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Contents

Federal Register

Vol. 84, No. 92

Monday, May 13, 2019

Agency for Healthcare Research and Quality
NOTICES
Patient Safety Organizations:
Voluntary Relinquishment from the AABB Center for Patient Safety, 20890

Agricultural Marketing Service
RULES
Soybean Promotion, Research, and Consumer Information; Beef Promotion and Research; Amendments to Allow Redirection of State Assessments to the National Program; Technical Amendments, 20765–20771

Agriculture Department
See Agricultural Marketing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20846

Antitrust Division
NOTICES
Changes under the National Cooperative Research and Production Act:
American Society of Mechanical Engineers, 20908–20909
DirectTrust Standards, 20909

Bureau of Consumer Financial Protection
PROPOSED RULES
Home Mortgage Disclosure, 20972–21041
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20864–20865

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20848–20849

Centers for Medicare & Medicaid Services
RULES
Home Health Services; CFR Correction, 20810
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20890–20891

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Procedural Justice-Informed Alternatives to Contempt Demonstration Project Data Collection, 20891–20893

Civil Rights Commission
NOTICES
Meetings:
Delaware Advisory Committee, 20847
District of Columbia Advisory Committee, 20847–20848
New Jersey Advisory Committee, 20846–20847

Coast Guard
PROPOSED RULES
Fire Protection for Recreational Vessels, 20827–20838
Safety Zone:
Tall Ships Challenge Great Lakes 2019, Buffalo, NY, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Kenosha, WI and Erie, PA, 20825–20827
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20902

Commerce Department
See Census Bureau
See Economic Analysis Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Commodity Futures Trading Commission
PROPOSED RULES
Certain Swap Data Repository and Data Reporting Requirements, 21044–21124

Defense Department
NOTICES
Meetings:
Board of Visitors, National Defense University, 20865–20866
Defense Business Board, 20866

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 20866–20867

Economic Analysis Bureau
NOTICES
Reporting Requirements:
Annual Survey of Foreign Direct Investment in the United States, 20855–20856
Annual Survey of Foreign Ocean Carriers' Expenses in the United States, 20856–20857
Annual Survey of U.S. Direct Investment Abroad, 20851–20852
Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons, 20852
Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States, 20849
Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent, 20853–20854
Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, 20852–20853
Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers, 20850–20851
Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, 20855
Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses, 20854–20855

Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate, 20849–20850

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Educational Opportunity Centers Program Annual Performance Report, 20867–20868
Significant Disproportionality State Survey, 20867

Energy Department
See Federal Energy Regulatory Commission
See National Nuclear Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20870–20871
Response to Recommendation 2019–1 of the Defense Nuclear Facilities Safety Board, Uncontrolled Hazard Scenarios and Implementation at the Pantex Plant, 20868–20870

Environmental Protection Agency
RULES
Air Quality Implementation Plans; Approvals and Promulgations:
Maryland; Reasonably Available Control Technology for Cement Kilns, Revisions to Portland Cement Manufacturing Plant and Natural Gas Compression Station Regulations, and Removal of Nitrogen Oxides Reduction and Trading Program Replaced by Other Programs and Regulations; Correction, 20808–20810
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Partial Approval, Partial Disapproval and Limited Approval, Limited Disapproval of Arizona Air Plan Revisions, Pinal County Air Quality Control District, 20838–20843
Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities, 20843–20845
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
RadNet, 20880–20881
Enforcement and Compliance:
Enhancing EPA-State Planning and Communication, 20882
Meetings:
Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union, 20881–20882
Permits:
Federal Indian Country Minor New Source Review Program, 20879–20880
Product Cancellation Order for Certain Pesticide Registrations and Amendments to Terminate Uses, 20882–20885
Registration Review:
Draft Human Health and/or Ecological Risk Assessments for Several Pesticides, 20885–20887

Federal Aviation Administration
RULES
Airworthiness Directives:
The Boeing Company Airplanes, 20772–20774
Amendment of Class E Airspace:
Mount Vernon, IL, 20774–20776
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 20822–20823
Learjet Inc. Airplanes, 20823–20825
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Renewal, Maintenance, Preventive Maintenance, Rebuilding, and Alteration, 20946
Petition for Exemption; Summary:
Bell Helicopter Textron, 20945–20946

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Number of Full-time Law Enforcement Employees as of October 31, 20909–20910

Federal Communications Commission
RULES
Use of Spectrum Bands above 24 GHz for Mobile Radio Services, 20810–20820

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 20872–20877
Complaint:
TransMontaigne Partners, LP and Metroplex Energy, Inc. v. Colonial Pipeline Co., 20877–20878
Environmental Impact Statements; Availability, etc.:
Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC; Plaquemines LNG and Gator Express Pipeline Project, 20871–20872
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Glen Ullin Energy Center, LLC, 20875–20876
MeterGenius, Inc., 20872
Petition for Declaratory Order:
Alternative Transmission Inc., 20878
Indicated Generation Owners, 20873
Request under Blanket Authorization
National Fuel Gas Supply Corp., 20878–20879
Request under Blanket Authorization:
Equitrans, LP, 20875

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 20887
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 20887

Federal Trade Commission
RULES
Guides for the Nursery Industry, 20776–20777
Labeling and Advertising of Home Insulation, 20777–20790
NOTICES
Granting of Requests for Early Termination of the Waiting Period under the Premerger Notification Rules, 20887–20890

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion, 20907–20908

Incidental Take Permit Application:
Proposed Habitat Conservation Plan for the Sand Skink, Orange County, FL; Categorical Exclusion, 20908
Proposed Habitat Conservation Plan for the Scrub-Jay and Eastern Indigo Snake, Volusia County, FL; Categorical Exclusion, 20906–20907

Food and Drug Administration
NOTICES
Determination of Regulatory Review Period for Purposes of Patent Extension:
AUSTEDO, 20896–20897
GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS, 20894–20896
Meetings:
Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments, 20893–20894

Foreign-Trade Zones Board
NOTICES
Authorization of Production Activity:
Fluid Equipment Development Co., LLC, Foreign-Trade Zone 70, Detroit, MI, 20857

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Testing Services and Scores for Foreign Health Care Workers to Demonstrate English Language Proficiency, 20897–20899

Homeland Security Department
See Coast Guard
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Mortgage and Loan Insurance Programs under the National Housing Act—Debenture Interest Rates, 20905–20906

Inspector General Office, Health and Human Services Department

RULES
Program Integrity—Medicare and State Health Care Programs; CFR Correction, 20810

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
RULES
Recognition and Deferral of Section 987 Gain or Loss, 20790–20801
User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents, 20801–20804
PROPOSED RULES
Withholding of Tax and Information Reporting with Respect to Interests in Partnerships Engaged in the Conduct of a U.S. Trade or Business, 21198–21225
NOTICES
Quarterly Publication of Individuals, Who Have Chosen to Expatriate, 20954–20968

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Magnesia Carbon Bricks from the People's Republic of China, 20857–20858
Fresh Tomatoes from Mexico, 20858–20861

Justice Department
See Antitrust Division
See Federal Bureau of Investigation
NOTICES
Proposed Consent Decree:
CERCLA, 20910

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 20910

National Aeronautics and Space Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
National Environmental Policy Act; Wallops Flight Facility; Site-wide, 20910–20912

National Highway Traffic Safety Administration
NOTICES
Petition for Decision of Inconsequential Noncompliance:
Daimler Trucks North America, LLC, 20951–20954
FCA US, LLC and Volkswagen Group of America, Inc., 20948–20951
Spartan Motors USA, Inc., 20947–20948

National Institutes of Health
NOTICES
Meetings:
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 20901–20902
National Cancer Institute, 20900
National Center for Complementary and Integrative Health, 20899–20900
National Institute of Diabetes and Digestive and Kidney Diseases, 20899–20901
National Institute on Aging, 20899
Office of the Director, 20900

National Nuclear Security Administration
NOTICES
Meetings:
Defense Programs Advisory Committee, 20871

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Northeast Multispecies Fishery; Common Pool Measures for Fishing Year 2019; Correction, 20820–20821
PROPOSED RULES
Taking and Importing Marine Mammals:
U.S. Navy Training and Testing in the Atlantic Fleet Training and Testing Study Area, 21126–21196

NOTICES
Application for Exempted Fishing Permits, 20862

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20912–20913

National Telecommunications and Information Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
State and Local Implementation Grant Program 2.0 Closeout Documentation, 20862–20863

Postal Regulatory Commission
RULES
Periodic Reporting, 20806–20808
NOTICES
New Postal Product, 20913

Postal Service
RULES
Inspection Service Authority; Civil Monetary Penalty Inflation Adjustment, 20804–20806

Presidential Documents
PROCLAMATIONS
Southern U.S. Border; Addressing Mass Migration Through (Proc. 9880), 21227–21231

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 20913–20914

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 20914, 20919–20920, 20939–20940
Application:
ALPS Variable Investment Trust, et al., 20914–20915
Toroso Investments, LLC and Tidal ETF Trust, 20933–20935
Meetings; Sunshine Act, 20944
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Exchange, LLC, 20940–20944
Cboe BYX Exchange, Inc., 20935–20937
Cboe BZX Exchange, Inc., 20937–20939
Cboe EDGA Exchange, Inc., 20917–20919
Cboe EDGX Exchange, Inc., 20915–20917, 20920–20933

Small Business Administration
NOTICES
Administrator's Line of Succession Designation, 20944

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Request for Commodity Jurisdiction Determination, 20945
Meetings:
Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union, 20944–20945

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service

U.S. Customs and Border Protection
NOTICES
Commercial Gaugers and Laboratories; Accreditation and Approval:
AmSpec, LLC (Savannah, GA), 20903–20904
AmSpec, LLC (Texas City, TX), 20903
Freeboard International (Linden, NJ), 20904–20905

Veterans Affairs Department
NOTICES
Privacy Act; Matching Program, 20968–20969

Separate Parts In This Issue

Part II
Bureau of Consumer Financial Protection, 20972–21041

Part III
Commodity Futures Trading Commission, 21044–21124

Part IV
Commerce Department, National Oceanic and Atmospheric Administration, 21126–21196

Part V
Treasury Department, Internal Revenue Service, 21198–21225

Part VI
Presidential Documents, 21227–21231

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

9822 (See Proc. 9880) 21229
9842 (See Proc. 9880) 21229
9880 21229

7 CFR

1220 20765
1260 20765

12 CFR

Proposed Rules:

1003 20972

14 CFR

39 20772
71 20774

Proposed Rules:

39 (2 documents) 20822, 20823

16 CFR

18 20776
460 20777

17 CFR

Proposed Rules:

23 21044
43 21044
45 21044
49 21044

26 CFR

1 20790
300 20801

Proposed Rules:

1 21198

33 CFR

Proposed Rules:

165 20825
175 20827

39 CFR

233 20804
3050 20806

40 CFR

52 20808

Proposed Rules:

52 20838
180 20843

42 CFR

484 20810
1001 20810

46 CFR

Proposed Rules:

25 20827

47 CFR

2 20810
25 20810
30 20810

50 CFR

648 20820

Proposed Rules:

218 21126

Rules and Regulations

Federal Register
Vol. 84, No. 92
Monday, May 13, 2019

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1220 and 1260

[No. AMS–LPS–13–0083]

RIN 0581–AD49

Soybean Promotion, Research, and Consumer Information; Beef Promotion and Research; Amendments To Allow Redirection of State Assessments to the National Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule amends the Soybean Promotion, Research, and Consumer Information Order (Soybean Order) and the Beef Promotion and Research Order (Beef Order) to add provisions allowing producers subject to these Orders to request, under certain circumstances, that their assessments paid to a State board or council authorized under their respective statutes, be redirected to the national program. The final rule also makes technical amendments to the Beef Order.

DATES: The final rule is effective June 12, 2019.

FOR FURTHER INFORMATION CONTACT: Kenneth Payne, Research and Promotion Division, at (202) 720–1118, fax (202) 720–1125, or by email at *Kenneth.Payne@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13771

This rulemaking does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Executive Order 13175

AMS has assessed the impact of this final rule on Indian tribes and determined that this rule will not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, AMS will work with the Department of Agriculture's (USDA) Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are identified in this final rule.

Background Summary and Final Action Taken

Soybean Order

The Soybean Promotion, Research, and Consumer Information Act (Soybean Act) (7 U.S.C. 6301–6311) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Soybean Act, a person subject to the Soybean Order may file a petition with USDA stating that the Soybean Order, any provision of the Soybean Order, or any obligation imposed in connection with the Soybean Order, is not in accordance with the law and request a modification of the Soybean Order or an exemption from the Soybean Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Soybean Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 1974 of the Soybean Act provides, with certain exceptions, that nothing in the Soybean Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Soybean Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Soybean Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Soybean Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Beef Order

Section 11 of the Beef Research and Promotion Act of 1985 (Beef Act) (7 U.S.C. 2901–2911) provides that nothing in the Beef Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Soybean Order Amendments

The Soybean Act and the Soybean Order issued thereunder authorize the collection of an assessment from soybean producers of one-half of one percent (0.5 percent) of the net market value of soybeans, processed soybeans, or soybean products. In most cases, these assessments are collected by QSSBs that retain up to half of the assessments as authorized by the Soybean Act. The QSSBs as defined under Section 1967(14) of the Soybean Act will forward the remainder to the United Soybean Board (Soybean Board), which administers the national soybean checkoff program.

The original Soybean Order, which became effective July 9, 1991, mandated that all producers marketing soybeans pay an assessment of one-half of one percent (0.5 percent) of the net market price of the market price of soybeans sold. The original Soybean Order contained a provision in § 1220.228(b)(5)(i), which required QSSBs that were authorized or required

to pay refunds to producers to certify to the Soybean Board that they would honor any request from a producer for a refund from the QSSB by forwarding to the Soybean Board those contributions for which the producer received a credit, pursuant to § 1220.223(a)(3). In other words, this section implicitly authorized refunds by the QSSB if State law allowed or required the QSSB to pay refunds; it further directed that the producer receive a credit for those refunds, with the amount sent to the Soybean Board.

In late 1995, 7 CFR 1220.228(b)(5)(i) was removed as part of a referendum process and rulemaking to eliminate obsolete regulatory language. However, the rulemaking inadvertently removed language that should have been retained regarding a producer's ability to redirect funds to the national program should they choose to do so. While this provision was removed from the order, QSSBs were still required to comply with the terms of their certification as a QSSB and, therefore, continued to allow for redirection of funds at the producer's request.

In States where payments to a QSSB are not required by State law, the opportunity for producers to choose, on a monthly basis, to direct the full federal assessment to the Soybean Board is already AMS' current policy and required under a QSSB's certification; this rule is intended to formalize the policy. Therefore, AMS is adding provisions that remedy the removal of the original refund language. A new provision is added to the Soybean Order to (i) require producers in States where refunds are authorized to forward that refund to the Soybean Board and (ii) provide an opportunity for a refund if the QSSB is not authorized by State statute but is organized and operating within a State and is certified by the Soybean Board, as provided by § 1220.228(a)(2). To avail themselves of this option, producers need to submit to their QSSB a form (QSSB–1) postmarked by the 30th day of the month following the month the soybeans were sold. Assessments will not be able to be retroactively redirected from the QSSB to the Soybean Board. Likewise, AMS will require that the QSSB must respond by the last day of the month following the month in which the OMB-approved QSSB–1 form was received.

Regardless of a State's requirements or refunding provisions, a producer is required by the Soybean Act to pay an assessment of one-half of one percent (0.5 percent) of the net market value of soybeans, processed soybeans, or soybean products. Several States have additional producer assessments, mandated by State statutes, that are collected in addition to the assessment required by the Soybean Act. If a QSSB offers a producer refund under a State statute, the QSSB can only refund to the producer any State assessment collected in excess of the assessment that the producer is required to pay under the Soybean Act. AMS will allow the portion of the assessment compelled by the Soybean Act that the QSSB would normally keep to be redirected to the national program by the producer if State law allows.

Examples:

- *Example 1—States with no State Law:* A soybean producer in California pays an assessment for a soybean sale. The assessment is collected by a certified Western Region Soybean Board, which keeps 50% and forwards the remaining 50% to the Soybean Board. California has no State law requiring a California assessment, so the California producer *may* request that the 50% of the assessment amount retained by the Western Region Soybean Board be redirected to the Soybean Board.
- *Example 2—States with a State Law that Authorizes Refunds:* A soybean producer in Iowa pays an assessment for a soybean sale. The assessment is collected by Iowa Soybean Promotion Board, which keeps 50% and forwards the remaining 50% to the Soybean Board. Iowa has a State law with a refund provision, so the Iowa producer *may* request that the 50% of the assessment amount retained by the Iowa Soybean Promotion Board be redirected to the Soybean Board.
- *Example 3—States with a State Law that Does Not Authorize Refunds:* A soybean producer in Virginia pays an assessment for a soybean sale. The assessment is collected by the Virginia Soybean Board which keeps 50% and forwards the remaining 50% to the Soybean Board. Virginia has a State law with no refund provision, so the Virginia soybean producer *may not* request that the 50% of the assessment amount retained by the Virginia Soybean Board be redirected to the Soybean Board.

Beef Order Amendments

Similarly, the Beef Promotion and Research Act of 1985 (Beef Act) and the Beef Promotion and Research Order (Beef Order) issued thereunder authorize the collection of an assessment from cattle producers of $1.00 per head of cattle sold. In most cases, these assessments are collected by Qualified State Beef Councils (QSBCs) that retain up to one-half of the assessments, as authorized by the Beef Act.[1] The QSBCs, as defined under Section 3(14) of the Beef Act, are required to forward the remainder to the Cattlemen's Beef Promotion and Research Board (Beef Board), which administers the national beef checkoff program.[2]

The original Beef Order, which became effective July 18, 1986, mandated that all producers owning and marketing cattle pay an assessment of $1.00 per head of cattle, to be collected each time cattle are sold. The original Beef Order contained a provision in § 1260.181(b)(5), which required QSBCs that were authorized or required by State law to pay refunds to producers to certify to the Beef Board that they would honor any request from a producer for a refund from the QSBC by forwarding to the Beef Board those contributions for which the producer received a credit, pursuant to § 1260.172(a)(3). In other words, this section authorized refunds by the QSBC if State law allowed or required the QSBC to pay refunds; it further directed that the producer receive a credit for those refunds, with the amount redirected to the Beef Board.

In late 1995, 7 CFR 1260.181(b)(5) was removed as part of rulemaking to eliminate obsolete regulatory language. However, the rulemaking inadvertently removed language that should have been retained regarding a producer's ability to redirect funds to the national program should they choose to do so. While this provision was removed from the order, QSBCs were still required to comply with the terms of their certification as a QSBC and, therefore, continued to allow for redirection of funds at the producer's request. Therefore, AMS is adding provisions to remedy the removal of the original language in § 1260.181.

Furthermore, while the Beef Act and Beef Order authorize QSBCs to retain up to 50 cents per head of cattle assessed, neither the Beef Act nor the Beef Order

[1] The Montana Beef Council is currently required by court order to obtain prior affirmative consent from producers before retaining any portion of the federal assessment.

[2] Section 3(14) of the Beef Act states that ''the term ''qualified State beef council'' means a beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives voluntary contributions and conducts beef promotion, research, and consumer information programs, and that is recognized by the Board as the beef promotion entity within such State.'' 7 U.S.C. 2902(14). Likewise, 7 CFR 1260.115 of the Beef Order states ''*Qualified State beef council* means a beef promotion entity that is authorized by State statute or a beef promotion entity organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and industry information programs; and that is certified by the Board pursuant to this subpart as the beef promotion entity in such State.''

require producers to contribute a portion of the $1.00-per-head assessment to a QSBC. Thus, unless a State statute requires the collection of the $1.00-per-head assessment set forth in the Beef Act (the federal assessment) or requires producers to contribute a portion of the $1.00-per-head federal assessment to the State beef council, producers are able to choose whether or not to contribute up to 50 cents per head of the federal assessment to their QSBC. While the original Beef Order did not address the specific situation that allows producers to choose whether or not to contribute up to 50 cents per head of the federal assessment to a QSBC, AMS is addressing this in the new language. A new provision is being added to the Beef Order to (i) require QSBCs in States where refunds to producers of the $1.00-per-head assessment collected per the Beef Act and Order are authorized by State statute to forward that refund to the Beef Board, and (ii) provide an opportunity for producers to choose to direct the full $1.00-per-head federal assessment to the Beef Board in States where State law does not require the collection of the $1.00-per-head assessment set forth in the Beef Act (the federal assessment) or in States where State statutes do not require producers to contribute a portion of the $1.00-per head federal assessment to the State beef council.

In States where payments to a QSBC are not required by State law, the opportunity for producers to choose, on a monthly basis, to direct the full $1.00-per-head federal assessment to the Beef Board is already AMS' current policy; this rule is intended to formalize the policy. The Beef Board also conveyed this policy in its July 26, 2018, memo ''Obligation to Redirect Assessments Upon Producer Request if Not Precluded by State Law.[3] As QSBCs are responsible for collecting assessments on cattle sold in or originating in their State (§§ 1260.172(a)(5) and 1260.181(b)(3)), producers who are allowed refunds under State statutes and choose to redirect the full $1.00-per-head assessment to the Beef Board must submit to the QSBC a written request on an approved request form (QSBC–1).

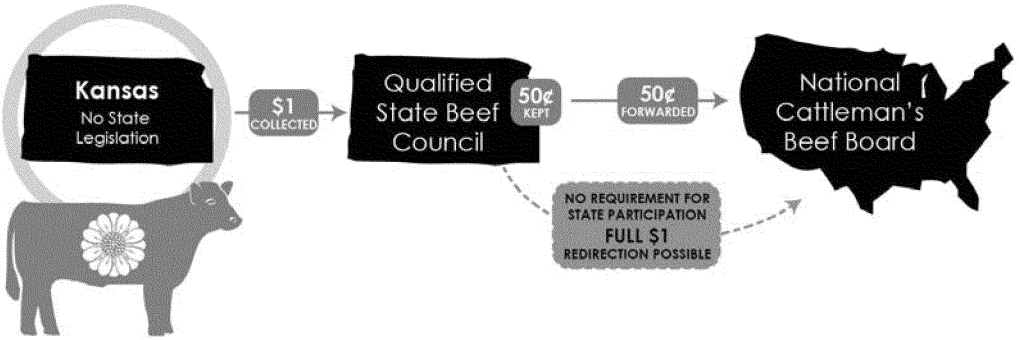
QSBCs generally describe the requirements and process for refunds in their Application for Certification that is reviewed and approved by the Beef Board. As part of their certification requirements, QSBCs must certify that any requests from producers for refunds will be honored by forwarding such request to the Beef Board if allowed by state law. In practice, QSBCs follow similar operating procedures for collecting the $1.00-per-head assessment across collection points (*e.g.,* markets, dealers, brokers) and are required to reconcile transactions on a monthly basis.[4] To align with their monthly reconciliation and budget planning, QSBCs provide for a monthly process through which producers can, if allowed by state law, redirect their assessments to the Beef Board. To avail themselves of this option, producers must submit a QSBC–1 form that is postmarked by the 15th day of the month following the month the cattle were sold. Assessments cannot be retroactively redirected from the QSBC to the Beef Board, and QSBCs will be required to respond to such requests within 60 days.[5]

Regardless of a State's requirements or refunding provisions, a producer is required by the Beef Act to pay an assessment of $1.00 on each head of cattle sold. Several States have additional producer assessments, mandated by State statutes, which are collected in addition to the $1.00-per-head assessment required by the Beef Act. If a QSBC offers a producer refund under a State statute, the QSBC can only refund to the producer any State assessment collected in addition to the $1.00-per-head assessment that the producer is required to pay under the Beef Act. This final rule provides that the portion of the $1.00-per-head federal assessment that the QSBC would normally keep under § 1260.181(b)(4) can be redirected to the national program by the producer if State law allows.

Examples:

• *Example 1—States with no State Law:* A producer in Kansas pays the $1.00 federal assessment for a cattle sale. The Kansas Beef Council collects $1.00, keeps $0.50, and forwards $0.50 to the Beef Board. Since there is no Kansas law compelling producers to contribute to the Kansas Beef Council, the producer *may* request that the $0.50 of the original $1.00 assessment be redirected to the Beef Board. This example is depicted in Figure 1.

Figure 1.



• *Example 2—States with a State Law that Authorizes Refunds:* A producer in Colorado pays $1.00 in assessments for a cattle sale. The Colorado Beef Council collects $1.00, keeps $0.50, and forwards $0.50 to the Beef Board. Colorado State law requires an assessment but allows a refund. The producer *may* request that the $0.50

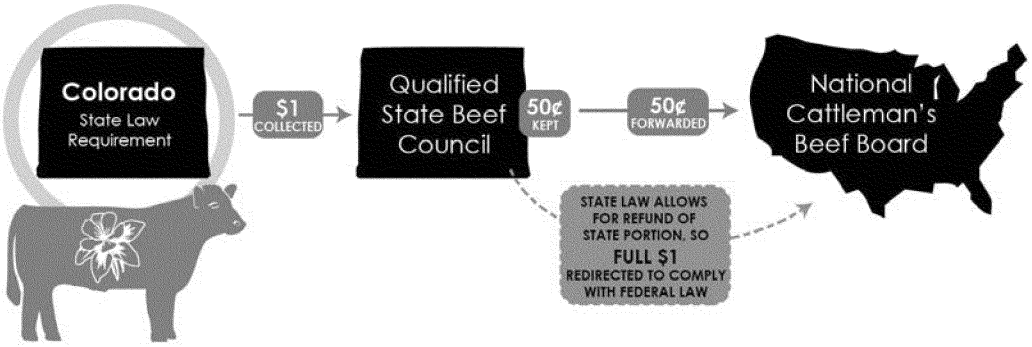
[3] *https://www.beefboard.org/library/files/redirection-memo-072916.pdf.*

[4] Cattlemen's Beef Board January 26, 2018, Guidelines for Qualified State Beef Councils.

[5] Montana Beef Council (MBC) presently operates differently and is therefore an exception to this process. Under a Preliminary Injunction in *R–CALF* v. *Sonny Perdue,* MBC is required to obtain affirmative consent from producers before retaining *any* portion of the federal assessment. As a result, MBC collects and sends all assessments to the Beef Board unless producers request, currently on an annual basis, that $0.50 of the $1.00-per-head assessment be provided back to MBC.

cents of the original $1.00 assessment be redirected to the Beef Board. This example is depicted in Figure 2.

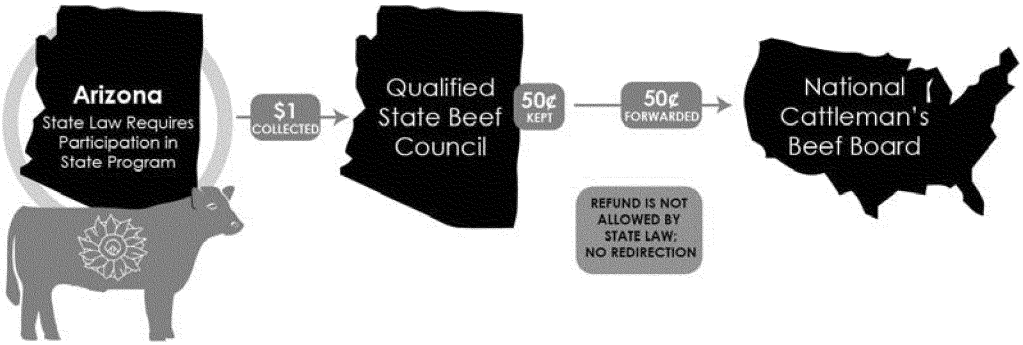
Figure 2.



Based on current understanding, AMS believes that most states fall within one of these two examples—either they have no state law compelling them to contribute to a QSBC or they have a state law that provides for refunds. In either case, a producer in these states can request that the $0.50 of the original $1.00 assessment be redirected to the Beef Board.

• *Example 3—States with a State Law that Does Not Authorize Refunds:* A producer in Arizona pays $1.00 in assessments for a cattle sale. The Arizona Beef Council collects $1.00, keeps $0.50, and forwards $0.50 to the Beef Board. Arizona law compels the collection of the $1.00-per-head assessment and does not provide for a refund. The producer *may not* request the Arizona Beef Council to redirect any portion of the $0.50 to the Beef Board. This example is depicted in Figure 3.

Figure 3.



Based on our current understanding of state laws, AMS believes that a few states fall under this example including Arizona, California, Georgia, Louisiana, Michigan, Oregon, Washington, and Wyoming. Because there is a state law in place that mandates assessments without allowing for a refund, producers in these states *may not* request that the $0.50 of the original $1.00 assessment be redirected to the Beef Board. In general, AMS recommends stakeholders fully consult state laws as these examples are used for illustrative purposes and are subject to change.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Soybean Industry

USDA's Farm Service Agency estimates that there are 569,998 soybean producers subject to the Soybean Order. This estimate comes from including all soybean producers engaged in the production of soybeans in the previous 2 years. The majority of producers subject to the Soybean Order are small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.201). SBA defines small agricultural producers as those having annual receipts of less than $750,000.

This final rule imposes no new burden on the soybean industry. This action clarifies that soybean producers, under certain circumstances, have the option to request that their assessments paid to a State board be directed to the national program. This action is not expected to change how producers or QSSBs operate with respect to directing funds when appropriate to the national program.

In the July 15, 2016 proposed rule, AMS provided a chart with estimates by

state for the potential amount that could be redirected to the national program (81 FR 45987). The estimates varied depending on whether redirection was possible and the degree to which state law affected refund amounts. AMS received comments indicating that the chart was difficult to follow and, in some cases, inaccurate. As a result, AMS is generalizing its estimate of potential financial impacts to range between $0 (for those states in which redirection is not possible) to up to $14 million (for high producing soybean states in which redirection is possible). However, given that this action is not expected to change how and whether producers choose to exercise the refund provisions in states where redirection of funds is possible, AMS does not anticipate a significant increase in producer requests that would impact the amount of assessments retained by a given state.

The information collection requirements on QSSBs are minimal. QSSBs are already required to remit assessments to the national programs. We have not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, AMS has determined that this final rule will not have a significant economic impact on a substantial number of small soybean entities.

Beef Industry

In the February 2013, publication of ''Farms, Land in Farms, and Livestock Operations,'' USDA's National Agricultural Statistics Service (NASS) estimated that the number of operations in the United States with cattle in 2012 totaled approximately 915,000, down from 950,000 in 2009. The majority of these operations that are subject to the Beef Order may be classified as small entities. According to the NASS website ''Farms, Land in Farms, and Livestock Operations,'' the issues released between 2005 and 2013 included ''Livestock Operations'' in the title. Beginning in 2014, livestock operations data will be available in the Census of Agriculture and most recent data can be referenced from Census data.

This final rule imposes no new burden on the beef industry. This action clarifies that producers, under certain circumstances, have the option of requesting that their assessments paid to a State council be directed to the national program. This action is not expected to change how producers or QSBCs operate with respect to directing funds when appropriate to the national program.

In the July 15, 2016, proposed rule, AMS provided a chart with estimates by state for the potential amount that could be redirected to the national program (81 FR 45988). The estimates varied depending on whether redirection was possible and the degree to which state law affected refund amounts. AMS received comments indicating that the chart was difficult to follow and, in some cases, inaccurate. As a result, AMS is generalizing its estimate of potential financial impacts to range between $0 (for those states in which redirection is not possible) to up to $4.6 million (for high producing beef states in which redirection is possible). However, given that this action is not expected to change how and whether producers choose to exercise the refund provisions in states where redirection of funds is possible, AMS does not anticipate a significant increase in producer requests that would impact the amount of assessments retained by a given state. Currently, a few States are in various stages of establishing or amending State laws regarding beef checkoff requirements, so this information may change over time.

The information collection requirements on QSBCs are minimal. QSBCs are already required to remit assessments to the national programs. We have not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, AMS has determined that this final rule will not have a significant economic impact on a substantial number of small producers.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35 (PRA)), this collection has been submitted to OMB with the reference number 0581–0246. Upon approval, the collection will be merged with OMB number 0581–0093, ''National Research, Promotion, and Consumer Information Programs.'' This final rule established the use of two new forms, which impose a total annual burden of 2.49 hours. The Producer Redirection of Checkoff Assessment forms, QSBC–1 and QSSB–1, require the minimum information necessary to effectively allow producers in certain states that pay their assessments to a State board or council authorized under their respective statutes, to redirect the assessment to the national program. The information collection requirements in the request are essential to carry out the legislative purpose of the Beef Act and the Soybean Act. Under the Beef and Soybean Orders, producers are required to pay an assessment each time cattle or soybeans are sold. While the Beef and Soybean Orders impose certain recordkeeping requirements, information required under the Beef and Soybean Orders can be compiled from records currently maintained. Such records must be retained for at least 3 years beyond the marketing year of their applicability.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In the proposed rule published July 15, 2016, (81 FR 45984) comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and USDA's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. No separate comments were received regarding the information collection section. However, AMS received a few comments that discussed the paperwork burden of the forms. AMS's response to those comments is discussed in the comments section.

Comments

A proposed rule concerning this action was published in the **Federal Register** on July 15, 2016 (81 FR 45984). A 60-day comment period ending September 13, 2016, was provided for interested persons to respond to the proposal. AMS received 14 comments. Of the 14 comments received, 12 commenters referenced proposed changes to the Beef Order, one commenter referenced proposed changes to the Soybean Order, and one commenter referenced both the Soybean and Beef Orders. One commenter did not provide comments within the timeframe provided in the proposed order. However, in general, this

commenter provided thoughts similar to those who opposed to the proposed rule.

Beef Order Comments

Of the 12 comments received regarding the Beef Order, over half stated that they opposed the proposed rule while the others recommended clarification, modification, or changes to the proposed rule. The majority of commenters believe that assessments should go to the national program, *unless* a producer provides affirmative consent that their federal assessment paid to a State council to remain with the State program. In their view, this approach would be consistent with a voluntary contribution as specified in the statute. These commenters suggest that having to request that their assessments paid to a State council be directed to the national program creates a mandatory contribution. Some commenters argued this is unconstitutional. AMS disagrees. This action continues to provide producers with a choice about where they want their funds directed. Since the inception of the national program, few producers have requested redirection of their funds to the national program, instead choosing to keep a portion of the federal assessment to support and invest in local programs and activities. For example, over the last three years, fewer than 20 producers or businesses have requested redirection of their funds to the national program. Thus, the majority of producers prefer that the QSBCs retain their assessments. Requiring the majority of producers to provide prior affirmative consent to keep their funds locally with the QSBCs would create an unnecessary burden to the industry as a whole.

A few commenters recommended that the deadline to request a redirection be extended. However, due to the need for QSBCs to reconcile their financial transactions on a monthly basis, the deadline for a redirection request must remain as a monthly process as stated in the proposed rule.

A few commenters recommended that AMS provide clarification of the individual State laws, clarify any conflicts with state laws, and modify/correct any examples provided in the rule and the tables to accurately reflect the governing state law. Specifically, the commenters requested greater clarification of the application of refunds in each state. AMS believes that application of State laws are best interpreted by the States themselves. The States, not AMS, are responsible for interpretation of their respective laws.

A few commenters pointed out that some QSBC names were incorrect. AMS has updated the list as part of its technical amendments and is reflected in this final rule.

One commenter requested that AMS clarify the terminology in the rule to reflect assessments of cattle producers, not ''beef'' producers, which, in their view, would include multinational trade associations and packers. That same commenter strongly disagreed with the assumption that only 20 operations would request a redirection. AMS modified terminology in the preamble accordingly and clarifies that it is producers as defined at § 1260.116 who are subject to assessment per the requirements at § 1260.172. Furthermore, while the commenter disagrees that only 20 producers or operations would request redirection and thus that AMS's information collection burden is too low, AMS has reviewed the number of redirection requests received over the last 3 years as the basis for its estimate. Over the last three years, fewer than 20 producers or businesses in total have requested redirection of their funds to the national program. Based on that data, AMS anticipates that the number of redirection requests will be similar to past years. Therefore, we do not believe the burden estimate is too low.

One commenter recommended several rule text changes. First, the commenter recommended changes to proposed rule § 1260.181(b)(5) to correct a perceived syntax error. The commenter recommended adding two new subsections to correct. Additionally, the commenter recommended a change to § 1260.312(c) to provide clarity and consistency with § 1260.181(b)(4). AMS reviewed the comments and believes they have merit. Consequently, these technical amendments are reflected in this final rule.

Soybean Order Comments

AMS received two comments respecting the Soybean Order. Both commenters recommended a rule text change to clarify that the proposed rule applies to QSSBs subject to both § 1220.228(a)(1) and (2) of the Soybean Promotion, Research, and Consumer Information Order. Both commenters also raised concerns with how the state refund rules applied to QSSBs. With respect to the commenters' recommended new amendatory language, AMS is unclear on section cross references and believes the suggested changes include an error. Rather than adopt the commenters suggested changes as they proposed, we have made modifications to the amendatory text by adding a new § 1220.228(e) to reflect that this rule applies to all QSSBs (*i.e.,* those entities that elect to serve due to their state authorization under § 1220.228(a)(1) and those entities that apply for certification under § 1220.228(a)(2)). AMS also moved the proposed text about producers receiving a refund and their obligations to remit this refund to the Board to the appropriate Assessments section at § 1220.223(a)(3). Further, as stated above, states are responsible for interpreting their laws, and AMS advises stakeholders to carefully review the state refund laws applicable to their state.

Accordingly, no changes will be made to the rule as proposed other than the tables and other technical amendments.

Beef Technical Amendments

In addition, several technical amendments are made to update information in the Beef Promotion and Research Order and rules and regulations:

Section 1260.181(b)(4) currently requires QSBCs to remit assessments to the Beef Board by the last day of the month in which the QSBC received the assessment ''unless the Board determines a different date.'' The Beef Board's practice has been to require QSBCs to remit assessments by the 15th day of the following month. This section will be updated to reflect actual practice.

Section 1260.315 is amended to reflect the current listing of QSBCs.

List of Subjects

7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR parts 1220 and 1260 are amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 2. In § 1220.223, revise paragraph (a)(3) to read as follows:

§ 1220.223 Assessments.

(a) * * *

(3) In determining the assessment due from each producer under paragraph (a)(1) or (2) of this section, a producer who is contributing to a Qualified State Soybean Board shall receive a credit from the Board for contributions to such Qualified State Soybean Board on any soybeans assessed under this section in an amount not to exceed one-quarter of one percent of the net market price of the soybeans assessed. Producers receiving a refund from a State entity are required to remit that refunded portion to the Board in the manner and form required by the Secretary.

* * * * *

■ 3. In § 1220.228, add paragraph (e) to read as follows:

§ 1220.228 Qualified State Soybean Boards.

* * * * *

(e) Entities authorized or required to pay refunds to producers must certify to the Board that any requests from producers for such refunds for contributions to it by the producer will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions pursuant to § 1220.223(a)(3). Entities not authorized by State statute but organized and operating within a State and certified by the Board pursuant to paragraph (a)(2) of this section must provide producers an opportunity for a State refund and must forward that refunded portion to the Board.

PART 1260—BEEF PROMOTION AND RESEARCH

■ 4. The authority citation for part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 5. In § 1260.172, add paragraph (a)(7) to read as follows:

§ 1260.172 Assessments.

(a) * * *

(7) A producer may request a redirection of assessments from a Qualified State Beef Council to the Board in accordance with § 1260.181(b)(8) or (9) by submitting a redirection request on the appropriate form postmarked by the 15th day of the month following the month in which the cattle were sold. Requests may not be retroactive. Requests to redirect assessments must be submitted by the producers who paid the assessments.

* * * * *

■ 6. In § 1260.181, revise the section heading and paragraph (b)(4) and add paragraphs (b)(8) and (9) to read as follows:

§ 1260.181 Qualified State Beef Councils.

* * * * *

(b) * * *

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the council, minus authorized credits issued to producers pursuant to § 1260.172(a)(3), by the 15th day of the month following the month in which the assessment was remitted to the Qualified State Beef Council unless the Board determines a different date for remittance of assessments.

* * * * *

(8) Certify to the Board, if the Council is authorized or permitted to pay refunds of contributions to the Council, that any requests from producers for such refunds by the producers will be honored by redirecting to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions pursuant to § 1260.172(a)(3).

(9) Certify to the Board that, if the Council is in a State in which State law does not require collection of the $1-per-head assessment set forth in the Act (the federal assessment) by the Council, or if the Council is in a State in which State statutes do not require producers to contribute a portion of the $1-per-head federal assessment to the Council, the Council will provide an opportunity for producers to choose to direct the full $1-per-head federal assessment to the Board.

■ 7. In § 1260.312, revise paragraph (c) to read as follows:

§ 1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.

* * * * *

(c) *Remittances.* The remitting person shall remit all assessments to the Qualified State Beef Council or its designee, or, if there is no Qualified State Beef Council, to the Cattlemen's Board at an address designated by the Board, with the report required in paragraph (a) of this section not later than the 15th day of the month following the month in which the cattle were purchased or marketed. All remittances sent to a Qualified State Beef Council or the Cattlemen's Board by the remitting persons shall be by check or money order payable to the order of the Qualified State Beef Council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

■ 8. Revise § 1260.315 to read as follows:

§ 1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as Qualified State Beef Councils:

(a) Alabama Cattlemen's Association.
(b) Arizona Beef Council.
(c) Arkansas Beef Council.
(d) California Beef Council.
(e) Colorado Beef Council Authority.
(f) Delaware Beef Advisory Board.
(g) Florida Beef Council, Inc.
(h) Georgia Beef Board, Inc.
(i) Hawaii Beef Industry Council.
(j) Idaho Beef Council.
(k) Illinois Beef Association, Inc.
(l) Indiana Beef Council, Inc.
(m) Iowa Beef Cattle Producers Association/dba/Iowa Beef Industry Council.
(n) Kansas Beef Council.
(o) Kentucky Cattlemen's Association, Inc.
(p) Louisiana Beef Industry Council.
(q) Maryland Beef Council.
(r) Michigan Beef Industry Commission.
(s) Minnesota Beef Council.
(t) Mississippi Beef Council.
(u) Missouri Beef Industry Council, Inc.
(v) Montana Beef Council.
(w) Nebraska Beef Council.
(x) Nevada Beef Council.
(y) New Jersey Beef Industry Council.
(z) New Mexico Beef Council.
(aa) New York Beef Industry Council.
(bb) North Carolina Cattlemen's Beef Council.
(cc) North Dakota Beef Commission.
(dd) Ohio Beef Council.
(ee) Oklahoma Beef Council.
(ff) Oregon Beef Council.
(gg) Pennsylvania Beef Council.
(hh) South Carolina Beef Council.
(ii) South Dakota Beef Industry Council.
(jj) Tennessee Beef Industry Council.
(kk) Texas Beef Council.
(ll) Utah Beef Council.
(mm) Vermont Beef Industry Council.
(nn) Virginia Beef Industry Council.
(oo) Washington State Beef Commission.
(pp) West Virginia Beef Council, Inc.
(qq) Wisconsin Beef Council, Inc.
(rr) Wyoming Beef Council.

Dated: May 7, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–09700 Filed 5–10–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0901; Product Identifier 2018–NM–114–AD; Amendment 39–19624; AD 2019–08–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports that frame web and frame integral inboard chord cracking is occurring on multiple airplanes in multiple locations below the passenger floor. This AD requires repetitive detailed, general visual, and high frequency eddy current (HFEC) inspections of the section 43 lower lobe frames at certain stations; an inspection to determine if certain repairs are installed; and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 17, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 17, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0901.

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–2018–0901; 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: George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@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 The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on October 16, 2018 (83 FR 52171). The NPRM was prompted by reports that frame web and frame integral inboard chord cracking is occurring on multiple airplanes in multiple locations below the passenger floor. The NPRM proposed to require repetitive detailed, general visual, and HFEC inspections of the section 43 lower lobe frames from station (STA) 380 to STA 520; an inspection to determine if certain repairs are installed; and applicable on-condition actions.

We are issuing this AD to address frame cracking, which could result in the failure of multiple frames or the combination of a severed frame and cracks in fuselage chem-milled pockets in this area, which could lead to uncontrolled decompression of the airplane.

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.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request for Clarification About Frame Replacement

Commenter Mark Bowen observed that if a crack or ''non SRM/Boeing repair'' is found as part of inspections accomplished under Boeing Alert Service Bulletin 737–53A1361, the only action given in the proposed AD is to contact Boeing for repair or alternative inspections. He asked whether frame replacement could be considered an alternative option to contacting Boeing for a repair or alternative inspections.

We partially agree with the commenter's request. Frame replacement that removes the cracked or repaired structure may be an option to repair or alternative inspections, provided the replacement can be shown to adequately address the unsafe condition. However, we note that the commenter did not provide sufficient documentation to show that, in regard to the unsafe condition identified in this AD, a frame replacement would adequately address the unsafe condition. In addition, the commenter did not provide details on a proposed method of compliance for accomplishing the proposed frame replacement or post-replacement inspections, nor any evidence of support for the proposal from the Boeing Commercial Airplanes Organization Designation Authorization (ODA). Operators may apply for an alternative method of compliance in accordance with paragraph (i) of this AD, provided they can show that frame replacement adequately addresses the unsafe condition. We have not changed this AD in this regard.

Request To Change Exception Language

Boeing requested that we change paragraph (i)(4) of the proposed AD to refer to paragraph (h) of the proposed AD instead of (h)(2). We contacted Boeing to clarify the intent of their comment and they stated that they wanted to allow using the phrase ''the original issue date of this service bulletin'' (rather than ''the effective date of this AD'') for determining compliance with this AD only when used in flag notes and notes. Boeing clarified that Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018, uses the phrase ''the original issue date of this service bulletin'' in several notes and

flag notes. Boeing added that those notes, which are required for compliance (''RC''), specify conditions under which certain airplanes do not have to do certain actions following approved repairs. Boeing noted that if those notes are not excepted in paragraph (h)(1) of this AD, then operators would have to request an AMOC if the applicable repairs were approved after the original issue date of the service bulletin and before the effective date of this AD.

We agree with the commenter's request to allow using the phrase ''the original issue date of this service bulletin'' for determining compliance with this AD only when used in flag notes and notes. We have revised paragraph (h)(1) of this AD to provide an exception to the phrase ''the original issue date of this service bulletin,'' in a note or flag note. We have determined it is not necessary to change paragraph (i)(4) of this AD in this regard.

Request To Correct Wording for Consistency

Boeing requested that we change paragraph (g)(1) of the proposed AD to refer to ''applicable on-condition actions'' instead of ''applicable corrective actions.'' The commenter suggested that ''on-condition actions'' would be consistent with current standards.

We agree because this language would be consistent with the preamble of this AD, as well as current terminology standards. We have made the requested change in paragraph (g)(1) of this 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

We reviewed Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018. This service information describes procedures for repetitive detailed, general visual, and HFEC inspections of the section 43 lower lobe frames from STA 380 to STA 520; a general visual inspection to determine if certain repairs are installed; and applicable on-condition actions. 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 262 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 84 work-hours × $85 per hour = $7,140 per inspection cycle.	$0	Up to $7,140 per inspection cycle	Up to $1,870,680 per inspection cycle.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–08–03 The Boeing Company: Amendment 39–19624; Docket No. FAA–2018–0901; Product Identifier 2018–NM–114–AD.

(a) Effective Date

This AD is effective June 17, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports that frame web and frame integral inboard chord cracking is occurring on multiple airplanes in multiple locations below the passenger floor. We are issuing this AD to address frame cracking, which could result in the failure of multiple frames or the combination of a severed frame and cracks in fuselage chem-milled pockets in this area, which could lead to uncontrolled decompression of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(2) For airplanes identified as Groups 2 through 6 in Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018: Except as required by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD,'' except where Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018, uses the phrase ''the original issue date of this service bulletin'' in a note or flag note.

(2) Where Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018, specifies contacting Boeing for repair instructions or contacting Boeing for alternative inspections: This AD requires doing the repair, or the alternative inspections and applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Except as required by paragraph (h)(2) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

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

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

(j) Related Information

For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@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) Boeing Alert Service Bulletin 737–53A1361, dated July 17, 2018.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on May 1, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–09747 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0041; Airspace Docket No. 19–AGL–6]

RIN 2120–AA66

Amendment of Class E Airspace; Mount Vernon, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E surface area and Class E airspace extending upward from 700 feet above the surface at Mount Vernon Airport, Mount Vernon, IL. This action is due to an airspace review caused by the decommissioning of the Mount Vernon VHF omnidirectional range (VOR), which provided navigation information to the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates and name of the airport are also being updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, August 15, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E surface area and Class E airspace extending upward from 700 feet above the surface at Mount Vernon Airport, Mount Vernon, IL, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 6708; February 28, 2019) for Docket No. FAA–2019–0041 to amend the Class E surface area and Class E airspace extending upward from 700 feet above the surface at Mount Vernon Airport, Mount Vernon, IL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received supporting this action. No response is provided.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

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

Modifying the Class E surface area to within a 4.1-mile radius (reduced from a 4.2-mile radius) at Mount Vernon Airport, Mount Vernon, IL, and removing the Mount Vernon VOR/DME and the associate extension from the airspace legal description;

And modifying the Class E airspace extending upward from 700 feet above the surface at Mount Vernon Airport, Mount Vernon, IL, by removing the Mount Vernon VOR/DME and the associated extension from the airspace legal description; and by updating the name of the airport (formerly Mount Vernon/Outland Airport) and the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review caused by the decommissioning of the Mount Vernon VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL IL E2 Mount Vernon, IL [Amended]

Mount Vernon Airport, IL
(Lat. 38°19′24″ N, long. 88°51′31″ W)

Within a 4.1-mile radius of Mount Vernon Airport.

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

* * * * *

AGL IL E5 Mount Vernon, IL [Amended]

Mount Vernon Airport, IL
(Lat. 38°19′24″ N, long. 88°51′31″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mount Vernon Airport.

Issued in Fort Worth, Texas, on May 6, 2019.

John A. Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–09701 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 18

Guides for the Nursery Industry

AGENCY: Federal Trade Commission.

ACTION: Rescission of the Guides for the Nursery Industry.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has completed its review of the Guides for the Nursery Industry (''Nursery Guides'' or ''Guides'') as part of its systematic review of all current Commission regulations and guides. Pursuant to that review, the Commission now rescinds the Guides.

DATES: The rescission is effective June 12, 2019.

ADDRESSES: Copies of this document are available on the Commission's website, *www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Guides for the Nursery Industry in 1979.[1] These Guides address various sales claims for outdoor plants, including representations regarding quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, growth ability, price, and origin or place where grown. The Commission amended the Guides in 1994 to update legal terminology, and again in 2007 to make a technical correction.[2]

The Commission reviews its rules and guides periodically to seek information about their costs and benefits to consumers and businesses, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission.

On February 22, 2018, the Commission initiated its scheduled regulatory review of the Nursery Guides and solicited public comment on several issues.[3] Specifically, the Commission sought input on the continuing need for the Guides; their economic impact; possible conflict between the Guides and state, local, federal, or international laws; and the effect of any technological, economic, environmental, or other industry changes. The Commission also solicited comment on issues specific to the Guides, such as whether the Commission should update plant classification references. In response, the Commission received one comment from the National Federation of Independent Business (''NFIB''). NFIB argued the Commission should rescind the Guides because they are an unnecessary federal regulatory burden. NFIB also contended that regulation or guidance concerning the nursery business is more properly conducted at the state, rather than federal, level.

Based on the lack of comments, as well as the paucity of consumer complaints and the lack of need for law enforcement action over the past two decades, on September 10, 2018 (83 FR 45582), the Commission published a Notice of Proposed Rulemaking (''NPRM'') seeking comments on a proposed rescission of the Guides. The Commission stated that the Guides no longer appear necessary, and thus serve little purpose to industry or consumers. Specifically, the types of practices detailed in the Guides do not appear to be prevalent in the nursery industry; little evidence exists that industry members currently use the Guides to help avoid deceptive practices; and rescission will have no impact on the FTC's ability to address unfair and deceptive practices in the nursery industry.

II. Comments Received

In response to the proposed rescission notice, the Commission received five comments, offering conflicting opinions.[4] The National Federation of Independent Business (''NFIB''), which had commented on the initial Notice, supported the proposed rescission, commenting that ''federal agencies should refrain from imposing unwarranted burdens on the American people and revoke unnecessary regulation.'' AmericanHort, an industry association representing nursery growers, greenhouses, and other garden retailers, supported retaining the Guides but also noted that ''the overall need for the Guides has perhaps diminished somewhat based on the general evolution of consumer protection mechanisms in our society.''

Three individual commenters opposed rescinding the Guides. Commenter Harrod argued that, ''due to the dishonest nature of some people,'' the Guides will always be needed. The commenter also asserted that rescission would imply that it is ''now okay to deceive people to make money.'' Similarly, commenter Lerner explained that the ''average nursery consumer lacks the expertise to identify species of plants'' and suggested the lack of complaints may be due to the Guides' effectiveness.[5]

[1] The Commission issued the Guides in 1979 (44 FR 11176 (Feb. 27, 1979)) to replace trade practice rules for the nursery industry (16 CFR part 34) first promulgated in the 1950s (23 FR 4803 (June 28, 1958)). The Guides were intended to help marketers avoid making claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. Industry guides, such as the Nursery Guides, are administrative interpretations of laws administered by the Commission. They do not have the force of law and are not independently enforceable. Failure to follow industry guides may result, however, in enforcement action under the FTC Act, 15 U.S.C. 45. In any such action, the Commission must prove that the act or practice at issue is unfair or deceptive in violation of Section 5 of the FTC Act.

[2] *See* 59 FR 64546 (Dec. 14, 1994); 72 FR 901 (Jan. 9, 2007).

[3] *See* 83 FR 7643 (Feb. 22, 2018).

[4] The comments, which can be found at *https://www.ftc.gov/policy/public-comments/2018/09/initiative-770,* included AmericanHort (#00007), NFIB (Nat'l Fed'n of Independent Business) (#00005), Lerner (#00004), Smith (#00003), and Harrod (#00002).

[5] Commenter Smith also opposed rescission without elaboration.

Although AmericanHort downplayed the Guides' overall necessity, it singled out the wild plant guidance (16 CFR 18.6) as particularly important. That section indicates that marketers should not sell plants collected from the wild without disclosing that fact.[6] The provision further advises that nurseries may identify plants ''propagated'' from lawfully-collected wild plants as ''nursery-propagated.'' AmericanHort explained that, while this guidance involves a relatively narrow issue, it is a ''critical element of industry guidance'' developed following negotiations between industry and conservation groups in the early 1990s. AmericanHort expressed concern this guidance would be lost if the Commission discontinues the Guides.[7]

III. Rescission of the Guides

The Commission has decided to rescind the Guides because they no longer appear necessary. In reaching this conclusion, the Commission has considered the comments received, the prevalence of practices covered by the Guides, the industry's use of the Guides, and the Commission's ability to address deceptive practices through enforcement actions or issuance of other educational materials in the Guides' absence. As discussed below, FTC staff can provide guidance and business education regarding the advertising of wild plants.

The record indicates that the types of practices addressed in the Guides are not prevalent in the nursery industry. The Guides focus on misrepresentations about species, size, rate of growth, and other plant characteristics. Neither the comments nor consumer complaints provide evidence that these types of deceptive practices are prevalent. Indeed, as discussed in the NPRM, nearly all recent complaints received by the Commission regarding plant sales involve online plant orders that were either dormant or dead upon arrival, incomplete, not delivered in the time promised (or at all), or not refunded upon request.[8]

Furthermore, with the exception of guidance on wild plants, the Commission lacks clear evidence that industry members currently use the Guides to help avoid deceptive practices. AmericanHort acknowledged that the need for the Guides has ''perhaps diminished'' over the years. As noted in the NPRM, FTC staff found no mention of the Guides on websites for industry associations, nurseries, or other industry entities.

The Guides do not appear to add substantially to general FTC guidance on deceptive practices under the FTC Act.[9] The current provisions focus on misrepresentations about plant characteristics and generally address claims that are clearly deceptive on their face, and thus unambiguously addressed by Section 5 of the FTC Act. In contrast, most of the agency's Guides address difficult implied claims, thus providing valuable information to help businesses avoid deception and substantiate claims that might otherwise lead to consumer confusion (*e.g.,* the Green Guides in 16 CFR part 260). Given AmericanHort and Harrod's comments about the usefulness of the Guides' wild plant section, the FTC staff will continue to provide business guidance on this topic through its online Business Center, which contains plain-language advice to help businesses understand their responsibilities and comply with the FTC Act.[10] This will ensure the wild plant guidance remains available to industry while also giving the FTC flexibility to update such guidance as needed.

Finally, contrary to a few commenter suggestions, the Guides' rescission will not impact sellers' obligations to avoid deceptive practices and otherwise comply with the law, nor will it impact the FTC's ability to address deceptive practices in the nursery industry. The Guides themselves are not rules. Instead, they contain interpretations of how the Commission would apply the FTC Act to nursery practices. Therefore, their rescission has no effect on existing obligations. Moreover, rescission does not signal an FTC withdrawal from efforts to prevent deception in the labeling and advertising of these products. Industry members must continue to follow the law articulated in pertinent Commission and court decisions, both of which are generally applicable to all industries. Industry should also consult the FTC's Policy Statement on Deception for guidance, which describes how the Commission applies established legal principles to address deceptive trade practices. As stated in the Deception Statement, the Commission ''will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.''[11] If the Commission determines that certain practices in the sale of outdoor plants are materially misleading, it can continue to address such practices through enforcement actions under Section 5 of the FTC Act.

List of Subjects in 16 CFR Part 18

Advertising, Nursery, Trade practices.

PART 18—[REMOVED]

■ For the reasons stated in the preamble, and under the authority of 15 U.S.C. secs. 5, 6, and 18, the Federal Trade Commission amends 16 CFR by removing part 18.

By direction of the Commission, Commissioners Chopra and Slaughter dissenting.

Julie A. Mack,

Acting Secretary.

[FR Doc. 2019–09745 Filed 5–10–19; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 460

RIN 3084–AB40

Labeling and Advertising of Home Insulation: Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (''R-value Rule'' or ''Rule'') to clarify, streamline, and improve existing requirements. Specifically, the amendments clarify the Rule's coverage, improve Fact Sheet disclosures, require certain test methods to substantiate R-value claims for non-insulation products, update the test procedures

[6] Section 18.6 (''Plants collected from the wild state'') reads: ''It is an unfair or deceptive act or practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state; *provided, however,* that plants propagated in nurseries from plants lawfully collected from the wild state may be designated as 'nursery-propagated.' ''

[7] Harrod, who supported retention, added that wild plants ''rarely prosper for a prolonged period of time.''

[8] The Guides address some of the practices identified in the complaints indirectly or in limited ways. For instance, § 18.1(c)(2) states it is deceptive to represent ''[t]hat industry products are healthy . . . when such is not the fact.'' In addition, some complaints involve incorrect orders, which are covered by § 18.1(a). The Commission sees no need to maintain the Guides to address these limited issues and has found no basis to amend the Guides to address other Section 5 violations, such as the failure to deliver products.

[9] Section 5 of the FTC Act, 15 U.S.C. 45(a)(1), prohibits unfair or deceptive acts or practices in or affecting commerce. See FTC Policy Statement on Deception, appended to *Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 175 (1984) (''Deception Policy Statement'').

[10] See *https://www.ftc.gov/tips-advice/business-center/guidance.*

[11] Deception Policy Statement, 103 F.T.C. at 175.

incorporated into the Rule, and exempt certain disclosures for limited format advertising.

DATES: The amendments will become effective on May 13, 2020. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 13, 2020.

ADDRESSES: Copies of this document are available on the Commission's website, *www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney (202–326–2889), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the R-value Rule in 1979 to address the failure of the home insulation marketplace to provide essential pre-purchase information to consumers, primarily an insulation product's ''R-value.'' [1] An insulation product's ''R-value'' represents the product's ability to restrict heat flow and, therefore, reduce energy costs. The higher the R-value, the better the product's insulating ability. R-value ratings vary among types and forms of home insulations and even among products of the same type and form.

For insulation marketed for use in residential structures, the Rule requires R-value disclosures, directs manufacturers to substantiate the claims made in these disclosures, and prohibits certain claims unless they are true and non-misleading. Specifically, the Rule requires insulation sellers to disclose the insulation product's R-value and related information based on uniform, industry-adopted test procedures.[2] This information enables consumers to evaluate the performance and cost-effectiveness of competing products.

A. Products Covered

The R-value Rule covers all ''home insulation products.'' Under the Rule, the term ''insulation'' includes any product ''mainly used to slow down heat flow'' from, for example, a heated interior through exterior walls to the outside.[3] The Rule covers most types of insulation marketed for use in residential structures.[4] It does not cover insulation marketed solely for use in commercial (including industrial) buildings.

Home insulation falls into two basic categories: ''mass'' and ''reflective.'' Mass insulations reduce heat transfer by conduction (through the insulation's mass), convection (air movement within, and through, the air spaces inside the insulation), and radiation. Reflective insulations (primarily aluminum foils) reduce heat transfer by radiation, when the insulation is installed facing an airspace. Within these basic categories, home insulation is made from various materials (*e.g.,* fiberglass, cellulose, polyurethane, aluminum foil) and comes in various forms (*e.g.,* batt, dry-applied loose-fill, spray-applied, board stock, multi-sheet reflective).

B. Covered Parties

The Rule applies to home insulation manufacturers, professional installers, retailers who sell insulation for do-it-yourself installation, and new home sellers, including sellers of manufactured housing (''covered entities''). It also applies to laboratories that conduct R-value tests for those who base their R-value claims on these test results.

C. The Rule's Basis

The Commission first issued the R-value Rule in response to a variety of unfair or deceptive acts or practices in the insulation industry. Specifically, the Commission found that many sellers: (1) Failed to disclose R-values, impeding informed purchasing decisions and misleading consumers who based their purchases on price or thickness alone; (2) exaggerated R-value disclosures and often failed to account for material factors (*e.g.,* aging, settling) that reduce thermal performance; (3) failed to inform consumers about an R-value's meaning and importance; (4) exaggerated fuel bill savings and failed to disclose that savings vary depending on consumers' particular circumstances; or (5) falsely claimed that consumers' insulation purchases would qualify for tax credits, or that products had been ''certified'' or ''favored'' by federal agencies.[5]

D. The Rule's Requirements

The Rule requires covered entities to disclose R-value and related information (*e.g.,* thickness, coverage area per package) on package labels and manufacturers' fact sheets. Covered entities must derive these disclosures from tests conducted according to one of four specified ASTM International (''ASTM'') test procedures that measure thermal performance under ''steady-state'' (*i.e.,* static) conditions.[6] Industry members must conduct tests for mass insulation products on the insulation material alone (excluding any airspace) at a mean temperature of 75 °F. The Rule's R-value tests account for factors that can affect insulation's thermal performance. For example, tests for polyurethane, polyisocyanurate, and extruded polystyrene insulation account for aging, and tests for loose-fill insulation products reflect the effect of settling.[7]

The Rule also requires specific disclosures on manufacturer product labels and fact sheets, installer receipts, and new home seller contracts. For example, insulation labels must display the product's R-value and the statement ''R means resistance to heat flow. The higher the R-value, the greater the insulating power.'' [8] The Rule also requires that certain affirmative disclosures appear in advertising and other promotional materials (including those on the internet) containing an R-value, price, thickness, or energy-saving claim, or comparing one type of insulation to another. For example, if an advertisement contains an R-value, it must disclose the type of insulation

[1] The Commission promulgated the R-value Rule pursuant to Section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a. The Rule became effective on September 30, 1980. *See* 44 FR 50218 (Aug. 27, 1979).

[2] Additional Commission rules or guides may also apply to home insulation sellers. *See, e.g.,* 16 CFR parts 701 and 702 (warranty-related rules), and 16 CFR part 260 (Guides for the Use of Environmental Marketing Claims). Further, Section 5 declares that unfair or deceptive acts or practices are unlawful, and requires that advertisers and other sellers have a reasonable basis for advertising and other promotional claims before they are disseminated. *See FTC Policy Statement on Deception,* 103 F.T.C. 174, 175 (1984) (appended to *Cliffdale Assocs., Inc.,* 103 F.T.C. 110 (1984)) (''*Deception Statement*''); *FTC Policy Statement on Unfairness,* appended to *International Harvester Co.,* 104 F.T.C. 949 (1984); and *FTC Policy Statement Regarding Advertising Substantiation,* 104 F.T.C. 839 (1984) (appended to *Thompson Med. Co.,* 104 F.T.C. 648 (1984)) (''*Substantiation Statement*'').

[3] *See* 16 CFR 460.2.

[4] The Rule does not cover pipe insulation or any type of duct insulation except for duct wrap. *See* 44 FR at 50238, n. 170 (the Commission explained that pipe insulation is used primarily to reduce condensation). In addition, while most of the Rule's provisions do not apply to non-insulation products with insulating characteristics, such as storm windows or storm doors, the amendments announced in this Notice add substantiation requirements for R-value claims made for such products.

[5] 44 FR at 50222–24.

[6] The Rule (§ 450.5) incorporates by reference ASTM test procedures, which ASTM reviews and revises periodically. For mass insulations, the required tests are ASTM C177, C518, C1363, or C1114. The Rule requires testing for reflective insulation products according to ASTM C1363, which generates R-values for insulation systems (such as those that include one or more air spaces). Industry members must test the R-value of a single-sheet reflective insulation product under ASTM E408 or C1371.

[7] 44 FR at 50219–20, 50227–28.

[8] 16 CFR 460.12(c).

being sold and the thickness needed to obtain that R-value, as well as the statement: ''The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values.'' In addition, if an advertisement contains an energy saving claim, it must disclose: ''Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power.''

The Rule also requires manufacturers and other sellers to have a ''reasonable basis'' for any energy-saving claims they make on labels or in advertising.[9] Although the Rule does not specify how they must substantiate such claims, the Commission explained when issuing the Rule that scientifically reliable measurements of fuel use in actual houses, or reliable computer models or methods of heat flow calculations, would meet the reasonable basis standard.[10] Sellers other than manufacturers can rely on the manufacturer's claims unless they know, or should know, that the manufacturer lacks a reasonable basis for its claims.

II. Regulatory Review

The Commission reviews its rules and guides periodically to ascertain their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews assist the Commission in identifying rules and guides warranting modification or rescission. As part of its last review in 2005, the Commission issued several amendments to update and improve the Rule. For example, the Commission added a temperature differential requirement for testing, updated tests for reflective insulation, and required new initial installed thickness disclosures for loose-fill insulation.[11]

In 2016, the Commission initiated a new regulatory review through the publication of an Advance Notice of Proposed Rulemaking (ANPR).[12] In the ANPR, the Commission sought comments on, among other things, the economic impact of, and the continuing need for, the Rule; the Rule's benefits to consumers; and the burdens it places on industry, including small businesses, subject to its requirements.

Following the ANPR, the Commission published a Notice of Proposed Rulemaking (NPRM) on January 22, 2018 (83 FR 2934). In the NPRM, the Commission proposed to: (1) Clarify that the Rule covers products marketed for residential applications, even if those products are originally developed for the commercial market; (2) require marketers to use the Rule's testing requirements to substantiate any R-value claims for non-insulation products marketed in whole or in part to reduce residential energy use by slowing heat flow; (3) add information about air sealing and installation to fact sheets; (4) clarify that online retailers must provide labels and fact sheets; (5) eliminate reference to an obsolete aging specification; (6) revise provisions addressing the incorporation by reference of ASTM test procedures; (7) eliminate a provision that automatically updates ASTM test procedures; and (8) exempt space-constrained advertising from certain affirmative disclosures.[13] In response to the NPRM, the Commission received 13 comments.[14] After considering the comments, the Commission now issues final amendments to the Rule, which, as discussed below, largely track the amendments proposed in the NPRM.

III. Issues Raised by Commenters

A. Need for and Costs and Benefits of the Rule

In the NPRM, the Commission determined to retain the Rule, given its benefits and minimal costs as reported by commenters. Summarizing comments received in response to the ANPR, the Commission explained that the Rule helps consumers and industry members by combating deceptive and unfair practices, creating a level playing field that promotes competition, fostering a marketplace in which industry can more easily self-regulate, furnishing guidelines to industry for product testing and evaluation, and promoting consumer confidence. The commenters also indicated the Rule does not impose significant, unwarranted costs on industry members or consumers.

In response to the NPRM, several commenters supported the Commission's decision to retain the Rule and reiterated many of their earlier points.[15] No commenters objected to the Rule's retention. Accordingly, the Commission retains the Rule.

B. Commercial Insulation Products Sold in the Residential Market

Background: The Rule does not cover insulation sold for use in commercial (including industrial) buildings.[16] However, comments submitted in response to the ANPR stated that some products developed and marketed primarily for commercial or industrial structures are also marketed for residential applications. In the NPRM, the Commission proposed amending the Rule to clarify that such products fall within the Rule's existing coverage of ''home insulation.''

Comments: Several commenters supported the proposed amendment; none objected.[17] NAIMA explained that the clarification effectively addresses disclosures for products developed initially or primarily for commercial or industrial applications but also marketed in the residential sector. The amendment, according to NAIMA, apprises industry members that commercial and industrial products marketed to homeowners must comply with the Rule.

Discussion: As discussed in the NPRM and the comments, some industry members operating in the residential market appear to be unaware that they must follow the R-value Rule for products marketed for residential applications even if originally developed and intended for the commercial or industrial market. Accordingly, the final amendments clarify that the Rule covers such products.

C. R-Value Claims for Non-Insulation Products

Background: Since its original promulgation, the Rule has applied only to products marketed primarily as insulation and thus has excluded non-insulation products with insulating characteristics, such as siding, coatings, caulking, weather stripping, garage doors, or draperies. In the NPRM, the Commission proposed expanding the Rule's current testing requirements to R-value claims made for any non-insulation product marketed to reduce energy use by slowing heat flow in residential buildings.

[9] *See* 16 CFR 460.19.

[10] 44 FR at 50233–34.

[11] 70 FR 31258 (May 31, 2005).

[12] 81 FR 35661 (June 3, 2016).

[13] The amendments also make a non-substantive change to § 460.2 (*i.e.,* changing the term ''slow down'' to ''slow'').

[14] The comments are located at: *https://www.ftc.gov/policy/public-comments/2018/03/initiative-740.* Polyisocyanurate Insulation Manufacturers Association (PIMA) (#00009); AFM Corporation (#00010); North American Insulation Manufacturers Association (NAIMA) (#00011); Insulation Contractors Association of America (ICAA) (#00012); Reflective Insulation Manufacturers Association (RIMA) (#00013); American Chemistry Council (ACC) (#00014); Brick Industry Association (#00015); EPS Industry Alliance (EPS–IA) (#00016); Harrison (#00008); Anonymous (#00007); Aresty (#00006); Ji (#00003); and Extruded Polystyrene Foam Association (XPSA) (#00002).

[15] *See* PIMA, NAIMA, Anonymous, and Ji.

[16] *See, e.g.,* 45 FR 68920 (Oct. 17, 1980) (staff guidance).

[17] *See* ACC, AFM, ICAA, NAIMA, PIMA, and XPSA.

Comments: Commenters supported (and none opposed) the Commission's proposal.[18] XPSA, for example, agreed that marketers must support claims for insulating performance qualities for these types of products. NAIMA observed a prevalence of questionable R-value claims for non-insulation products and argued the amendment would provide clear notice that marketers must substantiate R-value claims for such products. Specifically, NAIMA cited numerous questionable R-value (*e.g.,* R–24) and insulation-related claims made for paints and ceramic coatings. None of the commenters stated that the Rule's testing requirements in § 460.5 would be inappropriate for substantiating such claims or would otherwise fail to cover R-value claims for these various products. Finally, the Brick Industry Association (BIA) explained that its technical documents contain R-value claims for brick wall assemblies derived from a modified version of ASTM C1363. Asserting that its modified approach is consistent with the intent behind ASTM C1363, BIA urged the Commission to approve its R-value disclosures.

In addition to discussing the proposed amendment, several commenters raised concerns about energy savings claims.[19] NAIMA, for instance, asked the Commission to affirm marketers must substantiate any type of energy savings claim. NAIMA, along with ACC, also recommended the Commission reference the Policy Statement Regarding Advertising Substantiation[20] and remind manufacturers about the need for competent and reliable scientific evidence to back their claims. Such Commission affirmation, in NAIMA's view, would allow members to ''more authoritatively'' challenge deceptive competitor claims.

Discussion: Consistent with the proposal, the Commission's final amendments direct sellers to use the Rule's existing testing requirements to substantiate R-value claims for non-insulation products, with the exception of fenestration and fenestration attachments.[21] The Commission has observed a prevalence of grossly exaggerated R-value claims for non-insulation products, such as coatings, paint, and housewrap sold primarily for reasons other than their ability to impede heat flow. Because the Rule has not covered these products, the Commission has challenged such practices as false and unsubstantiated under Section 5 of the FTC Act.[22] Commenters confirmed that these questionable R-value claims for non-insulation products are common.[23]

To address this problem, the new provision will furnish an effective means to reduce deceptive claims by providing clear guidance for marketers seeking to make truthful, substantiated claims, while establishing a more direct means to combat unsubstantiated R-value claims. The amended rule requires marketers to base any voluntary R-value claim made in advertising for a non-insulation product on the appropriate tests referenced in § 460.5 of the Rule (*i.e.,* the standard ASTM tests incorporated into the Rule and currently applicable to R-value disclosures for insulation). Accordingly, marketers acting in good faith will have clear notice of the test procedures they should use to substantiate their R-value claims. In addition, the amendment will give the FTC a more efficient and direct means to challenge R-value claims that are not adequately substantiated. The amendment does not impose any disclosure, labeling, or additional requirements for non-insulation products beyond the testing requirements.[24]

It is likely most marketers who choose to make R-value claims for various non-insulation products already rely on the appropriate ASTM testing standards. Accordingly, this amendment should pose little or no additional burden. At the same time, it will clarify that marketers must substantiate R-value claims and will provide a check on unscrupulous sellers who seek an unfair advantage by exaggerating product R-values based on faulty tests.

The final amendment does not contain a provision approving specific technical disclosures related to R-value claims made for brick wall assemblies. Without additional details about how such R-values are derived, the Commission cannot address the particular testing BIA described. Should marketers need guidance about testing for this or other products covered by the new provision, they can contact FTC staff.

In response to commenter concerns about energy savings claims, the Commission reaffirms that sellers must substantiate their energy savings claims with competent and reliable scientific evidence. Section 460.19 of the Rule requires manufacturers to have a reasonable basis for savings claims and specifies recordkeeping requirements for data that support such claims. In addition, the Commission has provided general guidance for making truthful and not misleading advertising claims through a variety of means, including the Deception Policy Statement and the Policy Statement Regarding Advertising Substantiation.[25] Marketers may also refer to past Commission cases involving deceptive energy savings claims for further guidance on these issues.[26]

D. Additional Fact Sheet Disclosures

Background: In the NPRM, the Commission proposed changing the Rule's fact sheet disclosures to better alert consumers to factors that may affect their heating and cooling costs. The current fact sheets generally advise consumers that their fuel savings depend on a variety of considerations, including their geographic location, type of house, fuel use, and family size. Comments on the ANPR, however, suggested the fact sheets should also mention that proper insulation installation and home air sealing can affect fuel costs. Accordingly, the Commission proposed amending the fact sheets to specifically address these two factors and sought comments on how much time manufacturers would require to make such changes. The Commission also asked whether the Rule should require specific disclosures for R–19 batt insulation, as suggested by some commenters, when installed in typical wall cavities, where compression can reduce R-value.

Comments: Commenters supported including information about installation and home air sealing on fact sheets.[27]

[18] NAIMA, XPSA, Brick Industry Association, ICAA, and ACC.

[19] XPSA, ACC, and NAIMA.

[20] *See Substantiation Statement.*

[21] As noted in the NPRM, the amendments exclude fenestration and fenestration attachments because these products are covered under the rating and certification activities of entities such as the National Fenestration Rating Council (NFRC) and DOE. *See* Energy Policy Act of 1992 (Section 121 of Pub. L. 102–486).

[22] *United States* v. *Edward Sumpolec,* No. 6:09–cv–378–ORL–36KRS (M.D. Fla. Jan. 9, 2013); *In the Matter of Kryton Coatings International, Inc. and Procraft, Inc.,* FTC Matter/File Number: 012 3060. Docket Number: C–4052 (June 18, 2002); and *Federal Trade Commission* v. *Innovative Designs, Inc.,* 2:16–cv–01669–NBF (W.D. Pa. Nov. 4, 2016).

[23] NAIMA; Robert Aresty.

[24] Specifically, as indicated in the amendment to the Rule's Appendix, the requirements of §§ 460.6 through 460.21 do not apply to R-value claims for such products. Although the Rule's recordkeeping requirements (§ 460.9) do not apply to the amendment, marketers still must possess substantiation (*e.g.,* test reports) for their claims, just as they must for any claim pursuant to the FTC Act.

[25] *See Deception Statement;* and *Substantiation Statement.*

[26] *See, e.g., In re Gorell Enterprises Inc.,* FTC File No. 112–3053 (May 16, 2012); *In re Long Fence & Home LLLP,* FTC File No. 112–3005 (Apr. 5, 2012); *In re Serious Energy Inc.,* FTC File No. 112–3001 (May 16, 2012); *In re THV Holdings LLC,* FTC File No. 112–3057 (May 16, 2012); and *In re Winchester Industries,* FTC File No. 102–3171 (May 16, 2012).

[27] NAIMA, ICAA, and ACC.

ACC, for instance, indicated the two additional disclosures will help improve consumer understanding of building envelope performance. NAIMA added that the new information will assist consumers in choosing insulation.

Although commenters did not identify any significant regulatory burden associated with the changes, a few requested sufficient compliance time. ACC estimated its members could implement the proposed changes within 180 days. However, given that older fact sheets are likely to remain in circulation beyond that date, it asked the Commission to consider a ''reasonable approach'' to enforcement within the first year. NAIMA, on the other hand, recommended a two-year effective date to allow manufacturers to exhaust existing stock and revise fact sheets for a wide variety of products.

Although ACC did not oppose the proposed fact sheet change, it suggested additional mandatory disclosures related to air sealing. Specifically, it recommended that fact sheets include a link to Department of Energy (''DOE'') information about air sealing for homes and buildings. It also requested additional language in § 460.17 requiring installers to tell customers insulation has been installed in accordance with the manufacturer's instructions. Furthermore, ACC recommended additional disclosures consistent with its assertion in comments to the ANPR that an insulation's air infiltration properties impact overall home efficiency. NAIMA, however, expressed its continued disagreement with ACC on the matter. In its view, insulation does not play a major role in blocking total air infiltration in a home, and resistance to air flow is accomplished largely by other measures required by building energy codes, such as gypsum board, sheathing, house wrap, and sealing of joints and holes.

Finally, NAIMA supported specific disclosures on fact sheets for R–19 batts because such insulation, which is usually 6¼″ thick, is frequently compressed into 5 ½″ wall cavities, thus reducing R-value. NAIMA suggested requiring that fact sheets disclose the compressed insulation's R-value rounded to the nearest whole number.

Discussion: The final amendments require fact sheets to include installation and air sealing information. As discussed in the NPRM and by the commenters, these changes will better alert consumers to factors that may affect their heating and cooling costs. The final amendments also contain a new provision requiring fact sheets to disclose reductions in the R-value of R–19 batts when such insulation is compressed into typical wall cavities. This new disclosure will help alert building professionals and consumers to the lower R-value resulting from compression in the typical installation of this product. Finally, the Commission sets the effective date of these new disclosures (and all other final amendments) at one year, which gives manufacturers an entire selling season to make the required changes. The one-year compliance period should be sufficient for manufacturers to update their fact sheets posted online as well as those provided to retailers. Should manufacturers confront issues with existing fact sheet stock, they can contact FTC staff for guidance.

Although the final amendments include the general disclosures proposed in the NPRM, the Commission declines to require additional disclosures related to installation and air infiltration as suggested by ACC. Such disclosures do not appear necessary because the Rule already requires information on labels and fact sheets regarding the importance of proper installation in achieving the labeled R-value. In addition, the Commission declines to require disclosures about the air sealing qualities of insulation and associated impacts on overall energy performance. Commenters responding to the ANPR and NPRM disagreed about this issue. For example, while ACC argued the air sealing performance of insulation is important, NAIMA asserted that marketers should not claim a product's ability to block air infiltration, and not its R-value, is paramount. Likewise, NAIMA objected to claims suggesting insulation that limits air infiltration performs better overall than other insulations.[28] Furthermore, on several occasions since the Rule's initial promulgation in 1979, the Commission has acknowledged that R-value tests do not account for many factors, such as the design characteristics and geographic location of the building, the specific application in which the product is installed, outside and inside temperatures, air and moisture movement, installation technique, and others. At the same time, the Commission has also maintained that quantifying and providing uniform comparative ratings to reflect these various factors would significantly complicate the Rule's disclosures and likely confuse consumers without providing commensurate benefits.[29] Accordingly, consistent with the NPRM, the final Rule does not include disclosures addressing these issues. However, the Commission reiterates that under § 460.19 of the Rule, insulation manufacturers must have a reasonable basis for any energy savings claims they make for their insulation products.

E. Online Disclosures

Background: In the NPRM, the Commission proposed amending § 305.14 to require online insulation sellers to post labels and fact sheets on their websites for covered insulation products they sell directly to consumers. Large retailers commonly offer insulation for purchase through their websites. Though the current Rule requires retailers to ''make fact sheets available to your customers,'' it does not specify that fact sheets must be provided for online sales. In the NPRM, the Commission sought comment on the proposed change, including any burdens associated with providing such information online and any other associated issues.

Comments: Two commenters supported the proposal; none opposed it.[30] NAIMA explained that the burden associated with this requirement would be ''nominal'' and no different than existing burdens on insulation sellers.

Discussion: The final Rule adopts the proposed amendment. The new requirement for online fact sheets will effectuate the Rule's original intent by ensuring online consumers have access to the same information (both fact sheets and labels) as shoppers in stores. Retailers can make these disclosures through a variety of means, such as using expandable thumbnail images of package labels and fact sheets, or with conspicuous links directly to the required information.

F. Aging of Cellular Plastics

Background: In the NPRM, the Commission proposed continuing to require tests on cellular plastic insulations that fully reflect aging on the product's R-value, as currently indicated in § 460.5. In addition, the

[28] In addition, a Fact Sheet titled ''R-Value Introduction'' issued by DOE's Oak Ridge National Laboratory also raises questions about the importance of insulation's ability to limit air movement. The Fact Sheet states: ''The ability of insulation to limit air movement should not be confused with 'air sealing.' The insulation reduces air movement only within the space it occupies. It will not reduce air movement through other cracks between building parts. For example, controlling air movement within a wall cavity will not stop air that leaks between the foundation and the sill plate or between the wall joists and a window frame.'' *See https://web.ornl.gov/sci/buildings/tools/insulation/r-value/intro.*

[29] *See* 44 FR at 50226; and 68 FR 41872, 41877–41879 (July 15, 2003).

[30] NAIMA and ICAA.

Commission proposed eliminating the Rule's reference to the rescinded GSA Specification HH–I–530A aging standard, which appears to be obsolete. The Commission did not propose, as requested by several commenters, a new mandate that industry use only ASTM C1303 or CAN/ULC S770 (*i.e.,* the LTTR (''long-term thermal resistance'') method) to measure aging. As discussed in detail in the NPRM, several commenters urged the Commission to adopt the LTTR method because, in their view, the test is now well-established and would ensure R-value disclosures for cellular plastic insulations accurately reflect aging effects. Others, however, opposed its adoption, questioning the method's R-value results, coverage, and timeframe. In the NPRM, the Commission declined proposing a requirement that manufacturers use these methods in light of the significant disagreements about the tests' accuracy, scope of coverage, and applicable time frames.

Comments: Commenters generally supported the Commission's proposal to retain a general requirement that sellers conduct R-value tests on samples of cellular plastic insulations that fully reflect the effect of aging on the product's R-value. EPS–AI, for instance, stated that the Rule properly requires that tests for thermal resistance of polyurethane, polyisocyanurate, and extruded polystyrene fully reflect aging effects on the product's R-value. AFM agreed the Rule should continue to require that manufacturers determine the full effect of aging on their R-values, describing this provision as ''important protection for consumers.'' NAIMA similarly supported retaining this provision. Commenters also supported the proposed elimination of the obsolete GSA aging standard.[31] EPS–IA noted that the provision's removal would have no adverse impacts.

Commenters, however, continued to express opposing views about incorporating the LTTR method into the Rule. XPSA agreed with the Commission's decision to forgo adopting the aging standard. Reiterating its previous comments, XPSA stated that evidence does not demonstrate the method provides ''a uniform means of accurately comparing different cellular plastic thermal insulations.'' [32] Others, however, continued to urge the Commission to mandate the LTTR method. EPS–IA argued that, by not adopting the widely accepted ASTM C1303 test, the Commission is failing to fulfill its mission to prevent deception in the marketing of home insulation products and that there is ''very little opposition to this standard test method.'' It also submitted commercial product literature that, in its view, demonstrates that the lack of mandatory test method has led to deceptive R-value figures from extruded polystyrene manufacturers. Additionally, EPS–IA characterized the spray polyurethane industry's criticism of the LTTR method as ''conjecture and self-serving opposition'' that fails to hold up against evidence from Oak Ridge National Laboratories and ASTM.[33] Similarly, PIMA argued the accuracy of ASTM C1303 is well-documented by industry research and DOE studies, and stated that any comments to the contrary are ''without merit'' and should have no bearing on the Commission's decision. However, PIMA reiterated that the method is not applicable to closed-cell foam insulation products with impermeable facers. PIMA explained that ASTM C518 best measures the R-value of impermeable products (*e.g.,* foil-faced polyisocyanurate insulation), which are being used more frequently as continuous exterior insulation in new residential construction. PIMA also recognized that other factors may support the FTC's decision to forgo mandating ASTM C1303 for testing closed-cell foam insulation products but did not delineate those factors.

Discussion: Consistent with the NPRM, the final Rule retains the requirement in Section 460.5 that R-values fully reflect the effects of aging on cellular plastics and eliminates that section's reference to the GSA Specification HH–I–530A aging standard. Commenters did not identify any adverse impacts from eliminating the Rule's reference to the canceled GSA test. In addition, the final Rule does not mandate use of the LTTR method. Commenters on both the ANPR and NPRM disagreed about whether the Commission should mandate use of the LTTR method. Moreover, the record demonstrates that significant disagreements and concerns remain about various aspects of ASTM C1303 and CAN/ULC S770, including their accuracy, scope of coverage, and applicable timeframe. Nonetheless, because commenters did not identify a viable alternative test method, the Commission understands that many industry members will continue to use the LTTR method to gauge the effects of aging on R-value.[34] If new developments occur in the future that would warrant its adoption as a regulatory requirement, the Commission may revisit the issue, and interested parties may petition the Commission to consider additional rulemaking.

G. Disclosures for Reflective Insulation

Background: Reflective insulations, primarily aluminum foils, work by reducing heat transfer when installed facing an airspace. The Rule requires reflective insulation manufacturers to use specific tests to determine R-values, and to disclose those ratings to consumers for particular applications.[35] Section 460.5(c) requires industry members to test single-sheet systems using ASTM E 408–71 (''Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques''), or ASTM C 1371–04a (''Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers''). For reflective systems with more than one sheet, § 460.5(b) requires the use of ASTM C 1363–97, '' ''Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus'','' in a test panel constructed according to ASTM C1224–03, ''Standard Specification for Reflective Insulation for Building Applications,'' and under the test conditions specified in ASTM C1224–03. Section 460.12 of the Rule also requires that labels for reflective insulation include ''the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by that system when the direction of heat flow is up, down, and horizontal.''

The Rule also covers radiant barrier insulations, which are generally installed in attics facing the open airspace. However, as the Commission has stated, R-value claims are not appropriate for these products because no generally accepted test procedure exists to determine their R-value.[36]

In the NPRM, the Commission did not propose new requirements regarding disclosures or testing for reflective insulations. However, the Commission sought comment on whether to replace the term ''aluminum'' with ''reflective material'' or a similar term because

[31] *See* NAIMA, EPS–IA, and PIMA.

[32] 83 FR at 2941.

[33] Commenter Ji suggested that, because products may be stored in warehouses for a period of time after ASTM testing, the R-value reflected on the product label may no longer be accurate at the time of sale. Accordingly, Ji recommended that the test be done in a timely manner to maintain accuracy. However, the Rule already contains provisions related to aging, including the settling of blown cellulose and the aging of cellular plastics. 16 CFR 460.5(a)(1).

[34] *See* 70 FR at 31264.

[35] *See* 64 FR 48024, 48038–48039 (Sep. 1, 1999).

[36] 68 FR at 41889–90.

these insulation systems may not always involve aluminum.

Comments: Commenters generally supported the Commission's decision to retain the Rule's requirements for reflective insulation. NAIMA, for instance, supported the Rule's existing label disclosures for reflective insulation products. RIMA also supported retaining the requirement, but offered several suggestions to improve the Rule's provisions. First, it suggested technical amendments to reflective insulation-related terms. Specifically, it recommended replacing ''aluminum foil'' with ''reflective insulation,'' noting that low-emittance surfaces are not limited to aluminum foil or film. It also suggested replacing the term ''emissivity'' with ''emittance,'' explaining that, although these two terms often appear interchangeably, the ASTM test procedures incorporated in the Rule generally use the term emittance. Similarly, it suggested replacing the term ''difference'' with ''differential'' in the Rule's test procedure section (§ 460.5) to be consistent with the ASTM methods.

RIMA also recommended two substantive changes to the reflective insulation requirements. First, it suggested eliminating the reference to ASTM E408 for measuring emittance, explaining that this procedure measures ''normal emittance,'' while the other procedure allowed by the Rule, ASTM C1371, measures ''hemispherical emittance.'' Because ''normal emittance'' measurements are generally lower than ''hemispherical emittance,'' RIMA asserted that ASTM E408 results generally lead to higher, and thus ''overestimated,'' R-values. Second, RIMA argued that § 460.5(b) is overly restrictive because it limits use of the ASHRAE Handbook of Fundamentals to specific air space sizes from one line in Table 3 (pages 26.14 and 26.15). RIMA argued that the Rule should specifically allow ''interpolation and moderate extrapolation for air spaces greater than 3.5'' as stated in a footnote to the ASHRAE table.

Discussion: Based on the comments, the final Rule includes several technical amendments. First, it replaces references to ''aluminum foil'' and ''foil'' and similar words with the more general terms ''reflective insulation'' and ''reflective'' because, as noted in the NPRM, these insulation systems may not always involve aluminum.[37] In addition, consistent with RIMA's suggestion, the final Rule replaces the terms ''emissivity'' with ''emittance'' and ''differential'' with ''difference'' in § 460.5 to be consistent with the terms used in the test procedures incorporated in the Rule.[38] These minor conforming changes have no substantive impact on the existing requirements.

The Commission does not further amend the Rule's reflective insulation provisions. Specifically, the amended Rule will continue to allow the use of ASTM E408 as well as C1371. Although the Commission may consider eliminating the test in the future, it declines to make such a change without providing an opportunity for public comment. Furthermore, RIMA's comments did not indicate whether the inconsistencies between the ASTM E408 and C1371 have caused substantial problems in the marketplace nor did it explain the extent to which the test differences impact advertised R-values. In the future, if retaining ASTM E408 in the Rule creates a substantive problem, stakeholders may petition the Commission to consider further Rule amendments.

Regarding RIMA's proposal to allow extrapolation of values from the ASHRAE table, the Commission has already explained in a 2005 **Federal Register** final rule that ''it does not intend to restrict the use of the tables only to those values specifically printed in the tables themselves.'' [39] Instead, the Commission recognized ''that explanatory information in the footnotes to the ASHRAE handbook allow for interpolation and moderate extrapolation'' and expected ''industry members to use this guidance in complying with the Rule.'' [40] Commenters have not identified any ongoing problems stemming from this guidance or lack of a specific reference in the Rule. Accordingly, the Commission does not amend this part of the Rule.

H. Updating Test References

Background: In the NPRM, the Commission proposed updating § 460.5 to reflect the most recent versions of the ASTM test procedures. In addition, to ensure consistency with the Office of **Federal Register** (OFR) regulations, it proposed removing § 460.7 to eliminate automatic updates to the ASTM test procedures incorporated by reference in the Rule. Specifically, OFR regulations state that incorporation by reference is ''limited to the edition of the publication that is approved,'' and ''future amendments or revisions of the publication are not included.'' [41] The proposed amendment would also ensure the Rule provides notice and an opportunity to comment on test updates before they are incorporated by reference. The Commission indicated that it would periodically review the Rule's test procedures to ensure the Rule contains the most recent versions.

Comments: Commenters supported the proposed amendments to update the Rule's test procedure provisions.[42] According to NAIMA, the change will ensure the Commission ''provides notice and an opportunity to comment on updates before they are incorporated into the regulations.'' PIMA expressed support for FTC's continued reliance on consensus-based test standards such as those administered by ASTM because such ''standards are continually reviewed by subject-matter experts and allow for broad stakeholder input through transparent development and maintenance processes.'' It also encouraged FTC to consider the best method to update test standards ''moving forward'' and noted the burdensome process involved with updating the Rule's references. AFM added that the Rule should change its ASTM reference to the organization's current name, ''ASTM International.'' It also recommended the Rule state that the test methods are ''developed'' rather than ''designed'' by ASTM.

Discussion: Given the support for the test method updates announced in the NPRM, the Commission amends the Rule to reflect the most current test versions.[43] In addition, the amendments remove § 460.7 to eliminate automatic updates to the ASTM test procedures incorporated by reference in the Rule. The Commission will continue to update the test procedures as part of its routine Rule reviews. In the interim, if interested parties identify the need for any specific updates, they should petition the Commission for an amendment. The final Rule also updates the formal name for ASTM to ''ASTM International'' and changes the term ''designed'' to ''developed'' to better reflect ASTM's role.[44]

[37] Specifically, the amendments remove the reference to ''aluminum foil'' in § 460.2 and replace references to ''foil'' or ''aluminum foil'' in § 460.5 with ''reflective insulation.''

[38] *See, e.g.,* ASTM C518, 7.7.1 and ASTM C1224, 9.7.3 (''temperature difference'').

[39] 70 FR at 31270.

[40] *Id.*

[41] *See* 1 CFR 51.1(f).

[42] PIMA and NAIMA. No commenters opposed this.

[43] The final amendments reference the latest versions of three recently updated tests: ASTM C518–17, ASTM C739–17, and ASTM C1149–17.

[44] It appears that ASTM tends to use the term ''development'' with regard to standards. *See, e.g.,* 2016 Annual Book of ASTM Standards, Section 4, Vol. 04.06 (''Thermal Insulation: Building and Environmental Acoustics''), at iii (''[ASTM] is a

Continued

I. Limited Format Disclosures

Background: In the NPRM, the Commission proposed amending the Rule to exempt space-constrained advertising from the required disclosures in §§ 460.18 and 460.19, which may be infeasible or impractical for some methods of advertising.

Comments: The commenters expressed different views on the proposal. NAIMA supported the amendment, explaining that the required disclosures ''may be infeasible or impractical for some methods of advertising, such as [T]witter and mobile sources.'' It also noted the amendment is consistent with similar exemptions for radio and television advertisements.[45] ICAA, however, opposed the exemption, noting that digital advertising is likely to ''outpace print and radio advertising,'' making it the ''mainstream communication channel for consumers.'' In its view, the exemption would lead to an absence of disclosures ''where the bulk of advertising dollars are expended,'' and consumers would have no knowledge of the applicable federal rules for these claims. To address space-constrained formats, ICAA suggested the Rule require marketers to provide a short hyperlink (*e.g.,* ''See FTC disclosures here'') to take consumers directly ''to the appropriate code sections.'' [46]

Discussion: As proposed in the NPRM, the final Rule exempts space-constrained advertisements from the affirmative disclosures in §§ 460.18 and 460.19.[47] For example, the Rule requires the following statement in any insulation advertisement containing an R-value claim: ''The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values.'' The amendment exempts such statements for space-constrained advertisements. It defines ''space-constrained'' as any communication made through interactive media (such as the internet, online services, and software, including but not limited to internet search results and banner ads) that has space, format, size or technological limitations or restrictions that effectively prevent marketers from making the required disclosures.

This change will reduce the Rule's burdens without significantly reducing its effectiveness. Specifically, the Rule already provides several tiers of disclosures. In addition to the affirmative advertising disclosures, sellers must provide disclosures on package labels, as well as in fact sheets, that must be made available to customers before purchase. Furthermore, the final amendments add new requirements to ensure labels and fact sheets are available for online sales, making this important R-value information accessible to consumers before their purchase. In addition, the amendments do not create a blanket exemption for disclosures on all mobile devices or similar formats. Indeed, some of the required disclosures (*e.g.,* R-value disclosures triggered by § 460.18(b) and (c)) do not require significant space and thus are unlikely to qualify for the exemption. Accordingly, industry members must show there is insufficient space for the required disclosures to claim the exemption. Finally, the exemption does not alter advertisers' obligation to follow the substantiation requirements in § 460.19.[48]

J. Mean Temperature

Background: Since its promulgation in 1979, § 460.5 of the Rule has required R-value testing at a 75 °F mean temperature for most insulation products. In initially issuing this requirement, the Commission explained that the ''choice of this particular temperature is based on a significant volume of record evidence that 75 °F is already a widely-used test temperature and is incorporated in many voluntary industry standards and federal procurement specifications.'' [49] Section 460.5 requires testing at a 50 °F temperature differential (*i.e.,* the difference between the hot and cold surface during testing).

In response to the ANPR, some commenters recommended the Rule address insulation performance at mean temperatures lower than 75 °F. Specifically, they suggested the Commission consider either requiring an additional R-value disclosure at a low mean temperature or requiring disclosures about the cold weather performance of certain insulations. In the NPRM (83 FR at 2942), the Commission did not propose revising the Rule's mean test temperature requirement, nor did it propose specific affirmative disclosures for insulation products that may exhibit lower R-values at low temperatures. The Commission explained that, given the temperature differences throughout the country, no one temperature is likely to be sufficiently representative of consumer experiences.[50] The Commission noted, however, that nothing in the FTC Act or the Rule prohibits sellers from promoting their products' performance in low temperatures in their advertising. If a seller's products have better R-values than others at low temperatures, it may make truthful, substantiated claims conveying its products' advantages.[51]

Comments: The commenters generally supported the Commission's decision to retain the current mean temperature requirements.[52] NAIMA, for example, agreed that the range of temperature differences throughout the country makes it unlikely a single temperature will be representative of consumer experiences. It also noted that mandatory R-value disclosures at additional temperatures would increase the industry burden without a corresponding consumer benefit. ACC did not oppose the proposal but looked for further guidance on specific disclosures and whether they are substantiated. Specifically, it asked whether a manufacturer can make additional R-value claims, beyond those required by the Rule, ''at another temperature provided the statement is clearly qualified that the testing was conducted at another temperature.'' Further, it inquired whether additional claims such as ''R-value at XX degrees F'' or ''thermal resistance at XX degrees F'' would be considered adequately substantiated, qualified, and otherwise compliant with the Rule and Section 5 of the FTC Act.

Discussion: The Commission declines to amend the Rule's mean temperature requirements. As discussed in the NPRM, in publishing the original Rule, the Commission did not attempt to specify a mean test temperature representative of any particular geographical region or season. Further, given the temperature differences throughout the country, no one

globally recognized leader in the development and delivery of international voluntary standards.'').

[45] PIMA also supported the amendments.

[46] Commenter Ji also opposed the exemption, stating that the current disclosures ''help consumers make the right choice.''

[47] The Commission has already excluded television and radio advertising from the more detailed disclosure requirements because it found meaningful disclosures are probably not effective in those media. *See* 70 FR at 31271; 51 FR 39650 (Oct. 30, 1986).

[48] Section 460.19 requires a reasonable basis for fuel savings claims and directs marketers to maintain proof of such claims for three years.

[49] 44 FR at 50227.

[50] In initially issuing the Rule, the Commission did not attempt to specify a mean test temperature representative of any particular geographical region or season. Indeed, it reasoned that any attempt to do so would yield results inappropriate for other regions or seasons. Accordingly, the Commission chose a single temperature widely used in industry standards, recognizing the fact that it is not perfectly representative. *See* 64 FR at 48037; and 44 FR at 50219, 50227.

[51] *See* 68 FR at 41878–41879.

[52] *See* PIMA, XPSA, and NAIMA.

temperature is likely to be sufficiently representative of consumer experiences. Accordingly, the

Commission established a single temperature widely used in industry standards, recognizing it provides a reasonable benchmark to compare claims. As discussed in the NPRM and in comments, this reasoning still holds true.

Regarding ACC's questions about additional claims, the Commission reiterates its view that sellers may make truthful, substantiated claims conveying, for example, that their products have higher R-values at low temperatures compared to competing products. However, as the Commission considers the net impression of an entire advertisement to determine whether it is deceptive, the Commission declines to offer an opinion about ACC's suggested advertising claims in isolation.[53] Industry members may consult existing FTC guidance in developing their own advertising claims.[54]

K. R-Value per Inch Claims

Background: Section 460.20 of the Rule prohibits R-value per inch claims unless test results prove the product's R-value per inch does not drop at greater thicknesses. As the Commission has explained previously, R-value per inch claims lead ''consumers to believe that insulation R-values are linear,'' when, in fact, they often are not. For many insulation products, R-value does not increase proportionally with thickness. Accordingly, unqualified R-value per inch claims are often deceptive.[55] Therefore, the Rule prohibits these claims unless a differing, outstanding FTC Order applies or the seller has actual test results proving the product's R-value per inch is constant at various thicknesses. In response to comments seeking further clarification, the Commission declined to propose amendments in NPRM because it lacked evidence indicating the Rule's current language is ambiguous or confusing.

Comments: Commenters offered differing views on R-value per inch claims. ACC agreed with the Commission's approach and indicated that the current Rule is clear and concise. However, NAIMA asked for further clarity and reiterated a concern, expressed in earlier comments, about a recent decision from the Better Business Bureau's National Advertising Division (''NAD'') involving cellulose insulation claims.[56] In particular, NAIMA requested the Commission clarify what constitutes ''actual test data'' under the Rule, a concept contested in the NAD proceeding. According to NAIMA, cellulose manufacturers have substantiated their R-value claims at multiple thicknesses merely through a coverage chart, which, in NAIMA's view, does not constitute ''actual test data.'' Finally, NAIMA urged the Commission to amend the Rule to include the following clarification: ''Any express or implied claim that fibrous insulation R-value is linear with thickness is per se misleading and, therefore, prohibited, unless qualifying for one of the exceptions set forth in this section.''

Discussion: The Commission declines to amend the Rule's R-value per inch provision or to require marketers to make additional disclosures related specifically to fibrous insulation. As discussed in the NPRM, in adopting this provision, the Commission recognized that many consumers may believe the relationship between R-value and thickness is linear. Specifically, the Commission explained that misleading ''references to the R-value for a one-inch thickness of the material will encourage consumers to think that it is appropriate to multiply this figure by the desired number of inches, as though the R-value per inch was constant.'' The current provision addresses this issue by prohibiting R-value per inch claims unless supported by the tests required by the Rule, which the Commission considers to be competent and reliable scientific evidence. Furthermore, § 460.20 applies to all insulation. Therefore, a specific provision relating to fibrous insulation, as some commenters suggested, is unnecessary. Finally, the Commission lacks a basis to address the claims reviewed by NAD, given the limited information in the comments and the absence of views from cellulose manufacturers involved in the dispute.

L. Spray Foam Disclosures

Background and Comments: NAIMA asked the Commission to consider new regulatory requirements for spray foam insulation (SPF). Specifically, NAIMA raised concerns that the Rule does not adequately ensure SPF products deliver their advertised R-value. Unlike other insulation sellers, SPF installers, according to NAIMA, must essentially ''manufacture'' their insulation on-site to deliver the advertised thermal performance or R-value. In doing so, NAIMA explained that installers must manage a process involving ''generators, compressors, proportioning pumps, temperature controls, heated hoses and spray guns'' while wearing personal protective equipment. NAIMA claimed that certain SPF companies advocate ''underfilling'' wall cavities because, according to those companies, the superior air sealing qualities of foam insulation compensate for any reductions in R-value due to such a practice. NAIMA objects to such representations and argued that no ''reliable, scientifically validated method'' exists to support claims about R-value degradation due to air infiltration. In its view, air barriers, which are separate from insulation and typically required for new homes, already prevent any air infiltration through fiberglass or other types of insulation. NAIMA further stated that, as long as the wall assembly is sealed to code specifications, all forms of insulation achieve the same thermal performance.

To address these concerns, NAIMA recommended the Commission require that: (1) SPF installations entirely fill the wall cavity; (2) SPF installers maintain testing records; (3) SPF manufacturers give homeowners detailed information about ''the manufacturing process that will occur in their residence''; (4) SPF installers disclose the mixture of chemicals and installation of foam in the home; and (5) manufacturer and installer websites publicly disclose information about SPF insulation R-values. NAIMA stated that, in lieu of these specific requirements, the Commission could add a general requirement applicable to all forms of insulation, including fiberglass and mineral wool, that installers follow manufacturer's installation recommendations. Additionally, commenter Harrison raised concerns about the fire risks associated with ''sprayed and sheet insulation materials'' and called for improved

[53] ''[T]he Commission will evaluate the entire advertisement, transaction, or course of dealing in determining how reasonable consumers are likely to respond. Thus, in advertising the Commission will examine 'the entire mosaic, rather than each tile separately.' '' Deception Policy Statement, *supra* (quoting *FTC* v. *Sterling Drug,* 317 F.2d 669, 674 (2d Cir. 1963)).

[54] The Commission determines whether an advertisement is deceptive by engaging ''in a three-step inquiry, considering: (i) What claims are conveyed in the ad, (ii) whether those claims are false, misleading, or unsubstantiated, and (iii) whether the claims are material to prospective consumers.'' *POM Wonderful, LLC* v. *F.T.C.,* 777 F.3d 478, 490 (D.C. Cir. 2015), *cert. denied,* 136 S. Ct. 1839 (2016). The adequacy of disclosures may depend on how consumers interpret particular claims, including the net consumer impression of the advertisement. *See Kraft, Inc.* v. *F.T.C.,* 970 F.2d 311, 314, 318 (7th Cir. 1992).

[55] 44 FR at 50234.

[56] NAIMA (citing *Applegate Insulation (Cellulose Insulation Products),* Case #5961, NAD/CARU Case reports (June 2016)).

regulation to give clarity and guidance to industry members.

Discussion: The Commission does not propose Rule requirements to address SPF insulation. NAIMA highlights an ongoing debate, discussed in the NPRM (83 FR at 2938–2940), between foam and fiberglass manufacturers about the impact of an insulation's air infiltration qualities on insulation performance and overall home efficiency. However, NAIMA has not established a prevalence of deceptive practices that would support the sweeping Rule amendments it recommends. Furthermore, the Rule already addresses many of the issues NAIMA raised, such as the need for installers to deliver the advertised R-value (*e.g.,* 460.17) and the importance of properly installing insulation (*e.g.,* 460.12 and 460.13).

The Rule requires appropriate R-value disclosures and the substantiation of claims made in these disclosures, and prohibits false or misleading claims. It does not mandate the R-value of insulation installed in homes nor does it address whether some forms of insulation may be more effective than others for certain applications. These issues generally fall within the authority and expertise of state and local energy code officials, DOE experts, and other building professionals. This does not mean that the Commission endorses any particular claims or practices in the market. Any representations made by insulation sellers, whether covered by the R-value Rule or not, must be substantiated and otherwise not violate Section 5 of the FTC Act. Thus, manufacturers must back up any claims about insulation performance with competent and reliable scientific evidence. The Commission will take NAIMA's comments under advisement and continue to follow developments in the market. Finally, the Commission does not propose any changes to the Rule to address insulation safety issues. Safety issues generally fall within the mission and authority of other agencies such as the Consumer Products Safety Commission.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603 through 605.

The Commission does not anticipate that the amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. Because the R-value Rule covers home insulation manufacturers and retailers, professional installers, new home sellers, and testing laboratories, the Commission believes that any amendments to the Rule may affect a substantial number of small businesses. However, the Commission does not expect that the economic impact of the amendments will be significant because these amendments involve updates, clarifications and minor changes to the Rule.

Although the Commission has certified under the RFA that the amendments would not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission initiated this rulemaking to assist consumers in their insulation purchases by clarifying several provisions, updating requirements, ensuring proper test procedures are followed to determine the R-values of covered products, and exempting certain types of advertising from affirmative disclosures.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendment on small businesses. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

C. Small Entities to Which the Proposed Rule Will Apply

The R-value Rule covers home insulation manufacturers and retailers, professional installers, new home sellers, and testing laboratories. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the amendments will be significant because the Commission plans to provide businesses with ample time to implement the requirements, and the amendments require information disclosures that do not impose substantial burdens.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission anticipates that the amendments may slightly increase reporting or recordkeeping requirements associated with the Rule for some small entities, while reducing some compliance requirements associated with advertising in space-constrained formats. The amendments likely will increase some compliance requirements by extending the requirement to substantiate R-value claims to non-insulation products. The amendments will also require manufacturers to update labels and fact sheets, but provides substantial time for manufacturers to update these materials. The amendments will also likely reduce burden by exempting certain disclosures for limited format advertising.

E. Description of Steps Taken To Minimize Significant Economic Impact, if Any, on Small Entities, Including Alternatives

The Commission did not propose any specific small entity exemption or other significant alternatives, but sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on small entities. In particular, the Commission sought comments on whether it should time the Rule's effective date to provide additional time for small business compliance. No comments identified any new compliance costs, and several comments argued that some of the amendments will reduce compliance costs.

VII. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through January 31, 2021 (OMB Control No. 3084–0109). As detailed below, the amendments' changes to the Rule's labeling requirements should not alter in the net the Rule's overall PRA burden.[57]

[57] The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in

The Commission adopts a small number of rule amendments designed to clarify the Rule, update its disclosures, and require specific testing procedures for non-insulation products. In the Commission's view, the amendments will not increase the PRA burden associated with those testing procedures. Under the current requirements, any marketer making an R-value claim must have competent and reliable evidence to back that claim. Accordingly, it is likely that such marketers already conduct testing for claims under the normal course of business. Thus, the requirement should not increase those burdens. The amendments regarding the small changes to fact sheets and online displays of fact sheets and labels also should not increase the Rule's current PRA burden. The Rule already requires retailers to provide fact sheets to their consumers. In addition, any potential increase in burden resulting from those amendments would likely be offset by the amendment exempting space-constrained advertising from the affirmative disclosures in §§ 460.18 and 460.19.[58] Finally, no comments disputed this PRA analysis when presented in the NPRM. Consequently, the Commission believes the amendments will not result in incremental PRA burden.

VIII. Incorporation by Reference

Consistent with 5 U.S.C. 552(a) and 1 CFR part 51, the Commission incorporates the specifications of the following documents published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. and ASTM International:[59]

- 2017 ASHRAE Handbook—Fundamentals, I–P Edition (published 2017) (ASHRAE Handbook covers basic principles and data used in the heating, ventilation, air conditioning and refrigeration industry);
- ASTM C 177–13, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus'' (published October 2013) (''This test covers the measurement of heat flux and associated test conditions for flat specimens. The guarded-hot-plate apparatus is generally used to measure steady-state heat flux through materials having a ''low'' thermal conductivity and commonly denoted as ''thermal insulators.'');
- ASTM C 518–17, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus'' (published July 2017) (''This test method covers the measurement of steady state thermal transmission through flat slab specimens using a heat flow meter apparatus.'');
- ASTM C 739–17, ''Standard Specification for Cellulosic Fiber Loose-Fill Thermal Insulation'' (published August 2017) (''This specification covers the composition and physical requirements of chemically treated, recycled cellulosic fiber loose-fill type thermal insulation for use in attics or enclosed spaces in housing, and other framed buildings within the ambient temperature range from—45 to 90 °C by pneumatic or pouring application.'');
- ASTM C 1045–07 (reapproved 2013), ''Standard Practice for Calculating Thermal Transmission Properties Under Steady-State Conditions (published January 2014)'' (''This practice is intended to provide the user with a uniform procedure for calculating the thermal transmission properties of a material or system from standard test methods used to determine heat flux and surface temperatures.'');
- ASTM C 1114–06 (Reapproved 2013), ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus'' (published January 2014) (''This test method covers the determination of the steady-state thermal transmission properties of flat slab specimens of thermal insulation using a thin heater of uniform power density having low lateral heat flow.'');
- ASTM C 1149–17, ''Standard Specification for Self-Supported Spray Applied Cellulosic Thermal Insulation'' (published October 2017) (''The specification covers the physical properties of self-supported spray applied cellulosic fibers intended for use as thermal insulation or an acoustical absorbent material, or both.'');
- ASTM C 1224–15, ''Standard Specification for Reflective Insulation for Building Applications'' (published November 2015) (''This specification covers the general requirements and physical properties of reflective insulations for use in building applications.'');
- ASTM C 1363–11, ''Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus'' (published June 2011) (''This test method establishes the principles for the design of a hot box apparatus and the minimum requirements for the determination of the steady state thermal performance of building assemblies when exposed to controlled laboratory conditions. This method is also used to measure the thermal performance of a building material at standardized test conditions such as those required in ASTM material Specifications C739, C764, C1224 and Practice C1373.'');
- ASTM C 1371–15, ''Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers'' (published June 2015) (''This test method covers a technique for determination of the emittance of opaque and highly thermally conductive materials using a portable differential thermopile emissometer. The purpose of the test method is to provide a comparative means of quantifying the emittance of materials near room temperature.'');
- ASTM C 1374–14, ''Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation'' (published May 2014) (''This test method covers determination of the installed thickness of pneumatically applied loose-fill building insulations prior to settling by simulating an open attic with horizontal blown applications.'');
- ASTM E 408–13, ''Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques'' (published June 2013) (''These test methods cover determination of the total normal emittance of surfaces by means of portable, as well as desktop, inspection meter instruments.'').

The ASHRAE Handbook and the ASTM standards are reasonably available to interested parties. Members of the public can obtain copies of ASTM C 177–13, ASTM C 518–17, ASTM C 739–17, ASTM C 1045–07, ASTM C 1114–06, ASTM C 1149–17, ASTM C 1224–15, ASTM C 1363–11, ASTM C 1371–15, ASTM C 1374–14, and ASTM E 408–13 from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428; telephone: 1–877–909–2786; internet address: *http://www.astm.org.* Members of the public can obtain copies of the 2017 ASHRAE Handbook—Fundamentals, I–P Edition (2017) from ASHRAE Headquarters 1791 Tullie Circle, NE Atlanta, GA 30329; telephone (404) 636–8400; internet address: *https://www.ashrae.org.* The ASHRAE

past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

[58] The fact sheet amendments in § 460.13(e) do not constitute a ''collection of information'' under the PRA because they are a ''public disclosure of information originally supplied by the government to the recipient for the purpose of disclosure to the public'' as indicated in OMB regulations. *See* 5 CFR 1320.3(c)(2).

[59] Quoted descriptions of ASTM standards from *www.astm.org.*

Handbook and the ASTM standards are also available for inspection at the FTC Library (202–326–2395), Federal Trade Commission, Room H–630, 600 Pennsylvania Avenue NW, Washington, DC 20580.

Final Rule Language

List of Subjects in 16 CFR Part 460

Advertising, Incorporation by reference, Insulation, Labeling, Reporting and recordkeeping requirements, Trade practices.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 460 as follows:

PART 460—LABELING AND ADVERTISING OF HOME INSULATION

■ 1. The authority citation for part 460 is revised to read as follows:

Authority: 15 U.S.C. 41 *et seq.* (38 Stat. 717, as amended).

Appendix A also issued under 46 FR 22179 (April 16, 1981); 46 FR 22180 (April 16, 1981); 48 FR 31192 (July 7, 1983).

■ 2. Revise § 460.1 to read as follows:

§ 460.1 What this part does.

This part deals with R-value claims, as well as home insulation labels, fact sheets, ads, and other promotional materials in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act. If you are covered by this part, breaking any of its rules is an unfair or deceptive act or practice or an unfair method of competition under Section 5 of that Act. You can be fined heavily (up to the civil monetary penalty amount specified in § 1.98 of this chapter) each time you break a rule.

■ 3. Revise § 460.2 to read as follows:

§ 460.2 What is home insulation.

Insulation is any material mainly used to slow heat flow. It may be mineral or organic, fibrous, cellular, or reflective. It may be in rigid, semirigid, flexible, or loose-fill form. Home insulation is for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation. It does not include any kind of duct insulation except for duct wrap. It also includes insulation developed and marketed for commercial or industrial buildings that is also marketed for and used in residential buildings.

■ 4. Revise § 460.3 to read as follows:

§ 460.3 Who is covered.

You are covered by this part if you are a member of the home insulation industry. This includes individuals, firms, partnerships, and corporations. It includes manufacturers, distributors, franchisors, installers, retailers, utility companies, and trade associations. Advertisers and advertising agencies are also covered. So are labs doing tests for industry members. If you sell new homes to consumers, you are covered. If you make R-value claims for non-insulation products described in § 460.22, you are covered by the requirements of that section.

■ 5. Revise § 460.4 to read as follows:

§ 460.4 When the rules in this part apply.

You must follow the rules in this part each time you import, manufacture, distribute, sell, install, promote, or label home insulation. You must follow them each time you prepare, approve, place, or pay for home insulation labels, fact sheets, ads, or other promotional materials for consumer use. You must also follow them each time you supply anyone covered by this part with written information that is to be used in labels, fact sheets, ads, or other promotional materials for consumer use. Testing labs must follow the rules unless the industry members tell them, in writing, that labels, fact sheets, ads, or other promotional materials for home insulation will not be based on the test results. You must follow the requirements in § 460.22 each time you make an R-value claim for non-insulation products marketed in whole or in part to reduce residential energy use by slowing heat flow.

■ 6. Revise § 460.5 to read as follows:

§ 460.5 R-value tests.

R-value measures resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed in paragraphs (a) through (d) of this section.

(a) All types of insulation except reflective insulation must be tested with ASTM C177–13, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus;'' ASTM C518–17, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus;'' ASTM C1363–11, ''Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus'' or ASTM C1114–06, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus.'' The tests must be done at a mean temperature of 75 degrees Fahrenheit and with a temperature difference of 50 degrees Fahrenheit plus or minus 10 degrees Fahrenheit. The tests must be done on the insulation material alone (excluding any airspace). R-values (''thermal resistance'') based upon heat flux measurements according to ASTM C177–13 or ASTM C518–17 must be reported only in accordance with the requirements and restrictions of ASTM C1045–07, ''Standard Practice for Calculating Thermal Transmission Properties Under Steady-State Conditions.''

(1) For polyurethane, polyisocyanurate, and extruded polystyrene, the tests must be done on samples that fully reflect the effect of aging on the product's R-value.

(2) For loose-fill cellulose, the tests must be done at the settled density determined under paragraph 8 of ASTM C739–17, ''Standard Specification for Cellulosic Fiber Loose-Fill Thermal Insulation.''

(3) For loose-fill mineral wool, self-supported, spray-applied cellulose, and stabilized cellulose, the tests must be done on samples that fully reflect the effect of settling on the product's R-value.

(4) For self-supported spray-applied cellulose, the tests must be done at the density determined pursuant to ASTM C1149–17, ''Standard Specification for Self-Supported Spray Applied Cellulosic Thermal Insulation.''

(5) For loose-fill insulations, the initial installed thickness for the product must be determined pursuant to ASTM C1374–14, ''Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation,'' for R-values of 13, 19, 22, 30, 38, 49 and any other R-values provided on the product's label pursuant to § 460.12.

(b) Single sheet reflective insulation materials must be tested with ASTM E408–13, ''Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques,'' or ASTM C1371–15, ''Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers.'' This test determines the emittance of the reflective surfaces—its power to radiate heat. To get the R-value for a specific emittance, air space, and direction of heat flow, use Table 3 in the ASHRAE Handbook, Chapter 26, if the product is intended for applications that meet the conditions specified in the tables. You must use the R-value shown for 50 degrees Fahrenheit, with a temperature difference of 30 degrees Fahrenheit.

(c) Reflective insulation systems with more than one sheet, and single sheet

systems that are intended for applications that do not meet the conditions specified in Table 3 in the ASHRAE Handbook, Chapter 26 must be tested with ASTM C1363–11, ''Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus,'' in a test panel constructed according to ASTM C1224–15, ''Standard Specification for Reflective Insulation for Building Applications,'' and under the test conditions specified in ASTM C1224–15. To get the R-value from the results of those tests, use the formula specified in ASTM C1224–15.

(d) For insulation materials with reflective facings, you must test the R-value of the material alone (excluding any air spaces) under the methods listed in paragraph (a) of this section. You can also determine the R-value of the material in conjunction with an air space. You can use one of two methods to do this:

(1) You can test the system, with its air space, under ASTM C1363–11, ''Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus'' If you do this, you must follow the requirements in paragraph (a) of this section on temperature, aging and settled density.

(2) You can add up the tested R-value of the material and the R-value of the air space. To get the R-value for the air space, you must follow the requirements in paragraph (b) of this section.

(e) The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the FTC Library (202–326–2395), Federal Trade Commission, Room H–630, 600 Pennsylvania Avenue NW, Washington, DC 20580 and is available from the sources listed in paragraphs (e)(1) and (2) of this section. It is also available for inspection 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 *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(1) ASHRAE Headquarters, 1791 Tullie Circle, NE, Atlanta, GA 30329; telephone (404) 636–8400; *https://www.ashrae.org.*

(i) 2017 ASHRAE Handbook—Fundamentals, Chapter 26: Heat, Air, and Moisture Control in Building Assemblies—Material Properties, Inch Pound (I–P) Edition (Copyright 2017).

(ii) [Reserved]

(2) ASTM Int'l, 100 Barr Harbor Drive, P.O. Box C700, West Conshocken, PA 19428–2959, 877–909–2786, *www.astm.org/.*

(i) ASTM C 177–13, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus'' (published October 2013).

(ii) ASTM C 518–17, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus'' (published July 2017).

(iii) ASTM C 739–17, ''Standard Specification for Cellulosic Fiber Loose-Fill Thermal Insulation'' (published August 2017).

(iv) ASTM C 1045–07 (Reapproved 2013), ''Standard Practice for Calculating Thermal Transmission Properties Under Steady-State Conditions'' (published January 2014).

(v) ASTM C 1114–06 (Reapproved 2013), ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus'' (published January 2014).

(vi) ASTM C 1149–17, ''Standard Specification for Self-Supported Spray Applied Cellulosic Thermal Insulation'' (published October 2017).

(vii) ASTM C 1224–15, ''Standard Specification for Reflective Insulation for Building Applications'' (published November 2015).

(viii) ASTM C 1363–11, ''Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus'' (published June 2011).

(ix) ASTM C 1371–15, ''Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers'' (published June 2015).

(x) ASTM C 1374–14, ''Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation'' (published May 2014).

(xi) ASTM E 408–13, ''Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques'' (published June 2013).

§ 460.6 [Amended]

■ 7. In § 460.6, remove the words ''aluminum foil'' and add in their place the words ''reflective insulation.''

§ 460.7 [Removed and Reserved]

■ 8. Remove and reserve § 460.7.

§ 460.9 [Amended]

■ 9. In § 460.9(e), remove the words ''aluminum foil'' and ''emissivity'' and add in their place the words ''reflective insulation'' and ''emittance,'' respectively.

■ 10. In § 460.12, revise paragraphs (b)(4) and (5) to read as follows:

§ 460.12 Labels.

* * * * *

(b) * * *

(4) For reflective insulation: The number of sheets; the number and thickness of the air spaces; and the R-value provided by that system when the direction of heat flow is up, down, and horizontal. You can show the R-value for only one direction of heat flow if you clearly and conspicuously state that the insulation can only be used in that application.

(5) For insulation materials with reflective facings, you must follow the rule in this section that applies to the material itself. For example, if you manufacture boardstock with a reflective facing, follow paragraph (b)(3) of this section. You can also show the R-value of the insulation when it is installed in conjunction with an air space. This is its ''system R-value.'' If you do this, you must clearly and conspicuously state the conditions under which the system R-value can be attained.

* * * * *

■ 11. In § 460.13:

■ a. Amend the introductory text by adding the phrase ''Each fact sheet must contain these items:'' at the end;

■ b. Remove the undesignated phrase ''Each fact sheet must contain these items:'' following the introductory text;

■ c. Revise paragraph (e); and

■ d. Add paragraph (f).

The revision and addition read as follows:

§ 460.13 Fact sheets.

* * * * *

(e) After the chart and any statement dealing with the specific type of insulation, ALL fact sheets must carry this statement, boxed, in 12-point type:

READ THIS BEFORE YOU BUY

What You Should Know About R-values

The chart shows the R-value of this insulation. R means resistance to heat flow. The higher the R-value, the greater the insulating power. Compare insulation R-values before you buy.

There are other factors to consider. The amount of insulation you need depends mainly on the climate you live in. Also, your fuel savings from insulation will depend upon the climate, the type and size of your house, the amount of insulation already in your house, your fuel use patterns and family size, proper installation of your insulation, and how tightly your house is sealed against air leaks. If you buy too much insulation, it will cost you more than what you'll save on fuel.

To get the marked R-value, it is essential that this insulation be installed properly.

(f) For R–19 insulation batts, the fact sheet must also disclose the insulation's R-value when installed in wall cavities where the insulation's thickness exceeds the depth of the cavity.

■ 12. Revise § 460.14 to read as follows:

§ 460.14 How retailers must handle labels and fact sheets.

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers, whether you offer insulation products for sale offline or online. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display, and let customers take copies of them. You can keep them in a binder at a counter or service desk, and have a sign telling customers where the fact sheets are. You need not make the fact sheets available to customers if you display insulation packages on the sales floor where your insulation customers are likely to notice them and each individual insulation package offered for sale contains all package label and fact sheet disclosures required by §§ 460.12 and 460.13. If you are offering products for sale online, the product labels and fact sheets required by this part, or a direct link to this information, must appear clearly and conspicuously and in close proximity to the covered product's price on each web page that contains a detailed description of the covered product and its price.

§ 460.17 [Amended]

■ 13. In § 460.17, remove the words ''aluminum foil'' and add in their place the words ''reflective insulation.''

■ 14. In § 460.18, revise paragraph (e) to read as follows:

§ 460.18 Insulation ads.

* * * * *

(e) The affirmative disclosure requirements in this section do not apply to television or radio advertisements or to space-constrained advertisements. For the purposes of this part, ''space-constrained advertisement'' means any communication made through interactive media (such as the internet, online services, and software, including but not limited to internet search results and banner ads) that has space, format, size or technological limitations or restrictions that prevent industry members from making disclosures required by this part clearly and conspicuously. Industry members maintain the burden of showing that there is insufficient space to provide the disclosures that this part otherwise requires be made clearly and conspicuously.

■ 15. In § 460.19, revise paragraph (g) to read as follows:

§ 460.19 Savings claims.

* * * * *

(g) The affirmative disclosure requirements in this section do not apply to television or radio advertisements or to space-constrained advertisements. ''Space-constrained advertisement'' is defined in § 460.18(e).

§ § 460.22 through 460.24 [Redesignated as §§ 460.23 through 460.25]

■ 16. Redesignate §§ 460.22 through 460.24 as §§ 460.23 through 460.25.

■ 17. Add a new § 460.22 to read as follows:

§ 460.22 R-value claims for non-insulation products.

If you make an R-value claim for a product, other than a fenestration-related product, that is not home insulation and is marketed in whole or in part to reduce residential energy use by slowing heat flow, you must test the product pursuant to § 460.5 using a test or tests in that section appropriate to the product. Any advertised R-value claims must fairly reflect the results of those tests. For the purposes of this section, fenestration-related products include windows, doors, and skylights as well as attachments for those products.

Appendix to Part 460 [Designated as Appendix A to Part 460 and Amended]

■ 18. Designate the appendix to part 460 as appendix A to part 460 and amend newly designated appendix A as follows:

■ a. In the introductory text:

■ i. Remove ''16 CFR part 460'' and ''part 460'' everywhere they appear and add in their place ''this part''.

■ ii. Remove ''below'' and add in its place ''in paragraphs (a) through (d) of this appendix''.

■ iii. Remove ''in the **Federal Register** cited at the end of each exemption'' and add in its place ''cited in the authority citation to this part''.

■ b. In paragraph (a), remove ''46 FR 22179 (1981).''

■ c. In paragraph (b), remove ''46 FR 22180 (1981).''

■ d. Redesignate paragraphs (c) introductory text and (c)(1) through (4) as paragraphs (c)(1) and (c)(1)(i) through (iv), respectively.

■ e. Designate the undesignated paragraph following newly designated paragraph (c)(1)(iv) as paragraph (c)(2).

■ f. In newly designated paragraph (c)(2), remove ''48 FR 31192 (1983).''

■ g. Add paragraph (d).

The addition reads as follows:

Appendix A to Part 460—Exemptions

* * * * *

(d) The requirements in §§ 460.6 through 460.21 do not apply to R-value claims covered by § 460.22.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–09622 Filed 5–10–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9857]

RIN 1545–BL11

Recognition and Deferral of Section 987 Gain or Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to combinations and separations of qualified business units (QBUs) subject to section 987 and the recognition and deferral of foreign currency gain or loss with respect to a QBU subject to section 987 in connection with certain QBU terminations and certain other transactions involving partnerships. In addition, this document withdraws temporary regulations regarding the allocation of assets and liabilities of certain partnerships for purposes of section 987. The final regulations affect taxpayers that own certain QBUs.

DATES:

Effective date: These regulations are effective on May 13, 2019.

Applicability dates: For dates of applicability, see §§ 1.987–2(e), 1.987–4(h), and 1.987–12(j).

FOR FURTHER INFORMATION CONTACT: Steven D. Jensen at (202) 317–6938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under §§ 1.987–2 and 1.987–4 relating to combinations and separations of QBUs subject to section 987. This document also contains final regulations under § 1.987–12 relating to the recognition and deferral of foreign currency gain or loss under section 987

with respect to a QBU subject to section 987 in connection with certain QBU terminations and certain other transactions involving partnerships (together with the final regulations under §§ 1.987–2 and 1.987–4, the final regulations). In addition, this document withdraws temporary regulations under § 1.987–7T regarding the allocation of assets and liabilities of certain partnerships for purposes of section 987.

I. Background on Section 987 Regulations

On December 8, 2016, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Treasury Decision 9794 (the 2016 final regulations) in the **Federal Register** (81 FR 88806), which contains rules relating to the determination of the taxable income or loss of a taxpayer with respect to a section 987 QBU; the timing, amount, character, and source of any section 987 gain or loss; and other provisions.

On the same date, the Treasury Department and the IRS also published Treasury Decision 9795 (the temporary regulations) in the **Federal Register** (81 FR 88854) and a notice of proposed rulemaking (REG–128276–12) in the **Federal Register** (81 FR 88882) by cross-reference to the temporary regulations. The temporary regulations include the following rules that are not specifically affected by this Treasury decision: An annual deemed termination election for a section 987 QBU; an elective method, available to taxpayers that make the annual deemed termination election, for translating all items of income or loss with respect to a section 987 QBU at the yearly average exchange rate; rules regarding the treatment of section 988 transactions of a section 987 QBU; rules regarding QBUs with the U.S. dollar as their functional currency; rules regarding the translation of income used to pay creditable foreign income taxes; and rules under section 988 requiring the deferral of certain section 988 loss that arises with respect to related-party loans.

In addition, the temporary regulations contain the following provisions that are specifically affected by this Treasury decision: §§ 1.987–2T and 1.987–4T, relating to combinations and separations of QBUs; § 1.987–7T, which provides a liquidation value percentage methodology for allocating assets and liabilities of certain partnerships (section 987 aggregate partnerships, as defined in § 1.987–1(b)(5) of the 2016 final regulations); and § 1.987–12T, which requires deferral of foreign currency gain or loss under section 987 with respect to certain transactions defined as deferral events or outbound loss events—transactions that generally include QBU terminations and certain partnerships transactions.

On January 17, 2017, the Treasury Department and the IRS published Notice 2017–07, 2017–3 I.R.B. 423, announcing that certain rules under § 1.987–12T would be modified to prevent potential abuse by taxpayers making retroactive check-the-box elections. Section 1.987–12T(j)(1) states that § 1.987–12T generally applies to any deferral event or outbound loss event that occurs on or after January 6, 2017 (that is, thirty days after the date that § 1.987–12T was filed with the **Federal Register**). Under § 1.987–12T(j)(2), however, § 1.987–12T also applies to any deferral event or outbound loss event that occurs on or after December 7, 2016, if such deferral event or outbound loss event is undertaken with a principal purpose of recognizing section 987 loss. Notice 2017–07 indicated that § 1.987–12T(j)(2) would be modified so that § 1.987–12T also will apply to any deferral event or outbound loss event that is undertaken with a principal purpose of recognizing section 987 loss [1] and that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after December 22, 2016, and that is effective before December 7, 2016. Additionally, Notice 2017–07 provided that § 1.987–12T(j)(1) would be modified so that § 1.987–12T also will apply to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after January 6, 2017, and that is effective before January 6, 2017.

On October 16, 2017, the Treasury Department and the IRS issued Notice 2017–57, 2017–42 I.R.B. 325, announcing that future guidance would defer the applicability dates of §§ 1.987–2T, 1.987–4T, and 1.987–7T (along with certain other provisions of the 2016 final regulations and temporary regulations) by one year. The temporary regulations provide that these sections apply to taxable years beginning on or after the day that is one year after the first day of the first taxable year following December 7, 2016. *See* §§ 1.987–2T(e); 1.987–4T(h); 1.987–7T(d).

[1] Notice 2017–07 inadvertently referred to a principal purpose of recognizing section 987 gain or loss. These final regulations, by contrast, finalize the rule in the temporary regulations by applying § 1.987–12(j)(2) solely to deferral events and outbound loss events undertaken with a principal purpose of recognizing section 987 loss.

On June 25, 2018, the Treasury Department and the IRS published Notice 2018–57, 2018–26 IRB 774, announcing that future guidance would defer the applicability dates of §§ 1.987–2T, 1.987–4T, and 1.987–7T (along with certain other provisions of the 2016 final regulations and temporary regulations) by one additional year.

II. Executive Order 13789

Executive Order 13789, issued on April 21, 2017, instructs the Secretary of the Treasury (the Secretary) to review all significant tax regulations issued on or after January 1, 2016, and to take concrete action to alleviate the burdens of regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the IRS. Executive Order 13789 further instructs the Secretary to submit to the President within 60 days an interim report that identifies regulations that meet these criteria. Notice 2017–38, 2017–30 I.R.B. 147, which was published on July 24, 2017, included the 2016 final regulations in a list of eight regulations identified by the Secretary in the interim report as meeting at least one of the first two criteria specified in E.O. 13789.

E.O. 13789 further instructs the Secretary to submit to the President by September 18, 2017, a final report that recommends specific actions to mitigate the burden imposed by regulations identified in the interim report. On October 16, 2017, the Secretary published in the **Federal Register** this final report (82 FR 48013), which indicated, among other things, that the Treasury Department and the IRS intend to propose certain modifications to the 2016 final regulations to reduce burden and compliance challenges associated with those regulations and are actively considering other rules in connection with that proposal.

III. Deferral of Section 987 Gain or Loss on Certain Terminations and Other Transactions Involving Partnerships

Under the 2016 final regulations, the owner of a section 987 QBU that terminates includes in income all of the net unrecognized section 987 gain or loss with respect to the section 987 QBU in the year it terminates. Under these rules, a termination can result, for example, solely from a transfer of a section 987 QBU from a taxpayer to a related party, notwithstanding that the QBU's assets continue to be used in the same trade or business by the related party.

Because a termination can result in the deemed remittance of all the assets

of a section 987 QBU in circumstances in which the assets continue to be used by a related person in the conduct of the same trade or business that formerly was conducted by the section 987 QBU, terminations can facilitate the selective recognition of section 987 losses. In issuing the temporary regulations, the Treasury Department and the IRS determined that terminations of section 987 QBUs generally should not be permitted to facilitate the selective recognition of losses when the assets and liabilities of the section 987 QBU are transferred to a related person and remain subject to section 987 in the hands of the transferee. Similar policy considerations arise when the transfer of a partnership interest to a related person results in deemed transfers that cause the recognition of section 987 loss with respect to a section 987 QBU owned through the partnership, notwithstanding that the trade or business of the section 987 QBU continues without interruption and remains subject to section 987, and in the context of certain outbound transfers even when the assets do not remain subject to section 987 in the hands of the transferee (because, for example, the transferee has the same functional currency as the QBU). In order to address these policy concerns, the temporary regulations defer section 987 losses resulting from certain termination events, partnership transactions, and certain other transactions involving outbound transfers.

In addition, the temporary regulations generally apply to defer the recognition of section 987 gains as well as losses when the transferee is subject to section 987 with respect to the assets of the section 987 QBU. The temporary regulations do not, however, defer gain to the extent the assets of a section 987 QBU are transferred by a U.S. person to a related foreign person, consistent with the policies underlying section 367.

IV. Combinations and Separations of QBUs

The temporary regulations also include rules to prevent similarly inappropriate results when certain section 987 QBUs are combined or separated. Absent a special rule, the combination of multiple section 987 QBUs that have the same owner, or the separation of a section 987 QBU into two or more section 987 QBUs that have the same owner, would give rise to a transfer between an owner and one or more section 987 QBUs under the 2016 final regulations.

Consistent with the policy of deferring section 987 gain or loss under § 1.987–12T when assets of a section 987 QBU are reflected on the books and records of another section 987 QBU in the same controlled group as a result of certain transactions that result in deemed transfers, the temporary regulations provide that section 987 gain or loss generally is not recognized when two or more section 987 QBUs (combining QBUs) with the same owner combine into a single section 987 QBU (combined QBU) or when a section 987 QBU (separating QBU) separates into multiple section 987 QBUs (each, a separated QBU).

The temporary regulations also include certain mechanical rules applicable in this context, including (i) rules related to determining the net unrecognized section 987 gain or loss of combined QBUs and separated QBUs, and (ii) provisions regarding combining section 987 QBUs that have different functional currencies than their respective combined QBUs.

V. Determination of a Partner's Share of Assets and Liabilities of a Section 987 Aggregate Partnership

The 2016 final regulations set forth rules applicable to section 987 aggregate partnerships, which are defined as partnerships for which all of the capital and profits interests are owned, directly or indirectly, by persons that are related within the meaning of section 267(b) or section 707(b). Under the aggregate approach set forth in the 2016 final regulations, assets and liabilities reflected on the books and records of an eligible QBU of a section 987 aggregate partnership are allocated to each partner, which is considered an indirect owner of the eligible QBU. If the eligible QBU has a different functional currency than its indirect owner, then the assets and liabilities of the eligible QBU that are allocated to the partner are treated as a section 987 QBU of the indirect owner.

The temporary regulations provide specific rules for determining a partner's share of the assets and liabilities reflected on the books and records of an eligible QBU owned indirectly through a section 987 aggregate partnership. Specifically, § 1.987–7T(b) provides that, in any taxable year, a partner's share of each asset and liability of a section 987 aggregate partnership is proportional to the partner's liquidation value percentage with respect to the aggregate partnership. A partner's liquidation value percentage is defined as the ratio of the liquidation value of the partner's interest in the partnership to the aggregate liquidation value of all the partners' interests in the partnership. The liquidation value of the partner's interest in the partnership is the amount of cash the partner would receive with respect to its interest if, immediately following the applicable determination date, the partnership sold all of its assets for cash equal to the fair market value of such assets (taking into account section 7701(g)), satisfied all of its liabilities (other than those described in § 1.752–7), paid an unrelated third party to assume all of its § 1.752–7 liabilities in a fully taxable transaction, and then liquidated.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received one comment regarding the temporary regulations. In addition, the Treasury Department and the IRS received several comments in response to Notice 2017–38 pertaining to the temporary regulations. After consideration of all the comments, the regulations under §§ 1.987–2T, 1.987–4T, and 1.987–12T, as revised by this Treasury decision, are adopted as final regulations. In addition, the regulations under § 1.987–7T are withdrawn. The Treasury Department and the IRS are continuing to study the other provisions of the temporary regulations that are not specifically addressed by this Treasury decision. In addition, several comments were received that relate to rules in the 2016 final regulations. Comments on the 2016 final regulations, and provisions of the temporary regulations that are not specifically addressed by this Treasury decision, are beyond the scope of this rulemaking and are not addressed in this preamble. The Treasury Department and the IRS will consider these comments in connection with any future guidance projects addressing the issues discussed in the comments.

I. Comments Recommending Withdrawal of the Temporary Regulations

A number of comments recommended that all of the temporary regulations, including §§ 1.987–2T, 1.987–4T, and 1.987–12T, be withdrawn. Comments generally indicated that the 2016 final regulations and the temporary regulations are unduly complex and present significant financial and compliance burdens for taxpayers subject to the 2016 final regulations.

As described in the Background section of this Preamble, in its final report to the President in response to E.O. 13789, the Treasury Department indicated that the 2016 final regulations have proved difficult to apply for many taxpayers. The final report indicated that the Treasury Department and the IRS intend to propose modifications to the 2016 final regulations that will

reduce the compliance burdens associated with the regulations. While the Treasury Department and the IRS intend to reduce those burdens as described in the final report, the Treasury Department and the IRS continue to consider it inappropriate to permit the selective recognition of section 987 losses and the deferral of section 987 gains. This is particularly true when such selective loss recognition may be accomplished through related-party transactions that do not significantly impact the conduct of the trade or business of a section 987 QBU or its owner but nonetheless generate significant tax benefits, as is true of deferral events and outbound loss events.

Accordingly, the Treasury Department and the IRS have determined that finalizing §§ 1.987–2T, 1.987–4T, and 1.987–12T, while simultaneously deferring the applicability date of the 2016 final regulations and developing guidance to mitigate the complexity and administrative challenges associated with, the 2016 final regulations, appropriately balances taxpayers' burdens with the need to prevent abuse under the 2016 final regulations or under another method of complying with section 987 utilized by a taxpayer during a period for which the 2016 final regulations are not applicable. Accordingly, this Treasury decision finalizes the rules in §§ 1.987–2T, 1.987–4T, and 1.987–12T with certain clarifications.

II. Comments Recommending a Delay of the Applicability Date of the Temporary Regulations

Comments recommended that the applicability date for the 2016 final regulations and the temporary regulations, including §§ 1.987–2T, 1.987–4T, and 1.987–12T, be delayed for a specified period, such as one or two years. Similarly, comments recommended that the final and temporary regulations, including §§ 1.987–2T, 1.987–4T, and 1.987–12T, be withdrawn in their entirety and reproposed (in one case, with an effective date at least two years after such regulations are finalized) to allow taxpayers time to effectively plan to implement the final and temporary regulations. Generally, the comments indicated that taxpayers required additional time to update and implement existing systems to comply with the 2016 final regulations and the temporary regulations. One comment specifically recommended that the applicability date for § 1.987–12T be delayed until the applicability date of the 2016 final regulations. The comment indicated that, in certain instances, the applicability date of § 1.987–12T prevented the recognition of losses in connection with certain transactions that were in the planning and implementation stages when the temporary regulations were issued. No comments identified specific compliance challenges associated with § 1.987–12T.

The Treasury Department and the IRS decline to delay the applicability date of § 1.987–12T. As discussed in Part I of this Summary of Comments and Explanation of Revisions, § 1.987–12T prevents taxpayers from selectively recognizing section 987 losses through certain technical terminations of a section 987 QBU and similar transactions that would be relatively easy to effect through related-party transactions without meaningfully impacting a taxpayer's business operations. If the applicability date were delayed, taxpayers would be incentivized to engage in such selective recognition of section 987 losses, which would be contrary to the purposes of section 987 and § 1.987–12T. Delaying the application of related provisions under §§ 1.987–2T and 1.987–4T concerning combinations and separations of a section 987 QBU could similarly incentivize transactions designed to accelerate section 987 losses for taxpayers that have elected to apply the 2016 final regulations early. In this regard, the Treasury Department and the IRS observe that the transactions to which §§ 1.987–2T, 1.987–4T, and 1.987–12T are applicable occur exclusively among related persons, such that taxpayers may avoid the application of those sections by avoiding undertaking such transactions.

Accordingly, the final regulations retain the applicability dates of the temporary regulations, as modified by Notice 2017–07, Notice 2017–57, and Notice 2018–57. Specifically, the final regulations provide that §§ 1.987–2(c)(9), 1.987–4(c)(2), and 1.987–4(f) apply to taxable years beginning on or after the day that is three years after the first day of the first taxable year following December 7, 2016. If, however, a taxpayer makes an election under § 1.987–11(b), then §§ 1.987–2(c)(9), 1.987–4(c)(2), and 1.987–4(f) apply to taxable years to which §§ 1.987–1 through 1.987–10 apply as a result of such election.

Similarly, § 1.987–12 incorporates the applicability date provisions of § 1.987–12T, as modified by Notice 2017–07. Thus, the final regulations under § 1.987–12 generally apply to any deferral event or outbound loss event that occurs on or after January 6, 2017. Section 1.987–12 also applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after January 6, 2017, and that is effective before January 6, 2017. However, § 1.987–12 applies to any deferral event or outbound loss event occurring on or after December 7, 2016, if such deferral event or outbound loss event was undertaken with a principal purpose of recognizing section 987 loss. Similarly, § 1.987–12 applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that was filed on or after December 22, 2016, that was effective before December 7, 2016, and that was undertaken with a principal purpose of recognizing section 987 loss.

III. Comments Regarding the Determination of a Partner's Share of Assets and Liabilities of a Section 987 Aggregate Partnership

Comments recommended alternative approaches for determining a partner's share of the assets and liabilities of a section 987 aggregate partnership. Comments recommended that § 1.987–7 be withdrawn and replaced with the approach of the 2006 proposed regulations under section 987, which provided that a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership must be determined in a manner consistent with how the partners have agreed to share the economic benefits and burdens corresponding to those partnership assets and liabilities, taking into account the rules and principles of subchapter K. The comment indicated that that the liquidation value percentage approach was inconsistent with certain principles of subchapter K, resulting in distortions in the calculation of section 987 gain or loss in certain cases.

The Treasury Department and the IRS have determined that, in the absence of a more comprehensive set of rules for determining a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership that also articulates the interaction of those rules with applicable rules in subchapter K, a more flexible approach is warranted. Moreover, the Treasury Department and the IRS have determined that, in certain instances, the liquidation value percentage methodology set forth in § 1.987–7T may be interpreted as applying in a way that inappropriately distorts the computation of section 987 gain or loss.

Specifically, under such an interpretation, certain changes in a partner's liquidation value percentage may introduce distortions in the calculation of net unrecognized section 987 gain or loss under § 1.987–4, giving rise to net unrecognized section 987 gain or loss that is not attributable to fluctuations in exchange rates. For example, an appreciation or depreciation in property value can result in a change in liquidation value percentage that causes a change in owner functional currency net value for purposes of Step 1 of the § 1.987–4(d) calculation of unrecognized section 987 gain or loss for a taxable year without an offsetting adjustment under Step 6 or otherwise that would prevent the change in liquidation value percentage from distorting the calculation of unrecognized section 987 gain or loss. As a result, such unrecognized appreciation or depreciation generally can result in unrecognized section 987 gain or loss for a taxable year being allocated to each partner that indirectly owns a section 987 QBU even when there is no change in exchange rates.

Accordingly, the Treasury Department and the IRS are withdrawing § 1.987–7T (and making a conforming change to an example in § 1.987–12). Until new regulations are proposed and finalized, taxpayers may use any reasonable method for determining a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership. For this purpose, taxpayers may rely on subchapter K principles (consistent with the 2006 proposed regulations under section 987) or an approach similar to the liquidation value percentage method set forth in § 1.987–7T. However, the Treasury Department and the IRS do not believe that it would be reasonable to apply the liquidation value percentage method without corresponding adjustments to the determination of net unrecognized section 987 gain or loss. Thus, for example, a taxpayer using the liquidation value percentage method may be required to adjust its determination of net unrecognized section 987 gain or loss of a section 987 QBU that is owned indirectly through a partnership to prevent the determination of unrecognized section 987 gain or loss that is not attributable to fluctuations in exchange rates. These adjustments may include, for example, treating any change in a partner's owner functional currency net value that is attributable to a change in the partner's liquidation value percentage as resulting in a transfer to or from an indirectly owned section 987 QBU.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

This regulation does not establish a new collection of information nor modify an existing collection that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

III. Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will primarily affect U.S. corporations that have foreign operations, which tend to be larger businesses. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or 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, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

Drafting Information

The principal author of these final regulations is Steven D. Jensen of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.987–12 in numerical order to read in part as follows:

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

* * * * *

Section 1.987–12 is issued under 26 U.S.C. 987 and 989.

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■ **Par. 2.** Section 1.987–0 is amended by:

■ 1. Revising the entries for § 1.987–2(c)(9), § 1.987–4(c)(2), (f), § 1.987–12(a), (a)(1), (a)(2), (a)(3), (b), (b)(1), (b)(2), (b)(3), (b)(4), (c), (c)(1), (c)(2), (c)(3), (c)(4), (d), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (e), (e)(1), (e)(2), (f), (f)(1), (f)(2), (g), and (h).

■ 2. Adding entries for § 1.987–2(e), (e)(1), (e)(2), § 1.987–4(f)(1), (f)(2), (f)(3), (h), (h)(1), (h)(2), § 1.987–12(i), (i)(1), (i)(2), (i)(3), (j), (j)(1), and (j)(2).

The revisions and additions read as follows:

§ 1.987–0 Table of contents.

* * * * *

§ 1.987–2 Attribution of items to eligible QBUs; definition of a transfer and related rules.

* * * * *

(c)(9) Certain disregarded transactions not treated as transfers.

* * * * *

(e) Effective/applicability date.

(1) In general.

(2) Certain disregarded transactions not treated as transfers.

* * * * *

§ 1.987–4 Determination of net unrecognized section 987 gain or loss of a section 987 QBU.

* * * * *

(c)(2) Coordination with § 1.987–12.

* * * * *

(f) Combinations and separations.

(1) Combinations.

(2) Separations.

(3) Examples.

* * * * *

(h) Effective/applicability date.

(1) In general.

(2) Combinations and separations.

* * * * *

§ 1.987–12 Deferral of section 987 gain or loss.

(a) In general.

(1) Overview.

(2) Scope.

(3) Exceptions.

(b) Gain or loss recognition in connection with a deferral event.

(1) In general.

(2) Deferral event.

(3) Gain or loss recognized under § 1.987–5 in the taxable year of a deferral event.

(4) Successor QBU.

(c) Recognition of deferred section 987 gain or loss in the taxable year of a deferral event and in subsequent taxable years.

(1) In general.

(2) Recognition upon a subsequent remittance.

(3) Recognition of deferred section 987 loss in certain outbound successor QBU terminations.

(4) Special rules regarding successor QBUs.

(d) Loss recognition upon an outbound loss event.

(1) In general.

(2) Outbound loss event.

(3) Loss recognized upon an outbound loss event.

(4) Adjustment of basis of stock received in certain nonrecognition transactions.

(5) Recognition of outbound section 987 loss that is not converted into stock basis.

(e) Source and character.

(1) Deferred section 987 gain or loss and certain outbound section 987 loss.

(2) Outbound section 987 loss reflected in stock basis.

(f) Definitions.

(1) Controlled group.

(2) Qualified successor.

(g) Anti-abuse.

(h) Examples.

(i) Coordination with fresh start transition method.

(1) In general.

(2) Adjustment to deferred section 987 gain or loss.

(3) Adjustments in the case of an outbound loss event.

(j) Effective/applicability date.

(1) In general.

(2) Exceptions.

■ **Par. 3.** Section 1.987–2 is amended by

■ 1. Revising paragraphs (c)(9).

■ 2. Adding paragraph (e).

The revision and addition read as follows:

§ 1.987–2 Attribution of items to eligible QBUs; definition of a transfer and related rules.

* * * * *

(c) * * *

(9) *Certain disregarded transactions not treated as transfers*—(i) *Combinations of section 987 QBUs.* The combination of two or more separate section 987 QBUs (combining QBUs) that are directly owned by the same owner, or that are indirectly owned by the same partner through a single section 987 aggregate partnership, into one section 987 QBU (combined QBU) does not give rise to a transfer of any combining QBU's assets or liabilities to the owner under § 1.987–2(c). In addition, transactions between the combining QBUs occurring in the taxable year of the combination do not result in a transfer of the combining QBUs' assets or liabilities to the owner under § 1.987–2(c). For this purpose, a combination occurs when the assets and liabilities that are properly reflected on the books and records of two or more combining QBUs begin to be properly reflected on the books and records of a combined QBU and the separate existence of the combining QBUs ceases. A combination may result from any transaction or series of transactions in which the combining QBUs become a combined QBU. For rules regarding the determination of net unrecognized section 987 gain or loss of a combined QBU, see § 1.987–4(f)(1).

(ii) *Change in functional currency from a combination.* If, following a combination of section 987 QBUs described in paragraph (c)(9)(i) of this section, the combined section 987 QBU has a different functional currency than one or more of the combining section 987 QBUs, any such combining section 987 QBU is treated as changing its functional currency and the owner of the combined section 987 QBU must comply with the regulations under section 985 regarding the change in functional currency. See §§ 1.985–1(c)(6) and 1.985–5.

(iii) *Separation of section 987 QBUs.* The separation of a section 987 QBU (separating QBU) into two or more section 987 QBUs (separated QBUs) that, after the separation, are directly owned by the same owner, or that are indirectly owned by the same partner through a single section 987 aggregate partnership, does not result in a transfer of the separating QBU's assets or liabilities to the owner under § 1.987–2(c). Additionally, transactions that occurred between the separating QBUs in the taxable year of the separation prior to the completion of the separation do not result in transfers for purposes of section 987. For this purpose, a separation occurs when the assets and liabilities that are properly reflected on the books and records of a separating QBU begin to be properly reflected on the books and records of two or more separated QBUs. A separation may result from any transaction or series of transactions in which a separating QBU becomes two or more separated QBUs. A separation may also result when a section 987 QBU that is subject to a grouping election under § 1.987–1(b)(2)(ii)(A) changes its functional currency. For rules regarding the determination of net unrecognized section 987 gain or loss of a separated QBU, see § 1.987–4(f)(2).

* * * * *

(e) *Effective/applicability date*—(1) *In general.* Except as set forth in paragraph (h)(2) of this section, this section is applicable as specified in § 1.987–11.

(2) *Certain disregarded transactions not treated as transfers.* Paragraph (c)(9) of this section applies to taxable years beginning on or after the day that is three years after the first day of the first taxable year following December 7, 2016. Notwithstanding the preceding sentence, if a taxpayer makes an election under § 1.987–11(b), then paragraph (c)(9) of this section applies to taxable years to which §§ 1.987–1 through 1.987–10 apply as a result of such election.

§ 1.987–2T [Removed]

■ **Par. 4.** Section 1.987–2T is removed.

■ **Par. 5.** Section 1.987–4 is amended by

■ 1. Revising paragraphs (c)(2) and (f).

■ 2. Adding paragraph (h).

The revisions and addition read as follows:

§ 1.987–4 Determination of net unrecognized section 987 gain or loss of a section 987 QBU.

* * * * *

(c) * * *

(2) *Coordination with § 1.987–12.* For purposes of paragraph (c)(1) of this section, amounts taken into account under § 1.987–5 are determined without regard to § 1.987–12.

* * * * *

(f) *Combinations and separations*—(1) *Combinations.* The net unrecognized section 987 gain or loss of a combined QBU (as defined in § 1.987–2(c)(9)(i)) for a taxable year is determined under paragraph (b) of this section by taking into account the net accumulated unrecognized section 987 gain or loss of each combining QBU (as defined in § 1.987–2(c)(9)(i)) for all prior taxable years to which the regulations under section 987 apply, as determined under paragraph (c) of this section, and by treating the combining QBUs as having combined immediately prior to the beginning of the taxable year of combination. See paragraph (f)(3) of this section, *Example 1,* for an illustration of this rule.

(2) *Separations.* The net unrecognized section 987 gain or loss of a separated QBU (as defined in § 1.987–2(c)(9)(iii)) for a taxable year is determined under paragraph (b) of this section by taking into account the separated QBU's share of the net accumulated unrecognized section 987 gain or loss of the separating QBU (as defined in § 1.987–2(c)(9)(iii)) for all prior taxable years to which the regulations under section 987 apply, as determined under paragraph (c) of this section, and by treating the separating QBU as having separated immediately prior to the beginning of the taxable year of separation. A separated QBU's share of the separating QBU's net accumulated unrecognized section 987 gain or loss for all such prior taxable years is determined by apportioning the separating QBU's net accumulated unrecognized section 987 gain or loss for all such prior taxable years to each separated QBU in proportion to the aggregate adjusted basis of the gross assets properly reflected on the books and records of each separated QBU immediately after the separation. For purposes of determining the owner functional currency net value of the separated QBUs on the last day of the taxable year preceding the taxable year of separation under § 1.987–5(d)(1)(B) and (e), the balance sheets of the separated QBUs on that day will be deemed to reflect the assets and liabilities reflected on the balance sheet of the separating QBU on that day, apportioned between the separated QBUs in a reasonable manner that takes into account the assets and liabilities reflected on the balance sheets of the separated QBUs immediately after the separation. See paragraph (f)(3) of this section, *Example 2,* for an illustration of this rule.

(3) *Examples.* The following examples illustrate the rules of paragraphs (f)(1) and (2) of this section.

(i) Example 1. Combination of two section 987 QBUs that have the same owner. (A) *Facts.* DC1, a domestic corporation, owns Entity A, a DE. Entity A conducts a business in France that constitutes a section 987 QBU (French QBU) that has the euro as its functional currency. French QBU has a net accumulated unrecognized section 987 loss from all prior taxable years to which the regulations under section 987 apply of $100. DC1 also owns Entity B, a DE. Entity B conducts a business in Germany that constitutes a section 987 QBU (German QBU) that has the euro as its functional currency. German QBU has a net accumulated unrecognized section 987 gain from all prior taxable years to which the regulations under section 987 apply of $110. During the taxable year, Entity A and Entity B merge under local law. As a result, the books and records of French QBU and German QBU are combined into a new single set of books and records. The combined entity has the euro as its functional currency.

(B) *Analysis.* Pursuant to § 1.987–2(c)(9)(i), French QBU and German QBU are combining QBUs, and their combination does not give rise to a transfer that is taken into account in determining the amount of a remittance (as defined in § 1.987–5(c)). For purposes of computing net unrecognized section 987 gain or loss under this section for the year of the combination, the combination is deemed to have occurred on the last day of the owner's prior taxable year, such that the owner functional currency net value of the combined section 987 QBU at the end of that taxable year described under paragraph (d)(1)(B) of this section takes into account items reflected on the balance sheets of both French QBU and German QBU at that time. Additionally, any transactions between French QBU and German QBU occurring during the year of the merger will not result in transfers to or from a section 987 QBU. Pursuant to paragraph (f)(1) of this section, the combined QBU will have a net accumulated unrecognized section 987 gain from all prior taxable years of $10 (the $100 loss from French QBU plus the $110 gain from German QBU).

(ii) Example 2. Separation of two section 987 QBUs that have the same owner. (A) *Facts.* DC1, a domestic corporation, owns Entity A, a DE. Entity A conducts a business in the Netherlands that constitutes a section 987 QBU (Dutch QBU) that has the euro as its functional currency. The business of Dutch QBU consists of manufacturing and selling bicycles and scooters and is recorded on a single set of books and records. On the last day of Year 1, the adjusted basis of the gross assets of Dutch QBU is €1,000. In Year 2, the net accumulated unrecognized section 987 loss of Dutch QBU from all prior taxable years is $200. During Year 2, Entity A separates the bicycle and scooter business such that each business begins to have its own books and records and to meet the definition of a section 987 QBU under § 1.987–1(b)(2) (hereafter, ''bicycle QBU'' and ''scooter QBU''). There are no transfers between DC1 and Dutch QBU before the separation. After the separation, the aggregate adjusted basis of bicycle QBU's assets is €600 and the aggregate adjusted basis of scooter QBU's assets is €400. Each section 987 QBU continues to have the euro as its functional currency.

(B) *Analysis.* Pursuant to § 1.987–2(c)(9)(iii), bicycle QBU and scooter QBU are separated QBUs, and the separation of Dutch QBU, a separating QBU, does not give rise to a transfer taken into account in determining the amount of a remittance (as defined in § 1.987–5(c)). For purposes of computing net unrecognized section 987 gain or loss under this section for Year 2, the separation will be deemed to have occurred on the last day of the owner's prior taxable year, Year 1. Pursuant to paragraph (f)(2) of this section, bicycle QBU will have a net accumulated unrecognized section 987 loss of $120 (€600/€1,000 × $200), and scooter QBU will have a net accumulated unrecognized section 987 loss of $80 (€400/€1,000 × $200).

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(h) *Effective/applicability date*—(1) *In general.* Except as set forth in paragraph (h)(2) of this section, this section is applicable as specified in § 1.987–11.

(2) *Combinations and separations.* Paragraphs (c)(2) and (f) of this section apply to taxable years beginning on or after the day that is three years after the first day of the first taxable year following December 7, 2016. Notwithstanding the preceding sentence, if a taxpayer makes an election under § 1.987–11(b), then paragraphs (c)(2) and (f) of this section applies to taxable years to which §§ 1.987–1 through 1.987–10 apply as a result of such election.

§ 1.987–4T [Removed]

■ **Par. 6.** Section 1.987–4T is removed.

§ 1.987–7 [Amended]

■ **Par. 7.** Section 1.987–7 is amended by removing and reserving paragraph (b).

§ 1.987–7T [Removed]

■ **Par. 8.** Section 1.987–7T is removed.

■ **Par. 9.** Section 1.987–12 is revised to read as follows:

§ 1.987–12 Deferral of section 987 gain or loss.

(a) *In general*—(1) *Overview.* This section provides rules that defer the recognition of section 987 gain or loss that, but for this section, would be recognized in connection with certain QBU terminations and certain other transactions involving partnerships. This paragraph (a) provides an overview of this section and describes the section's scope of application, including

with respect to QBUs subject to section 987 but to which §§ 1.987–1 through 1.987–11 generally do not apply. Paragraph (b) of this section describes the extent to which section 987 gain or loss is recognized under § 1.987–5 or similar principles in the taxable year of a deferral event (as defined in paragraph (b)(2) of this section) with respect to a QBU. Paragraph (c) of this section describes the extent to which section 987 gain or loss that, as a result of paragraph (b), is not recognized under § 1.987–5 or similar principles is recognized upon the occurrence of subsequent events. Paragraph (d) of this section describes the extent to which section 987 loss is recognized under § 1.987–5 or similar principles in the taxable year of an outbound loss event (as defined in paragraph (d)(2) of this section) with respect to a QBU. Paragraph (e) of this section provides rules for determining the source and character of gains and losses that, as a result of this section, are not recognized under § 1.987–5 or similar principles in the taxable year of a deferral event or outbound loss event. Paragraph (f) of this section defines controlled group and qualified successor for purposes of this section. Paragraph (g) of this section provides an anti-abuse rule. Paragraph (h) of this section provides examples illustrating the rules described in this section. Paragraph (i) of this section provides rules coordinating the application of this section with the fresh start transition method. Paragraph (j) of this section provides dates of applicability.

(2) *Scope.* This section applies to any foreign currency gain or loss realized under section 987(3), including foreign currency gain or loss of an entity described in § 1.987–1(b)(1)(ii) (certain entities not otherwise subject to the regulations under section 987). References in this section to section 987 gain or loss refer to any foreign currency gain or loss realized under section 987(3), references to a section 987 QBU refer to any eligible QBU (as defined in § 1.987–1(b)(3)(i), but without regard to § 1.987–1(b)(3)(ii)) that is subject to section 987, and references to a section 987 aggregate partnership refer to any partnership for which the acquisition or disposition of a partnership interest could give rise to foreign currency gain or loss realized under section 987(3). Additionally, references to recognition of section 987 gain or loss under § 1.987–5 encompass any determination and recognition of gain or loss under section 987(3) that would occur but for this section. Accordingly, the principles of this section apply to a QBU subject to section 987 regardless of whether the QBU otherwise is subject to §§ 1.987–1 through 1.987–11. An owner of a QBU that is not subject to § 1.987–5 must adapt the rules set forth in this section as necessary to recognize section 987 gains or losses that are subject to this section consistent with the principles of this section.

(3) *Exceptions*—(i) *Annual deemed termination elections.* This section does not apply to section 987 gain or loss of a section 987 QBU with respect to which the annual deemed termination election described in § 1.987–8(d) is in effect.

(ii) *De minimis exception.* This section does not apply to a section 987 QBU for a taxable year if the net unrecognized section 987 gain or loss of the section 987 QBU that, as a result of this section, would not be recognized under § 1.987–5 in the taxable year does not exceed $5 million.

(b) *Gain and loss recognition in connection with a deferral event*—(1) *In general.* Notwithstanding § 1.987–5, the owner of a section 987 QBU with respect to which a deferral event occurs (a deferral QBU) includes in taxable income section 987 gain or loss in connection with the deferral event only to the extent provided in paragraphs (b)(3) and (c) of this section. However, if the deferral event also constitutes an outbound loss event described in paragraph (d) of this section, the amount of loss recognized by the owner may be further limited under that paragraph.

(2) *Deferral event*—(i) *In general.* A deferral event with respect to a section 987 QBU means any transaction or series of transactions that satisfy the conditions described in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) *Transactions.* The transaction or series of transactions include either:

(A) A termination of the section 987 QBU other than any of the following terminations: A termination described in § 1.987–8(b)(3), a termination described in § 1.987–8(c), or a termination described solely in § 1.987–8(b)(1); or

(B) A disposition of part of an interest in a section 987 aggregate partnership or DE through which the section 987 QBU is owned, a disposition of part of a directly held section 987 QBU, or any contribution by another person to a section 987 aggregate partnership, DE, or section 987 QBU of assets that, immediately after the contribution, are not considered to be included on the books and records of an eligible QBU, provided that the contribution gives rise to a deemed transfer from the section 987 QBU to the owner. See paragraph (h) of this section, *Examples 1, 2,* and *4,* for illustrations of this rule.

(iii) *Assets on books of successor QBU.* Immediately after the transaction or series of transactions, assets of the section 987 QBU are reflected on the books and records of a successor QBU (as defined in paragraph (b)(4) of this section).

(3) *Gain or loss recognized under § 1.987–5 in the taxable year of a deferral event.* In the taxable year of a deferral event with respect to a deferral QBU, the owner of the deferral QBU recognizes section 987 gain or loss as determined under § 1.987–5, except that, solely for purposes of applying § 1.987–5, all assets and liabilities of the deferral QBU that, immediately after the deferral event, are reflected on the books and records of a successor QBU are treated as not having been transferred and therefore as remaining on the books and records of the deferral QBU notwithstanding the deferral event.

(4) *Successor QBU.* For purposes of this section, a section 987 QBU (potential successor QBU) is a successor QBU with respect to a section 987 QBU referred to in paragraph (b)(2)(ii) of this section if, immediately after the transaction or series of transactions described in that paragraph, the potential successor QBU satisfies all of the conditions described in paragraphs (b)(4)(i) through (iii) of this section.

(i) The books and records of the potential successor QBU reflect assets that, immediately before the transaction or series of transactions described in paragraph (b)(2)(ii) of this section, were reflected on the books and records of the section 987 QBU referred to in that paragraph.

(ii) The owner of the potential successor QBU and the owner of the section 987 QBU referred to in paragraph (b)(2)(ii) of this section immediately before the transaction or series of transactions described in that paragraph are members of the same controlled group.

(iii) In the case of a section 987 QBU referred to in paragraph (b)(2)(ii)(A) of this section, if the owner of the section 987 QBU immediately before the transaction or series of transactions described in that paragraph was a U.S. person, the potential successor QBU is owned by a U.S. person.

(c) *Recognition of deferred section 987 gain or loss in the taxable year of a deferral event and in subsequent taxable years*—(1) *In general*—(i) *Deferred section 987 gain or loss.* A deferral QBU owner (as defined in paragraph (c)(1)(ii) of this section) recognizes section 987 gain or loss attributable to the deferral QBU that, as a result of paragraph (b) of

this section, is not recognized in the taxable year of the deferral event under § 1.987–5 (deferred section 987 gain or loss) in the taxable year of the deferral event and in subsequent taxable years as provided in paragraphs (c)(2) through (4) of this section.

(ii) *Deferral QBU owner.* For purposes of this paragraph (c), a deferral QBU owner means, with respect to a deferral QBU, the owner of the deferral QBU immediately before the deferral event, or the owner's qualified successor.

(2) *Recognition upon a subsequent remittance*—(i) *In general.* Except as provided in paragraph (c)(3) of this section, a deferral QBU owner recognizes deferred section 987 gain or loss in the taxable year of the deferral event and in subsequent taxable years upon a remittance from a successor QBU to the owner of the successor QBU (successor QBU owner) in the amount described in paragraph (c)(2)(ii) of this section.

(ii) *Amount.* The amount of deferred section 987 gain or loss that is recognized pursuant to this paragraph (c)(2) in a taxable year of the deferral QBU owner is the outstanding deferred section 987 gain or loss (that is, the amount of deferred section 987 gain or loss not previously recognized) multiplied by the remittance proportion of the successor QBU owner with respect to the successor QBU for the taxable year ending with or within the taxable year of the deferral QBU owner, as determined under § 1.987–5(b) (and, to the extent relevant, paragraphs (b) and (c)(2)(iii) of this section) without regard to any election under § 1.987–8(d). For purposes of computing this remittance proportion, multiple successor QBUs of the same deferral QBU are treated as a single successor QBU. See paragraph (h) of this section, *Example 5,* for an illustration of this rule.

(iii) *Deemed remittance when a successor QBU ceases to be owned by a member of the deferral QBU owner's controlled group.* For purposes of this paragraph (c)(2), in a taxable year of the deferral QBU owner in which a successor QBU ceases to be owned by a member of a controlled group that includes the deferral QBU owner, the successor QBU owner is treated as having a remittance proportion of 1. Accordingly, if there is only one successor QBU with respect to a deferral QBU and that successor QBU ceases to be owned by a member of the controlled group that includes the deferral QBU owner, all outstanding deferred section 987 gain or loss with respect to that deferral QBU will be recognized. This paragraph (c)(2)(iii) does not affect the application of §§ 1.987–1 through 1.987–11 to the successor QBU owner with respect to its ownership of the successor QBU.

(3) *Recognition of deferred section 987 loss in certain outbound successor QBU terminations.* Notwithstanding paragraph (c)(2) of this section, if assets of the successor QBU (transferred assets) are transferred (or deemed transferred) in a transaction that would constitute an outbound loss event if the successor QBU had a net accumulated section 987 loss at the time of the exchange, then the deferral QBU owner recognizes outstanding deferred section 987 loss, if any, to the extent it would recognize loss under paragraph (d)(1) of this section if (i) the deferral QBU owner owned the successor QBU, (ii) the deferral QBU owner had net unrecognized section 987 loss with respect to the successor QBU equal to its outstanding deferred section 987 loss with respect to the deferral QBU, and (iii) the transferred assets were transferred (or deemed transferred) in an outbound loss event. Any outstanding deferred section 987 loss with respect to the deferral QBU that is not recognized as a result of the preceding sentence is recognized by the deferral QBU owner in the first taxable year in which the deferral QBU owner (including any qualified successor) ceases to be a member of a controlled group that includes the acquirer of the transferred assets or any qualified successor of such acquirer.

(4) *Special rules regarding successor QBUs*—(i) *Successor QBU with respect to a deferral QBU that is a successor QBU.* If a section 987 QBU is a successor QBU with respect to a deferral QBU that is a successor QBU with respect to another deferral QBU, the first-mentioned section 987 QBU is considered a successor QBU with respect to the second-mentioned deferral QBU. For example, if QBU A is a successor QBU with respect to QBU B, and QBU B is a successor QBU with respect to QBU C, then QBU A is a successor QBU with respect to QBU C.

(ii) *Separation of a successor QBU.* If a successor QBU with respect to a deferral QBU separates into two or more separated QBUs (as defined in § 1.987–2(c)(9)(iii)), each separated QBU is considered a successor QBU with respect to the deferral QBU.

(iii) *Combination of a successor QBU.* If a successor QBU with respect to a deferral QBU combines with another section 987 QBU of the same owner, resulting in a combined QBU (as defined in § 1.987–2(c)(9)(i)), the combined QBU is considered a successor QBU with respect to the deferral QBU.

(d) *Loss recognition upon an outbound loss event*—(1) *In general.* Notwithstanding § 1.987–5, the owner of a section 987 QBU with respect to which an outbound loss event occurs (an outbound loss QBU) includes in taxable income in the taxable year of an outbound loss event section 987 loss with respect to that section 987 QBU only to the extent provided in paragraph (d)(3) of this section.

(2) *Outbound loss event.* An outbound loss event means, with respect to a section 987 QBU:

(i) Any termination of the section 987 QBU in connection with a transfer by a U.S. person of assets of the section 987 QBU to a foreign person that is a member of the same controlled group as the U.S. transferor immediately before the transaction or, if the transferee did not exist immediately before the transaction, immediately after the transaction (related foreign person), provided that the termination would result in the recognition of section 987 loss with respect to the section 987 QBU under § 1.987–5 and paragraph (b) of this section but for this paragraph (d); or

(ii) Any transfer by a U.S. person of part of an interest in a section 987 aggregate partnership or DE through which the U.S. person owns the section 987 QBU to a related foreign person that has the same functional currency as the section 987 QBU, or any contribution by such a related foreign person to such a partnership or DE of assets that, immediately after the contribution, are not considered to be included on the books and records of an eligible QBU, provided that the transfer would result in the recognition of section 987 loss with respect to the section 987 QBU under § 1.987–5 and paragraph (b) of this section but for this paragraph (d). See paragraph (h) of this section, *Example 3,* for an illustration of this rule.

(3) *Loss recognized upon an outbound loss event.* In the taxable year of an outbound loss event with respect to an outbound loss QBU, the owner of the outbound loss QBU recognizes section 987 loss as determined under § 1.987–5 and paragraphs (b) and (c) of this section, except that, solely for purposes of applying § 1.987–5, the following assets and liabilities of the outbound loss QBU are treated as not having been transferred and therefore as remaining on the books and records of the outbound loss QBU notwithstanding the outbound loss event:

(i) In the case of an outbound loss event described in paragraph (d)(2)(i) of this section, assets and liabilities that,

immediately after the outbound loss event, are reflected on the books and records of the related foreign person described in that paragraph or of an eligible QBU owned by such related foreign person; and

(ii) In the case of an outbound loss event described in paragraph (d)(2)(ii) of this section, assets and liabilities that, immediately after the outbound loss event, are reflected on the books and records of the eligible QBU from which the assets and liabilities of the outbound loss QBU are allocated and not on the books and records of a section 987 QBU.

(4) *Adjustment of basis of stock received in certain nonrecognition transactions.* If an outbound loss event results from the transfer of assets of the outbound loss QBU in a transaction described in section 351 or section 361, the basis of the stock that is received in the transaction is increased by an amount equal to the section 987 loss that, as a result of this paragraph (d), is not recognized with respect to the outbound loss QBU in the taxable year of the outbound loss event (outbound section 987 loss).

(5) *Recognition of outbound section 987 loss that is not converted into stock basis.* Outbound section 987 loss attributable to an outbound loss event that is not described in paragraph (d)(4) of this section is recognized by the owner of the outbound loss QBU in the first taxable year in which the owner or any qualified successor of the owner ceases to be a member of a controlled group that includes the related foreign person referred to in paragraph (d)(2)(i) or (ii) of this section, or any qualified successor of such person.

(e) *Source and character*—(1) *Deferred section 987 gain or loss and certain outbound section 987 loss.* The source and character of deferred section 987 gain or loss recognized pursuant to paragraph (c) of this section, and of outbound section 987 loss recognized pursuant to paragraph (d)(5) of this section, is determined under § 1.987–6 as if such deferred section 987 gain or loss were recognized pursuant to § 1.987–5 without regard to this section on the date of the related deferral event or outbound loss event.

(2) *Outbound section 987 loss reflected in stock basis.* If loss is recognized on the sale or exchange of stock described in paragraph (d)(4) of this section within two years of the outbound loss event described in that paragraph, then, to the extent of the outbound section 987 loss, the source and character of the loss recognized on the sale or exchange is determined under § 1.987–6 as if such loss were section 987 loss recognized pursuant to § 1.987–5 without regard to this section on the date of the outbound loss event.

(f) *Definitions*—(1) *Controlled group.* For purposes of this section, a controlled group means all persons with the relationships to each other specified in sections 267(b) or 707(b).

(2) *Qualified successor.* For purposes of this section, a qualified successor with respect to a corporation (transferor corporation) means another corporation (acquiring corporation) that acquires the assets of the transferor corporation in a transaction described in section 381(a), but only if (A) the acquiring corporation is a domestic corporation and the transferor corporation was a domestic corporation, or (B) the acquiring corporation is a controlled foreign corporation (as defined in section 957(a)) (CFC) and the transferor corporation was a CFC. A qualified successor of a corporation includes the qualified successor of a qualified successor of the corporation.

(g) *Anti-abuse.* No section 987 loss is recognized under § 1.987–5 or this section in connection with a transaction or series of transactions that are undertaken with a principal purpose of avoiding the purposes of this section.

(h) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, DC1 is a domestic corporation that owns all of the stock of DC2, which is also a domestic corporation, and CFC1 and CFC2 are CFCs. In addition, DC1, DC2, CFC1, and CFC2 are members of a controlled group as defined in paragraph (f)(1) of this section, and the de minimis rule of paragraph (a)(3)(ii) of this section is not applicable. Finally, except as otherwise provided, Business A is a section 987 QBU with the euro as its functional currency, there are no transfers between Business A and its owner, and Business A's assets are not depreciable or amortizable.

(1) Example 1. Contribution of a section 987 QBU to a member of the controlled group. (i) *Facts.* DC1 owns all of the interests in Business A. The balance sheet of Business A reflects assets with an aggregate adjusted basis of €1,000x and no liabilities. DC1 contributes €900x of Business A's assets to DC2 in an exchange to which section 351 applies. Immediately after the contribution, the remaining €100x of Business A's assets are no longer reflected on the books and records of a section 987 QBU. DC2, which has the U.S. dollar as its functional currency, uses the former Business A assets in a business (Business B) that constitutes a section 987 QBU. At the time of the contribution, Business A has net accumulated unrecognized section 987 gain of $100x.

(ii) *Analysis.* (A) Under § 1.987–2(c)(2)(ii), DC1's contribution of €900x of Business A's assets to DC2 is treated as a transfer of all of the assets of Business A to DC1, immediately followed by DC1's contribution of €900x of Business A's assets to DC2. The contribution of Business A's assets is a deferral event within the meaning of paragraph (b)(2) of this section because:

(*1*) The transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, resulting in a termination of Business A under § 1.987–8(b)(2); and

(*2*) Immediately after the transaction, assets of Business A are reflected on the books and records of Business B, a section 987 QBU owned by a member of DC1's controlled group and a successor QBU within the meaning of paragraph (b)(4) of this section. Accordingly, Business A is a deferral QBU within the meaning of paragraph (b)(1) of this section, and DC1 is a deferral QBU owner of Business A within the meaning of paragraph (c)(1)(ii) of this section.

(B) Under paragraph (b)(3) of this section, DC1's taxable income in the taxable year of the deferral event includes DC1's section 987 gain or loss determined with respect to Business A under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets and liabilities of Business A that are reflected on the books and records of Business B immediately after Business A's termination are treated as not having been transferred and therefore as though they remained on Business A's books and records (notwithstanding the deemed transfer of those assets under § 1.987–8(e)). Accordingly, in the taxable year of the deferral event, DC1 is treated as making a remittance of €100x, corresponding to the assets of Business A that are no longer reflected on the books and records of a section 987 QBU, and is treated as having a remittance proportion with respect to Business A of 0.1, determined by dividing the €100x remittance by the sum of the remittance and the €900x aggregate adjusted basis of the gross assets deemed to remain on Business A's books at the end of the year. Thus, DC1 recognizes $10x of section 987 gain in the taxable year of the deferral event. DC1's deferred section 987 gain equals $90x, which is the amount of section 987 gain that, but for the application of paragraph (b) of this section, DC1 would have recognized under § 1.987–5 ($100x), less the amount of section 987 gain recognized by DC1 under § 1.987–5 and this section ($10x).

(2) Example 2. Election to be classified as a corporation. (i) *Facts.* DC1 owns all of the interests in Entity A, a DE. Entity A conducts Business A, which has net accumulated unrecognized section 987 gain of $500x. Entity A elects to be classified as a corporation under § 301.7701–3(a). As a result of the election and pursuant to § 301.7701–3(g)(1)(iv), DC1 is treated as contributing all of the assets and liabilities of Business A to newly-formed CFC1, which has the euro as its functional currency. Immediately after the contribution, the assets and liabilities of Business A are reflected on CFC1's balance sheet.

(ii) *Analysis.* Under § 1.987–2(c)(2)(ii), DC1's contribution of all of the assets and liabilities of Business A to CFC1 is treated as a transfer of all of the assets and liabilities

of Business A to DC1, followed immediately by DC1's contribution of those assets and liabilities to CFC1. Because the deemed transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, the Business A QBU terminates under § 1.987–8(b)(2). The contribution of Business A's assets is not a deferral event within the meaning of paragraph (b)(2) of this section because, immediately after the transaction, no assets of Business A are reflected on the books and records of a successor QBU within the meaning of paragraph (b)(4) of this section due to the fact that the assets of Business A are not reflected on the books and records of a section 987 QBU immediately after the termination as well as the fact that the requirement of paragraph (b)(4)(iii) of this section is not met. Accordingly, DC1 recognizes section 987 gain with respect to Business A under § 1.987–5 without regard to this section. Because the requirement of paragraph (b)(4)(iii) of this section is not met, the result would be the same even if the assets of Business A were transferred in a section 351 exchange to an existing foreign corporation that had a different functional currency than Business A.

(3) Example 3. Outbound loss event. (i) *Facts.* The facts are the same as in *Example 2 in paragraph (h)(2) of this section,* except that Business A has net accumulated unrecognized section 987 loss of $500x rather than net accumulated unrecognized section 987 gain of $500x.

(ii) *Analysis.* (A) The analysis of the transactions under §§ 1.987–2(c)(2)(ii), 1.987–8(b)(2), and paragraph (b) of this section is the same as in *Example 2 in paragraph (h)(2) of this section.* However, the termination of Business A as a result of the transfer of the assets of Business A by a U.S. person (DC1) to a foreign person (CFC1) that is a member of DC1's controlled group is an outbound loss event described in paragraph (d)(2) of this section.

(B) Under paragraphs (d)(1) and (3) of this section, in the taxable year of the outbound loss event, DC1 includes in taxable income section 987 loss recognized with respect to Business A as determined under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets and liabilities of Business A that are reflected on the books and records of CFC1, a related foreign person described in paragraph (d)(2) of this section, are treated as not having been transferred. Accordingly, DC1's remittance proportion with respect to Business A is 0, and DC1 recognizes no section 987 loss with respect to Business A. DC1's outbound section 987 loss is $500x, which is the amount of section 987 loss that DC1 would have recognized under § 1.987–5 ($500x) without regard to paragraph (d) of this section, less the amount of section 987 loss recognized by DC1 under paragraph (d)(3) of this section ($0). Under paragraph (d)(4) of this section, DC1 must increase its basis in its CFC1 shares by the amount of the outbound section 987 loss ($500x).

(4) Example 4. Conversion of a DE to a partnership. (i) *Facts.* (A) DC1 owns all of the interests in Entity A, a DE that conducts Business A. On the last day of Year 1, DC1 sells 50 percent of its interest in Entity A to DC2 (the Entity A sale).

(B) For Federal income tax purposes, Entity A is converted to a partnership when DC2 purchases the 50 percent interest in Entity A. DC2's purchase is treated as the purchase of 50 percent of the assets of Entity A (that is, the assets of Business A), which, prior to the purchase, were treated as held directly by DC1 for Federal income tax purposes. Immediately after DC2's deemed purchase of 50 percent of Business A assets, DC1 and DC2 are treated as contributing their respective interests in Business A assets to a partnership. *See* Rev. Rul. 99–5, 1999–1 CB 434 (situation 1). In connection with the deemed contribution, DC1 and DC2 agree to share equally in all items of the partnership's profits and loss, and, for purposes of § 1.987–7, to determine their share of assets and liabilities of the resulting partnership in accordance with their respective shares of partnership profits.

(ii) *Analysis.* (A) The transactions deemed to occur under Rev. Rul. 99–5 are not taken into account for purposes of this section. The Entity A sale and resulting existence of a partnership, however, have consequences under section 987 and this section, as described in this Example 4 in paragraphs (h)(4)(ii)(B) through (D) of this section.

(B) Immediately after the Entity A sale, Entity A is a section 987 aggregate partnership within the meaning of § 1.987–1(b)(5) because DC1 and DC2 own all the interests in partnership capital and profits, DC1 and DC2 are related within the meaning of section 267(b), and the partnership has an eligible QBU (Business A) that would be a section 987 QBU with respect to a partner if owned by the partner directly. As a result of the Entity A sale, 50 percent of the assets and liabilities of Business A ceased to be reflected on the books and records of DC1's Business A section 987 QBU. As a result, such assets and liabilities are treated as if they were transferred from DC1's Business A section 987 QBU to DC1. Additionally, following DC2's acquisition of 50 percent of the interest in Entity A, DC2 is allocated 50 percent of the assets and liabilities of Business A under §§ 1.987–2(b). Because DC2 and Business A have different functional currencies, DC2's portion of the Business A assets and liabilities constitutes a section 987 QBU. Accordingly, 50 percent of the assets and liabilities of Business A are treated as transferred by DC2 to DC2's Business A section 987 QBU.

(C) The Entity A sale is a deferral event described in paragraph (b)(2) of this section because:

(1) The sale constitutes the disposition of part of an interest in a DE; and

(2) Immediately after the transaction, assets of DC1's Business A section 987 QBU are reflected on the books and records of DC1's Business A section 987 QBU and DC2's Business A section 987 QBU, each of which is a successor QBU with respect to DC1's Business A section 987 QBU within the meaning of paragraph (b)(4) of this section. Accordingly, DC1's Business A section 987 QBU is a deferral QBU within the meaning of paragraph (b)(1) of this section, and DC1 is a deferral QBU owner within the meaning of paragraph (c)(1)(ii) of this section. Under paragraph (b)(1) of this section, DC1 includes in taxable income section 987 gain or loss with respect to Business A in connection with the deferral event to the extent provided in paragraphs (b)(3) and (c) of this section.

(D) Under paragraph (b) of this section, in the taxable year of the Entity A sale, DC1 includes in taxable income section 987 gain or loss with respect to Business A as determined under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets and liabilities of Business A that, immediately after the Entity A sale, are reflected on the books and records of successor QBUs are treated as though they were not transferred and therefore as remaining on the books and records of DC1's Business A section 987 QBU notwithstanding the Entity A sale. Accordingly, DC1's remittance amount under § 1.987–5 is $0, and DC1 recognizes no section 987 gain or loss with respect to Business A.

(5) Example 5. Partial recognition of deferred gain or loss. (i) *Facts.* DC1 owns all of the interests in Entity A, a DE that conducts Business A in Country X. During Year 1, DC1 contributes all of its interests in Entity A to DC2 in an exchange to which section 351 applies. At the time of the contribution, Business A has net accumulated unrecognized section 987 gain of $100x. After the contribution, Entity A continues to conduct business in Country X (Business B). In Year 3, as a result of a net transfer of property from Business B to DC2, DC2's remittance proportion with respect to Business B, as determined under § 1.987–5, is 0.25.

(ii) *Analysis.* (A) For the reasons described in *Example 1 in paragraph (h)(1) of this section,* the contribution of Entity A by DC1 to DC2 results in a termination of Business A and a deferral event with respect to Business A, a deferral QBU; DC1 is a deferral QBU owner within the meaning of paragraph (c)(1)(ii) of this section; Business B is a successor QBU with respect to Business A; DC2 is a successor QBU owner; and the $100x of net accumulated unrecognized section 987 gain with respect to Business A becomes deferred section 987 gain as a result of the deferral event.

(B) Under paragraph (c)(1) of this section, DC1 recognizes deferred section 987 gain with respect to Business A in accordance with paragraphs (c)(2) through (4) of this section. Under paragraph (c)(2)(i) of this section, DC1 recognizes deferred section 987 gain in Year 3 as a result of the remittance from Business B to DC2. Under paragraph (c)(2)(ii) of this section, the amount of deferred section 987 gain that DC1 recognizes is $25x, which is DC1's outstanding deferred section 987 gain or loss ($100x) with respect to Business A multiplied by the remittance proportion (0.25) of DC2 with respect to Business B for the taxable year as determined under § 1.987–5(b).

(i) *Coordination with fresh start transition method*—(1) *In general.* If a taxpayer is a deferral QBU owner, or is or was the owner of an outbound loss QBU, and the taxpayer is required under § 1.987–10(a) to apply the fresh start transition method described in § 1.987–10(b) to the deferral QBU or outbound

loss QBU, or would have been so required if the taxpayer had owned the deferral QBU or outbound loss QBU on the transition date (as defined in § 1.987–11(c)), the adjustments described in paragraphs (i)(2) and (3) of this section, as applicable, must be made on the transition date.

(2) *Adjustment to deferred section 987 gain or loss.* The amount of any outstanding deferred section 987 gain or loss of a deferral QBU owner with respect to a deferral QBU described in paragraph (i)(1) of this section must be adjusted to equal the amount of outstanding deferred section 987 gain or loss that the deferral QBU owner would have had with respect to the deferral QBU on the transition date if, immediately before the deferral event, the deferral QBU had transitioned to the method prescribed by §§ 1.987–1 through 1.987–10 pursuant to the fresh start transition method.

(3) *Adjustments in the case of an outbound loss event.* The basis of any stock described in paragraph (d)(4) of this section that was received in connection with the transfer (or deemed transfer) of assets of an outbound loss QBU described in paragraph (i)(1) of this section and that is held on the transition date must be adjusted to equal the basis that such stock would have had on the transition date if, immediately prior to the outbound loss event, the outbound loss QBU had transitioned to the method prescribed by §§ 1.987–1 through 1.987–10 pursuant to the fresh start transition method. If no such stock was received, the amount of any outbound section 987 loss with respect to the outbound loss QBU that may be recognized on or after the transition date pursuant to paragraph (d)(5) of this section must be adjusted to equal the amount of such loss that would be outstanding and that may be recognized pursuant to that paragraph if, immediately before the outbound loss event, the outbound loss QBU had transitioned to the method prescribed by §§ 1.987–1 through 1.987–10 pursuant to the fresh start transition method.

(j) *Applicability date*—(1) *In general.* Except as described in paragraph (j)(2) of this section, this section applies to any deferral event or outbound loss event that occurs on or after January 6, 2017. This section also applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after January 6, 2017, and that is effective before January 6, 2017.

(2) *Exceptions*—(i) *Principal purpose.* This section applies to any deferral event or outbound loss event occurring on or after December 7, 2016, if such deferral event or outbound loss event was undertaken with a principal purpose of recognizing section 987 loss.

(ii) *Entity classification.* This section also applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that was filed on or after December 22, 2016, that was effective before December 7, 2016, and that was undertaken with a principal purpose of recognizing section 987 loss.

§ 1.987–12T [Removed]

■ **Par. 10.** Section 1.987–12T is removed.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: April 8, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–09552 Filed 5–10–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9858]

RIN 1545–BO38

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

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

DATES:

Effective date: This regulation is effective June 12, 2019.

Applicability date: For the dates of applicability, see §§ 300.5(d), 300.6(d), and 300.10(d).

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

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

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

A. User Fee Authority and Enrolled Agent and Enrolled Retirement Plan Agent User Fees

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing a charge for services the agency provides (user fees). The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. Under the IOAA, user fee regulations are subject to policies prescribed by the President. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A–25, 58 FR 38142 (July 15, 1993).

Under OMB Circular A–25, Federal agencies that provide services that confer special benefits on identifiable recipients beyond those accruing to the general public are to establish user fees that recover the full cost of providing the special benefit. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services, review user fees biennially, and update them as necessary. Section 330(a)(1) of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury (Treasury Department). Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Section 10.3 of Circular 230 defines who may practice before the IRS and includes individuals who have been granted enrollment to practice as enrolled agents and enrolled retirement plan agents. Section 10.4 of Circular 230 authorizes the IRS to grant enrollment as an enrolled agent or enrolled retirement plan agent to individuals who demonstrate special competence in tax matters by passing a written examination administered by, or under

the oversight of, the IRS and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Section 10.4 also authorizes the IRS to grant enrollment as an enrolled agent or an enrolled retirement plan agent to a qualifying former IRS employee by virtue of past IRS service and technical experience if the former employee has not engaged in any conduct that would justify suspension or disbarment under the provisions of Circular 230 and meets certain other requirements. The ability to practice before the IRS is a special benefit that is conferred on enrolled agents and enrolled retirement plan agents that does not accrue to the general public.

Once eligible for enrollment as an enrolled agent, whether by examination or former employment with the IRS, an individual must file an application for enrollment with the IRS and pay a $30 nonrefundable user fee. To maintain active enrollment and eligibility to practice before the IRS, an individual who has been enrolled as an enrolled agent or enrolled retirement plan agent must file an application to renew enrollment every three years and pay a $30 nonrefundable user fee. 31 CFR 10.6(d).

As required by the IOAA and OMB Circular A–25, the IRS Return Preparer Office (RPO) completed its 2017 biennial review of the enrollment and renewal user fees associated with enrolled agents and enrolled retirement plan agents. As discussed in section B of this preamble, during its review the RPO took into account the increase in labor, benefits, and overhead costs incurred in connection with providing services to individuals who enroll or renew enrollment as enrolled agents and enrolled retirement plan agents since the user fee was last changed in 2011. In addition, RPO determined that costs associated with Federal tax-compliance checks and suitability checks on enrolled individuals should be recovered as part of the user fee for administering the enrollment and renewal programs. The 2017 biennial review also took into account new costs associated with administering the program for enrolled agents and enrolled retirement plan agents, including the costs of operating a dedicated toll-free helpline in the RPO for enrollment and renewal matters.

B. Calculation of the User Fee

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of administering the program for enrollment or renewal. GAAP is established by the Financial Accounting Standards Board (FASB). Recognition of costs is based on Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government, issued by the Federal Accounting Standard Advisory Board (FASAB). The FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended, is available at *https://files.fasab.gov/pdffiles/2018_fasab_handbook.pdf.*

1. Cost Center Allocation

The IRS determines the cost of its services and activities using a cost-accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost-accounting system is a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. Costs of operating a cost center are recorded in the IRS's cost-accounting system. Costs of user fees include direct costs, such as labor, and indirect costs. Indirect costs are not easily traceable and are allocated using a method or by applying an overhead rate.

2. Determining the per Unit Cost

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

3. Cost Estimation of Direct Labor

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

4. Overhead

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

These costs can include:

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

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

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

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

5. Calculation of the per Unit Cost of the User Fee

The IRS used projections for fiscal years 2018 through 2020 to determine the direct costs associated with enrolled agent enrollment and renewal and enrolled retirement plan agent renewal. Direct costs are incurred by the RPO and include labor costs for enrollment and

renewal submission processing; tax compliance and background checks; continuing education and testing-related activities; and communications, which include the new toll-free helpline.

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

Labor and Benefits	$2,708,603
Corporate Overhead (68%)	$1,841,850
Labor, Benefits, and Overhead	$4,550,453

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

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

Taking into account the full amount of these costs, the RPO determined that the full cost of administering the program for enrolled agents and enrolled retirement plan agents has increased from $30 to $67 per application for enrollment or renewal. The user fee complies with the directive in OMB Circular A–25 to recover the full cost of providing a service that confers special benefits on identifiable recipients beyond those accruing to the general public.

C. Notice of Proposed Rulemaking and Final Regulations

On November 19, 2018, a notice of proposed rulemaking (REG–122898–17) proposing to amend the regulations relating to imposing user fees for enrolled agents and retirement plan agents was published in the **Federal Register** (83 FR 58202). The document proposed removing the initial enrollment user fee for enrolled retirement plan agents because the IRS no longer offers initial enrollment as an enrolled retirement plan agent.

The document also proposed increasing the amount of the renewal user fee for enrolled retirement plan agents from $30 to $67. In addition, the document proposed increasing the amount of both the enrollment and renewal user fees for enrolled agents from $30 to $67. The notice of proposed rulemaking contains a detailed explanation regarding the amendments to these regulations.

Two comments responding to the notice of proposed rulemaking were received. A public hearing on the notice of proposed rulemaking was scheduled for January 24, 2019. As stated in the notice of proposed rulemaking, requests to speak and outlines of topics to be discussed at the hearing were required to be submitted by January 18, 2019. On January 22, 2019, the public hearing was cancelled due to a lapse in appropriations (IR–2019–05). Because no requests to speak at the hearing had been received, the hearing was not rescheduled. After consideration of the comments, this Treasury Decision adopts the regulations proposed by the notice of proposed rulemaking without change.

Summary of Comments

Two comments were submitted on the notice of proposed rulemaking. The comments are available at *www.regulations.gov* or upon request.

One of the comments agreed with the proposed user fee regulations because the commenter's status as an enrolled agent allows him to earn income by representing taxpayers before the IRS. The comment stated that the commenter supported the increase, so long as the user fees comply with the relevant authorities. As discussed in the background section of this preamble, the IOAA authorizes each agency to promulgate regulations that impose user fees for services the agency provides to identifiable recipients. User fee regulations under the IOAA are subject to policies prescribed by the President, which are set forth in OMB Circular A–25. As described in the background section of this preamble, the Treasury Department and IRS complied with the requirements of the IOAA and OMB Circular A–25 in promulgating these regulations. The notice of proposed rulemaking and the background section of this preamble provide a detailed analysis of how the RPO determined the full cost of providing services to enrolled agents and enrolled retirement plan agents (83 FR 58202). Accordingly, the user fee complies with the relevant authorities.

The other comment generally disagreed with enrollment and renewal user fees associated with enrolled agents and enrolled retirement plan agents. The comment stated that the Federal government should bear the full cost of administering programs related to tax professionals. This comment was not accepted because it is contrary to the policies prescribed by the President as set forth in OMB Circular A–25. Accordingly, the proposed regulations are adopted without change.

Special Analyses

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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

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

cost of the user fee. The total economic impact of this regulation is thus approximately $842,897 annually, which is the product of the approximately 22,781 individuals and the $37 increase in the fee which is not a significant economic impact. Accordingly, it is certified that the rule will not have a significant economic impact on a substantial number of small entities.

It is not anticipated that the increase in user fee that is paid every three years and averages to $12.33 per year will negatively affect enrollment, which has historically remained steady as user fee amounts have changed. Pursuant to section 7805(f), the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business (83 FR 58202). No comments on the notice of proposed rulemaking were received from the Chief Counsel for Advocacy of the Small Business Administration.

Drafting Information

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

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

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

Authority: 31 U.S.C. 9701.

§ 300.0 [Amended]

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

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

§ 300.5 Enrollment of enrolled agent fee.

* * * * *

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

* * * * *

(d) *Applicability date.* This section applies beginning June 12, 2019.

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

§ 300.6 Renewal of enrollment of enrolled agent fee.

* * * * *

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

* * * * *

(d) *Applicability date.* This section applies beginning June 12, 2019.

§ 300.10 [Removed]

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

§ 300.11 [Redesignated as § 300.10 and Amended]

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

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

* * * * *

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

* * * * *

(d) *Applicability date.* This section applies beginning June 12, 2019.

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

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

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: April 19, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–09732 Filed 5–10–19; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority; Civil Monetary Penalty Inflation Adjustment

AGENCY: Postal Service™.

ACTION: Interim final rule.

SUMMARY: This document updates postal regulations by implementing inflation adjustments to civil monetary penalties that may be imposed under consumer protection and mailability provisions enforced by the Postal Service pursuant to the Deceptive Mail Prevention and Enforcement Act and the Postal Accountability and Enhancement Act. These adjustments are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This document includes the adjustments for 2018 and 2019 for statutory civil monetary penalties subject to the 2015 Act.

DATES: *Effective Date:* May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Steven Sultan, (202) 268–7385, *SESultan@uspis.gov.*

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 (2015 Act), Public Law 114–74, 129 Stat. 584, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Section 3 of the 1990 Act specifically includes the Postal Service in the definition of ''agency'' subject to its provisions.

Beginning in 2017, the 2015 Act requires the Postal Service to make an annual adjustment for inflation to civil penalties that meet the definition of ''civil monetary penalty'' under the 1990 Act. The Postal Service must make the annual adjustment for inflation and publish the adjustment in the **Federal Register** by January 15 of each year. The Postal Service did not complete the annual adjustments for 2018 or 2019 due to an oversight. In order to satisfy the annual adjustment requirement, the Postal Service will be making both the 2018 and 2019 annual adjustments at this time. Each penalty will be adjusted as instructed by the Office of Management and Budget (OMB) based on the Consumer Price Index (CPI–U) from the most recent October. OMB has furnished detailed instructions regarding the annual adjustment for 2018 in memorandum M–18–03, *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 15, 2017), *https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf.* OMB provided detailed instructions regarding the annual adjustment for 2019 in memorandum M–19–04, *Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 14, 2018), *https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf.* For 2018, OMB has advised that an adjustment multiplier of 1.02041 will be

used. For 2019, OMB has advised that an adjustment multiplier of 1.02522 will be used. The Postal Service will first apply the 2018 adjustment multiplier. The Postal Service will then apply the 2019 adjustment multiplier on the 2018 adjusted amount. The new penalty amount must be rounded to the nearest dollar after each adjustment multiplier is applied. The new penalty amounts will take effect immediately upon publication in the **Federal Register**.

The 2015 Act allows the interim final rule and annual inflation adjustments to be published without prior public notice or opportunity for public comment.

Adjustments to Postal Service Civil Monetary Penalties

Civil monetary penalties may be assessed for postal offenses under sections 106 and 108 of the Deceptive Mail Prevention and Enforcement Act, Public Law 106–168, 113 Stat. 1811, 1814 (*see,* 39 U.S.C. 3012(a), (c)(1), (d), and 3017(g)(2), (h)(1)(A)); and section 1008 of the Postal Accountability and Enhancement Act, Public Law 109–435, 120 Stat. 3259–3261 (*see,* 39 U.S.C. 3018 (c)(1)(A)). The statutory civil monetary penalties subject to the 2015 Act and the amount of each penalty the annual adjustment for inflation are as follows:

39 U.S.C. 3012(a)—False Representations and Lottery Orders

Under 39 U.S.C. 3005(a)(1)–(3), the Postal Service may issue administrative orders prohibiting persons from using the mail to obtain money through false representations or lotteries. Persons who evade, attempt to evade, or fail to comply with an order to stop such prohibited practices may be liable to the United States for a civil penalty under 39 U.S.C. 3012(a). The regulations implemented pursuant to this section currently imposes a $69,463 penalty for each mailing less than 50,000 pieces, $138,925 for each mailing of 50,000 to 100,000 pieces, and $13,893 for each additional 10,000 pieces above 100,000 not to exceed $2,778,505. The new penalties will be as follows: $72,669 for each mailing less than 50,000 pieces, $145,335 for each mailing of 50,000 to 100,000 pieces, and $14,535 for each additional 10,000 pieces above 100,000 not to exceed $2,906,718.

39 U.S.C. 3012(c)(1)—False Representation and Lottery Penalties in Lieu of or as Part of an Order

In lieu of or as part of an order issued under 39 U.S.C. 3005(a)(1)–(3), the Postal Service may assess a civil penalty. Currently, the amount of this penalty, set in the implementing regulations to 39 U.S.C. 3012(c)(1), is $34,731 for each mailing that is less than 50,000 pieces, $69,463 for each mailing of 50,000 to 100,000 pieces, and an additional $6,946 for each additional 10,000 pieces above 100,000 not to exceed $1,389,252. The new penalties will be: $36,334 for each mailing that is less than 50,000 pieces, $72,669 for each mailing of 50,000 to 100,000 pieces, and an additional $7,267 for each additional 10,000 pieces above 100,000 not to exceed $1,453,359.

39 U.S.C. 3012(d)—Misleading References to the United States Government; Sweepstakes and Deceptive Mailings

Persons sending certain deceptive mail matter described in 39 U.S.C. 3001(h)–(k), including:

- Solicitations making false claims of Federal Government connection or approval;
- Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;
- Solicitations containing improperly prepared ''facsimile checks''; and
- Certain solicitations for ''skill contests'' and ''sweepstakes'' sent to individuals who, in accordance with 39 U.S.C. 3017(d), have requested that such materials not be mailed to them;

may be liable to the United States for a civil penalty under 39 U.S.C. 3012(d). Currently, this penalty is not to exceed $13,893 for each mailing. The new penalty will be $14,535.

39 U.S.C. 3017(g)(2)—Commercial Use of Lists of Persons Electing Not To Receive Skill Contest or Sweepstakes Mailings

Under 39 U.S.C. 3017(g)(2), the Postal Service may impose a civil penalty against a person who provides information for commercial use about individuals who, in accordance with 39 U.S.C. 3017(d), have elected not to receive certain sweepstakes and contest information. Currently, this civil penalty may not exceed $2,778,505 per violation. The new penalty may not exceed $2,906,718 per violation.

39 U.S.C. 3017(h)(1)(A)—Reckless Mailing of Skill Contest or Sweepstakes Matter

Currently, under 39 U.S.C. 3017(h)(1)(A) and its implementing regulations, any promoter who recklessly mails nonmailable skill contest or sweepstakes matter may be liable to the United States in the amount of $13,893 per violation for each mailing to an individual. The new penalty is $14,535 per violation.

39 U.S.C. 3018(c)(1)(A)—Hazardous Material

Under 39 U.S.C. 3018(c)(1)(A), the Postal Service may impose a civil penalty payable into the Treasury of the United States on a person who knowingly mails nonmailable hazardous materials or fails to follow postal laws on mailing hazardous materials. Currently, this civil penalty is at least $300, but not more than $119,786 for each violation. The new penalty is at least $314, but not more than $125,314 for each violation.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Banks, Banking, Credit, Crime, Infants and children, Law enforcement, Penalties, Privacy, Seizures and forfeitures.

For the reasons set out in this document, the Postal Service amends 39 CFR part 233 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

■ 1. The authority citation for 39 CFR part 233 is revised to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1), 3012, 3017, 3018; 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–208, 110 Stat. 3009; Secs. 106 and 108, Pub. L. 106–168, 113 Stat. 1806 (39 U.S.C. 3012, 3017); Pub. L. 114–74, 129 Stat. 584.

§ 233.12 [Amended]

■ 2. In § 233.12:

■ a. In paragraph (a), remove ''$69,463'' and add in its place ''$72,669'', remove ''$138,925'' and add in its place ''$145,335'', remove ''$13,893'' and add in its place ''$14,535'', and remove ''$2,778,505'' and add in its place ''$2,906,718''.

■ b. In paragraph (b), remove ''$34,731'' and add in its place ''$36,334'', remove ''$69,463'' and add in its place ''$72,669'', remove ''$6,946'' and add in its place ''$7,267'', and remove ''$1,389,252'' and add in its place ''$1,453,359''.

■ c. In paragraph (c)(4), remove ''$13,893'' and add in its place ''$14,535''.

■ d. In paragraph (d), remove ''$2,778,505'' and add in its place ''$2,906,718''.

■ e. In paragraph (e), remove ''$13,893'' and add in its place ''$14,535''.

■ f. In § 233.12(f), remove ''$300'' and add in its place ''$314'' and remove

''$119,786'' and add in its place ''$125,314''.

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2019–09436 Filed 5–10–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2018–1; Order No. 5086]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts final rules that require the Postal Service to provide information about cost and service issues affecting flats-shaped mail (flats). The Commission intends to analyze this information over time to identify trends and measurable goals that will lead to the development of a plan to improve these cost and service issues.

DATES: Effective June 12, 2019.

ADDRESSES: For additional information, Order No. 5086 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Basis and Purpose of Final Rules
III. Final Rules

I. Background

On March 1, 2019, the Commission proposed specific reporting requirements to facilitate measuring and tracking cost and service performance issues related to flats. The Commission adopts final rules on these requirements, with minor revisions to the proposed rules as described below.

II. Basis and Purpose of Final Rules

The Commission initiated this proceeding to explore potential enhancements to the Postal Service's data systems and to facilitate the development of consistent reporting requirements to measure, track, and report cost and service performance issues related to flats. With the adoption of these rules, the Postal Service will be required to annually file data at the national, and facility level data (when specified). These reporting requirements are designed to provide sufficient information to improve transparency into the cost and service issues associated with flats. In addition, the reporting requirements will increase the accountability of the Postal Service related to operational initiatives related to flats.

The final rules incorporate many of the suggestions identified by commenters, as well as additional clarifying language added by the Commission; however, the substance of the rules remains unchanged.

The Commission revises paragraphs (b) through (g) to extend the filing date to 95 days after the end of the fiscal year.

Paragraph (b) of proposed § 3050.50 is modified in several ways. First, in § 3050.50(b)(2), the Commission removes the word ''estimate,'' as the Commission expects the Postal Service to use the actual unit attributable costs for each product. Second, in § 3050.50(b)(4), the Commission clarifies that the comparison should be conducted as the percentage change in unit attributable costs, and the Commission makes additional minor clarifications to the language. Third, in § 3050.50(b)(5), the Commission removes the word ''current'' and adds the word ''changes'' after ''mail mix'' for clarity. The Commission expands the reporting requirement for § 3050.50(b)(5) to provide data from FY 2013 to present. In addition, the Commission clarifies in § 3050.50(b)(5)(ii) through (iii) that the calculation should be for combined flat-shaped products rather than each flat-shaped product. Fourth, the Commission adds a requirement in § 3050.50(b)(5) that the Postal Service explain the methodology used to calculate mail mix changes. Finally, the Commission modifies § 3050.50(b)(6) and (7) to make clear that that the Postal Service must identify the drivers of changes in the result of the analyses.

Paragraph (e) of proposed § 3050.50 is clarified, as suggested by the Postal Service, to indicate the appropriate five years of historical data that the Commission is requesting. In addition, paragraph (e) of proposed § 3050.50 is supplemented with a rule for instances where a specific report name may change, and additional reporting required when a report name change occurs.

Paragraph (f) of proposed § 3050.50 is modified to ensure that the Postal Service reports on operational changes and/or initiatives that will have any impact on flat-shaped mail operations, flat-shaped mail costs, and/or flat-shaped mail service.

Paragraph (g) of proposed § 3050.50 is modified to ensure that the Postal Service reports on data enhancements that will have any impact on measuring, tracking, and/or reporting on flat-shaped mail costs, operations, and/or service.

Finally, the Commission incorporates the majority of the suggested formatting edits to the rules provided by the Public Representative in Attachment A to her comments.

III. Final Rules

The Commission places the reporting requirements for flat-shaped mail products in a new section in 39 CFR part 3050.

List of Subjects for 39 CFR Part 3050

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3050—PERIODIC REPORTING

■ 1. The authority citation for part 3050 continues to read as follows:

Authority: 39 U.S.C. 503, 3651, 3652, 3653.

■ 2. Add § 3050.50 to read as follows:

§ 3050.50 Information pertaining to cost and service for flat-shaped mail.

(a) The reports in paragraphs (b) through (f) of this section shall be filed with the Commission at the times indicated.

(b) Within 95 days after the end of each fiscal year, the Postal Service shall file a financial report that analyzes data from the fiscal year for all mail products that consist of more than 80 percent flat-shaped mail. At a minimum, the report shall include:

(1) Volume and shape workpapers that identify products that contain more than 80 percent flat-shaped mail (flat-shaped products).

(2) Unit attributable cost workpapers for each flat-shaped product that is disaggregated into the following cost categories: Mail processing unit cost, delivery unit cost, vehicle service driver unit cost, purchased transportation unit cost, window service unit cost, and other unit cost.

(3) A narrative that explains the methodology used to calculate the unit attributable cost categories described in paragraph (b)(2) of this section.

(4) A narrative supported by workpapers that identifies flat-shaped products for which the percentage change in average unit attributable cost was greater than the percentage change in total market dominant average unit attributable cost for the same fiscal year. The narrative must include

identification of cost categories that are driving above average change in unit attributable cost for flat-shaped product and a specific plan to reduce unit attributable cost for the identified flat-shaped product.

(5) An analysis of volume trends, and mail mix changes for flat-shaped products from FY 2013 to present, which includes, at a minimum, a comparison of:

(i) The aggregate unit attributable costs for combined flat-shaped products for each fiscal year,

(ii) The calculated estimate of aggregate unit attributable costs for combined flat-shaped products for each fiscal year, using FY 2013 fiscal year's volume distribution,

(iii) A narrative that identifies drivers of changes in volume trends and mail mix, and

(iv) A narrative that explains the methodology used to calculate the estimated unit attributable cost described in paragraph (b)(5)(ii) of this section.

(6) An analysis of the Flat Sequencing System (FSS), which includes, at a minimum, the percent of flat-shaped mail destinating in a FSS zone that were not finalized on FSS equipment, the cost of processing flat-shaped mail on the FSS, and the delivery point sequence (DPS) percentage of FSS mail. In addition, a narrative that identifies drivers of changes in the results of the analysis between fiscal years.

(7) A manual processing analysis, which includes, at a minimum, the cost of manually processing flat-shaped mail, the percent of flat-shaped mail that was manually processed, and the percent of flat-shaped mail that was entered at automation prices. In addition, a narrative that identifies drivers of changes in the results of the analysis between fiscal years.

(8) An estimate, with supporting workpapers, of the cost impact of bundle processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of bundle processing on flat-shaped products.

(9) An estimate, with supporting workpapers, of the cost impact of low productivity on automated equipment on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of low productivity on automated equipment on flat-shaped products.

(10) An estimate, with supporting workpapers, of the cost impact of manual processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of manual processing on flat-shaped products.

(11) An estimate, with supporting workpapers, of the cost impact of allied operations on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of allied operations on flat-shaped products.

(12) An estimate, with supporting workpapers, of the cost impact of transportation on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of transportation on flat-shaped products.

(13) An estimate, with supporting workpapers, of the cost impact of last mile/delivery on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of last mile/delivery on flat-shaped products.

(c) Within 95 days after the end of each fiscal year, the Postal Service shall file a service report that analyzes data from the fiscal year for all mail products that consist of more than 80 percent flat-shaped mail. At a minimum, the analysis must include:

(1) Service performance scores for all flat-shaped products.

(2) An estimate, with supporting workpapers, of the service impact of bundle processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of bundle processing on flat-shaped products.

(3) An estimate, with supporting workpapers, of the service impact of low productivity on automated equipment on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of low productivity on automated equipment on flat-shaped products.

(4) An estimate, with supporting workpapers, of the service impact of manual processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of manual processing on flat-shaped products.

(5) An estimate, with supporting workpapers, of the service impact of allied operations on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of allied operations on flat-shaped products.

(6) An estimate, with supporting workpapers, of the service impact of transportation on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of transportation on flat-shaped products.

(7) An estimate, with supporting workpapers, of the service impact of last mile/delivery on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of last mile/delivery on flat-shaped products.

(d) Within 95 days after the end of each fiscal year, the Postal Service shall file an analysis of costs by operationally relevant grouping from FY 2013 to present.

(1) The report shall utilize fiscal year data filed in accordance with § 3050.22, and § 3050.28(c) and (d) and any other data necessary to complete the analysis.

(2) The report shall also include a narrative that explains the methodology used to calculate costs by operationally relevant grouping.

(e) Within 95 days after the end of each fiscal year, the Postal Service shall file the following reports that include data by both quarter and fiscal year, as well as at the national level and at the facility level unless otherwise specified. The reports shall include, at a minimum, five years of quarterly historical fiscal year data covering the reporting year and the previous four fiscal years.

(1) Bundle Breakage Visibility Reports which include, at a minimum, number of bundles processed, number of bundles processed by class, product, facility, and machine type, number of broken bundles; and number of broken bundles by class, product, facility, and machine type.

(2) Mail Processing Variance Reports, which include, at a minimum, for each machine type that process flat-shaped mail: Category, plant/facility, volume, actual workhours, earned workhours (target hours), productivity, variance, and percent achieved, and target productivities, including narrative that explains methodology used to develop target.

(3) eFlash Report, which includes, at a minimum manual letter and flats volume, manual letter and flats workhours, manual letter and flats cost analysis, manual letter and flats handling time, and manual letter and flats handling cost per piece.

(4) Work in Process metrics, which include, at a minimum, measurement of: unload scan to bundle sorter scan, unload scan to tray mechanization scan, bundle sorter scan to mail processing equipment piece scan, tray mechanization scan to next automation scan, and unload scan to first automation scan.

(5) First-Class Mail Root Cause Point Impact Report, which includes, at a minimum, root cause, shape, service standard, point impact, rank, results

attributed to air transit Automated Area Distribution Center (AADC)/Area Distribution Center (ADC) processing delays, and results attributed to surface transit AADC/ADC processing delays.

(6) SVWeb Report, which includes, at a minimum, on-time departure percentage, on-time arrival percentage, space utilization type by container type, average load percentage, total number of late containers, misrouted containers based on unload scans at unexpected site, National Performance Assessment (NPA) goals, goal achievement, the total score for six required scans, trips on time, space utilization targets, and comparison of fiscal year space utilization to targets.

(7) Last Mile Impact Report, which includes, at a minimum, overall on-time score, on-time score at last processing, and last mile impact for all flat-shaped products at each service standard.

(8) For each report listed in paragraphs (e)(1) through (7) of this section, the Postal Service shall provide a narrative that describes any changes made to underlying data systems during the fiscal year that impact the methodology used to produce the report.

(9) For each report listed in paragraphs (e)(1) through (7) of this section, the Postal Service shall provide a narrative that discusses trends, changes, and reasons for any changes in data within the report.

(10) If any of the reports listed in paragraphs (e)(1) through (7) of this section no longer exist by that name in any year, the Postal Service must provide the closest successor to that report to provide the required information. The Postal Service must identify all differences between the original report and the successor report, and provide a narrative that explains the impact of using the successor report opposed to the original report.

(f) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that identifies all national operational changes and/or initiatives that occurred during the fiscal year related to flat-shaped mail and all planned national operational changes and/or initiatives for the next fiscal year related to flat-shaped mail. The operational changes and/or initiatives should impact operations related to flat-shaped mail, impact the cost of flat-shaped mail, and/or impact the service of flat-shaped mail.

(1) The report shall identify data from paragraphs (b), (c), (d), and/or (e) of this section that will be impacted by each operational change/initiative.

(2) The report shall also include an estimate, with supporting workpapers, of the impact of each operational change/initiative on the data selected in paragraph (f)(1) of this section.

(g) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that identifies all data enhancements that occurred during the fiscal year related to data systems that affect flat-shaped mail. The data enhancements identified should have an impact on measuring, tracking, and/or reporting on flat-shaped mail cost, operations, and/or service.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–09779 Filed 5–10–19; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0309; FRL–9993–31–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology for Cement Kilns, Revisions to Portland Cement Manufacturing Plant and Natural Gas Compression Station Regulations, and Removal of Nitrogen Oxides Reduction and Trading Program Replaced by Other Programs and Regulations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the Environmental Protection Agency (EPA) rule language of the March 28, 2018 final rule pertaining to oxides of nitrogen (NO_X) and Reasonably Available Control Technology (RACT), submitted by the State of Maryland.

DATES: This final correcting amendment is effective on May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2308. Ms. Powers can also be reached via electronic mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 28, 2018, (83 FR 13192), EPA published a final rulemaking action announcing approval of several amendments to the Code of Maryland Regulations (COMAR) into the Maryland SIP. The amendments included (but were not limited to): (1) NO_X RACT for cement kilns for the 2008 ozone national ambient air quality standards (NAAQS); (2) the removal of obsolete provisions related to the NO_X Budget Trading Program; and (3) amendments to the requirements for Portland cement plants and natural gas compressor stations.

In the final rulemaking, EPA inadvertently omitted COMAR 26.11.29.05 from the regulations incorporated by reference into the Code of Federal Regulations at 40 CFR 52.1070. The intent of the rule was to incorporate COMAR 26.11.29 in its entirety, consistent with Maryland's November 24, 2015 submittal, as well as EPA's original analysis of the submittal.[1] This document corrects the erroneous omission.

In the final rulemaking document published in the **Federal Register** on March 28, 2018 (83 FR 13192), on page 13195, in the second and third columns, the revised rule language should have read—''d. Adding the subheading ''26.11.29 Control of NO_X Emissions from Natural Gas Pipeline Stations'' and the entries ''26.11.29.01'' through ''26.11.29.05''.'' Additionally, the table in paragraph (c) of section 52.1070, under the newly-added heading ''26.11.29 Control of NO_X emissions from Natural Gas Pipeline Stations'' should have included COMAR 26.11.29.05.

Need for Correction

As published, the final rule failed to fully incorporate Maryland's proposed SIP revision as it was submitted and as EPA intended to approve. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action which underwent notice and comment rulemaking. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

[1] *See* Technical Support Document at 6, in the docket for the original rulemaking action.

Corrections of Publication

In this Final rule: Correction, EPA is amending 40 CFR 52.1070 to incorporate COMAR 26.11.29.05 by reference, as was initially intended.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revisions to Maryland regulations at COMAR 26.11.29 as discussed in this final action, and EPA's original, May 28, 2018 final action (83 FR 13192). EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTAC**t section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2]

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a significant regulatory action and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Because the agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of May 13, 2019. EPA will submit a report containing this rule 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**. This correction to 40 CFR 52.1070 for Maryland is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 25, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding the entry ''26.11.29.05'' in numerical order to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

[2] 62 FR 27968 (May 22, 1997).

EPA—APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.1100
*	*	*	*	*
26.11.29 Control of NOX Emissions From Natural Gas Pipeline Stations				
*	*	*	*	*
26.11.29.05	Maintaining Records	7/20/2015	3/28/2018, 83 FR 13192	
*	*	*	*	*

* * * * *

[FR Doc. 2019–09336 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Part 484

Home Health Services

CFR Correction

■ In Title 42 of the Code of Federal Regulations, Part 482 to End, revised as of October 1, 2018, on page 167, in § 484.115, in paragraphs (a)(1) introductory text and (a)(2) introductory text, ''January 13, 2017'' is corrected to read ''January 13, 2018''.

[FR Doc. 2019–09854 Filed 5–10–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Program Integrity—Medicare and State Health Care Programs

CFR Correction

■ In Title 42 of the Code of Federal Regulations, Part 482 to End, revised as of October 1, 2018, in § 1001.952, on pages 959 through 961, the word ''beneficiary'' is changed to read ''recipient'' in the following paragraphs: (x)(5), (y)(4), (y)(5) introductory text, (y)(5)(iii), (y)(5)(v), and (y)(11).

[FR Doc. 2019–09856 Filed 5–10–19; 8:45 am]

BILLING CODE 1301–00–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, and 30

[GN Docket No. 14–177; FCC 19–30]

Use of Spectrum Bands Above 24 GHz for Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts rules for specific millimeter wave bands above 24 GHz in the *Fifth Report and Order.* The Commission takes two actions that continue its efforts to make available millimeter wave (mmW) spectrum, at or above 24 GHz, for fifth-generation (5G) wireless, Internet of Things, and other advanced spectrum-based services, including satellite broadband services. First, the Commission establishes rules to allow Fixed-Satellite Service (FSS) operators such as satellite broadband service operators, to operate with individually licensed earth stations transmitting in the 50.4–51.4 GHz band using criteria identical to those applicable in the 24.75–25.25 GHz band. Second, the Commission establishes a process for the Department of Defense (Department) to operate on a shared basis in the Upper 37 GHz band (37.6–38.6 GHz band) in limited circumstances.

DATES: Effective June 12, 2019.

FOR FURTHER INFORMATION CONTACT: John Schauble of the Wireless Telecommunications Bureau, Broadband Division at (202) 418–0797 or *John.Schauble@fcc.gov,* Michael Ha of the office of Engineering and Technology, Policy and Rules Division, at 202–418–2099 or *Michael.Ha@fcc.gov,* or Jose Albuquerque of the International Bureau, Satellite Division, at 202–418–2288 or *Jose.Albuquerque@fcc.gov.* For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order GN Docket No. 14–177, FCC 19–30, adopted on April 12, 2019 and released on April 15, 2019. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-19-30A1.pdf,* or by using the search function on the ECFS web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Fifth Report and Order* on small entities.

Paperwork Reduction Act

The requirements in revised § 25.136 (e), (f), and (g) constitute new or modified collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. This document will be submitted to OMB for review under section 3507(d) of the PRA. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis. In the present document, the Commission has assessed the effects of its filing requirements on satellite providers and finds that these requirements will not impose undue burdens on businesses with fewer than 25 employees. The filing requirements the Commission is imposing are necessary to ensure that the proposed operations will comply with the technical rules the Commission has established and not unduly preclude possible future terrestrial operation in the band.

Congressional Review Act

The Commission will send a copy of the *Fifth Report and Order,* including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

In addition, the Commission will send a copy of the *Fifth Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Fifth Report and Order,* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

I. Introduction

1. The Commission takes two actions that continues its efforts to make available millimeter wave (mmW) spectrum, at or above 24 GHz, for 5G wireless, Internet of Things (IoT), and other advanced spectrum-based services, including satellite broadband services. First, the Commission establishes rules authorizing FSS operators such as satellite broadband service operators, to license individual earth stations in the 50.4–51.4 GHz band using criteria identical to those applicable in the 24.75–25.25 GHz band. This action will allow FSS operators to provide additional capacity that can be used to provide faster and more advanced services to their customers. Second, the Commission establishes a process for the Department of Defense (Department) to operate on a shared basis in the Upper 37 GHz band (37.6–38.6 GHz) in limited circumstances. This action will provide certainty to potential applicants as the Commission begins the auction process for the Upper 37 GHz band, the 39 GHz band (38.6–40 GHz band), and the 47 GHz band (47.2–48.2 GHz) later this year.

II. Background

2. On June 8, 2018, the Commission released the *Third Report & Order* (*Third R&O*), 83 FR 34478, *Memorandum Opinion and Order* (*MO&O*), and *Third Further Notice of Proposed Rulemaking* (*Third FNPRM*), 83 FR 34520, in this proceeding. In relevant parts, the *Third FNPRM* proposed permitting the licensing of individual FSS earth stations in the 50.4–51.4 GHz band using criteria identical to those applicable in the 24.75–25.25 GHz band. With respect to the 37 GHz band, the Commission noted that it had adopted rules that establish coordination zones for 14 military sites and three scientific sites identified by the National Telecommunications and Information Administration (NTIA), and it sought comment on ''on how best to accommodate coordination zones for future Federal operations at a limited number of additional sites.'' In contrast, for the Lower 37 GHz band, the Commission sought comment on a proposed coordination mechanism and alternatives to facilitate co-equal shared use of the Lower 37 GHz band between Federal and non-Federal users, as well as among non-Federal users.

3. The 50.4–51.4 GHz band includes primary Federal and non-Federal allocations for fixed and mobile services, as well as primary Federal and non-Federal allocations for fixed-satellite (Earth-to-space) and mobile satellite (Earth-to-space) services. In 1998, the Commission designated the 50.4–51.4 GHz band for use by wireless (fixed and mobile) services. In the *Spectrum Frontiers FNPRM,* 81 FR 79894, the Commission proposed to authorize fixed and mobile operations throughout the 50.4–52.6 GHz band in accordance with the part 30 Upper Microwave Flexible Use Service (UMFUS) rules. The Commission also proposed to use geographic area licensing to license UMFUS stations in the band on a Partial Economic Area (PEA) basis and sought comment on sharing with satellite services. The Commission received ten satellite applications or market access requests and 20 earth station applications seeking to use the existing FSS (Earth-to-space) allocation in the 50.4–51.4 GHz band for delivery of broadband services.

4. In the *Third FNPRM,* the Commission proposed rules that would permit licensing of individual FSS earth stations in the 50.4–51.4 GHz band using criteria identical to those applicable in the 24.75–25.25 GHz band Specifically, the Commission proposed to apply the permitted aggregate population limits within the specified earth station Power Flux Density (PFD) contour on a per-county basis, similar to the requirement in the 27.5–28.35 GHz band, and to adopt constraints on the number of permitted earth stations on both a per county and a per PEA basis. To reflect these requirements, the Commission proposed to modify § 25.136 of the Commission's rules to include the 50.4–51.4 GHz band. The Commission also proposed to amend footnote NG65 to the U.S. Table of Allocations to include the 50.4–51.4 GHz band, making clear the relative interference protection obligations between the co-primary services.

5. With respect to the Upper 37 GHz band, the entire 37 GHz band is allocated to the fixed and mobile services on a primary basis for Federal and non-Federal use. In the *Spectrum Frontiers R&O,* 81 FR 79894, the Commission made five decisions addressing the Federal and non-Federal use of the band that are relevant here. First, it adopted service rules to permit non-Federal fixed and mobile terrestrial operation throughout the 37 GHz band. Second, it divided the band into two segments: a lower band segment from 37.0–37.6 GHz (Lower 37 GHz band) and an upper band segment from 37.6–38.6 GHz (Upper 37 GHz band). Third, it made the Lower 37 GHz band available for coordinated co-primary sharing between Federal and non-Federal users. Fourth, it adopted rules to license the Upper 37 GHz band geographically by PEAs in 200 megahertz channel blocks (but changed the band plan to 100 megahertz blocks in the *Spectrum Frontiers Fourth R&O,* 84 FR 1618). Fifth, it established the coordination zones throughout the entire 37–38.6 GHz band for the 14 military sites and three scientific sites identified by NTIA. While the Commission noted that Federal agencies

still had the ability to add future sites on a coordinated basis, it did not indicate how this could be done.

6. In the *Third FNPRM,* the Commission sought comment on how best to accommodate coordination zones for future Federal operations at a limited number of additional sites. The Commission asked whether it should amend its rules to add more specific sites for Federal operations, or whether it should establish a process that would permit Federal entities in the future to identify a limited number of additional sites on an as-needed basis. The Commission also asked whether the coordination zones previously established in its rules might be reduced to better accommodate nearby non-Federal operations without adversely impacting Federal operations at those sites.

7. The Commission received 26 comments and 17 reply comments on the *Third FNPRM.* A list of commenters, reply commenters, and parties filing *ex parte* submissions relating to the issues are addressed in this *Fifth Report and Order.* No petitions for reconsideration of the *Third R&O* were filed.

III. Discussion

A. 50.4–51.4 GHz Band

8. AT&T, Boeing, EchoStar, SES, SpaceX, Telesat, TIA, and Viasat, support licensing of individual FSS earth stations in the 50.4–51.4 GHz band. Although not specifically opposed to the idea of allowing earth stations to operate in the 50.4–51.4 GHz band, CTIA, Nokia, and T-Mobile argue that it is premature to adopt rules for sharing between terrestrial and FSS operations before UMFUS service rules are adopted. They urge the Commission to adopt UMFUS service rules either first or simultaneously. In contrast, most satellite operators, asserting that there is no need to delay adopting FSS earth station sharing rules, point to workability in other bands, imminent plans for 50.4–51.4 GHz band satellite deployment, and the need to alleviate the current regulatory uncertainty, which the operators describe as debilitating, particularly given the high cost and long lead time involved in designing and building next-generation satellites. EchoStar and Boeing further encourage the Commission not only to swiftly adopt the proposed rules, but also to proceed with processing pending earth station applications in this band conditioned upon the outcome of the proceeding.

9. With respect to the terms under which the 50.4–51.4 GHz band would be made available for individually licensed earth stations, there is a split between commenters who support using the same criteria applicable in the 24.75–25.25 GHz band and those who ask the Commission to adopt more permissive criteria. EchoStar, TIA, and AT&T support the criteria contained in the *Third FNPRM,* which would allow up to three earth station locations in a given county and a maximum of 15 earth station locations in a given PEA. AT&T, in addition, expressly opposes any relaxation in sharing criteria proposed in the *Third FNPRM,* asserting a lack of evidence and justification for disturbing the existing balance between services achieved by the rules introduced in other bands. T-Mobile similarly cautions that the Commission should go no further than the current sharing framework adopted for the 24 GHz band, which it characterizes as a consistent approach across already allocated bands. In contrast, Boeing, SES, SpaceX, and Telesat ask the Commission to adopt more permissive or flexible sharing criteria than the Commission proposed, and they assert that the shorter propagation distances of the 50.4–51.4 GHz band make it suitable for more robust sharing. Similarly, Viasat supports individual licensing of earth stations in the 50.4–51.4 GHz band consistent with the more liberal sharing framework applicable in the 47.2–48.2 GHz band, and it further asks the Commission to clarify that smaller earth stations may be permitted to operate in the 47.2–48.2 GHz and 50.4–51.4 GHz bands on a secondary basis with respect to terrestrial services. Other parties request that the Commission add an allocation for FSS in the 51.4–52.4 GHz band. CCA contends that the Commission should not adopt rules that could prejudice future mobile use.

10. The Commission adopts its proposal to permit licensing of individual FSS earth stations in the 50.4–51.4 GHz band using the criteria the Commission adopted for the 24.75–25.25 GHz band. This action will allow FSS operators to provide faster and more advanced services to their customers. Under those criteria, there may be no more than three earth stations in the 50.4–51.4 GHz band in a county and no more than 15 earth stations in any PEA. The area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to -77.6 dBm/m^2/MHz, together with the similar area of any other earth station operating in the 50.4–51.4 GHz band in the same county, may not cover, in the aggregate, more than the amount of population specified below:

Population within the County where earth station is located	Maximum permitted aggregate population within -77.6 dBm/m^2/MHz PFD contour of earth stations
Greater than 450,000	0.1 percent of population in county.
Between 6,000 and 450,000	450 people.
Fewer than 6,000	7.5 percent of population in county.

Furthermore, the area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to -77.6 dBm/m^2/MHz may not contain any major event venue, urban mass transit route, passenger railroad, or cruise ship port. In addition, that area shall not cross any of the following types of roads, as defined in functional classification guidelines issued by the Federal Highway Administration: Interstate, Other Freeways and Expressways, or Other Principal Arterial.

11. Although the 50.4–52.6 GHz band remains under consideration for UMFUS licensing, establishing UMFUS service rules will require us to address issues concerning sharing with co-primary Federal services in the 50.4–52.6 GHz band, as well as protection of passive services in the adjacent 50.2–50.4 GHz and 52.6–54.25 GHz bands. In the meantime, the Commission notes that a significant number of FSS operators seek to license space stations and earth stations in the band. As in the case of other bands shared between co-primary terrestrial and fixed-satellite services, (*e.g.,* 24.75–25.25 GHz, 37.5–40 GHz and 47.2–48.2 GHz), the Commission finds that, where an FSS allocation already exists in the 50.4–51.4 GHz band, a limited number of individually licensed FSS earth stations can share the 50.4–51.4 GHz band with minimal impact on terrestrial operations in this band. Both the 24 GHz and 50 GHz bands are satellite uplink bands. As in 24 GHz, the limits, the Commission will impose on FSS earth stations in the 50 GHz band will ''better provide FSS

with additional capacity for satellite services while permitting substantial terrestrial use of the band.'' Throughout this proceeding, the Commission has sought to promote spectrum efficiency by permitting spectrum made available for UMFUS to be shared with other allocated services when possible. The Commission recognizes there are a significant number of pending FSS earth station applications for the 50.4–51.4 GHz band. The Commission agrees that operators in this co-primary service seeking to proceed with system development need this degree of regulatory certainty and should not have to wait while the more complex issues associated with UMFUS licensing are addressed and resolved. Thus, the Commission adopts the proposed rules, which will facilitate sharing between FSS and UMFUS, while the Commission continues to consider the rules for terrestrial operations in the band.

12. At this time, the Commission will not adopt any of the various proposals for increased flexibility for FSS earth station licensing. The Commission recognizes the differences in propagation characteristics between the 50 GHz band and lower frequency bands,[1] but the Commission concludes that, prior to the adoption of UMFUS licensing rules, it would be premature to extend FSS earth station flexibility beyond the more conservative limits adopted in the 24.75–25.25 GHz band. Accordingly, the Commission modifies § 25.136 of its rules to include the 50.4–51.4 GHz band, thereby applying the identical licensing criteria to these FSS earth stations as are applicable to those in the 24.75–25.25 GHz band. The Commission also makes a minor conforming modification to § 25.130(b)(4) to include this newly modified rule section in the list of rule sections with which FSS transmitting earth station applicants must comply when seeking authorization in bands shared with UMFUS. In addition, the Commission amends footnote NG65 to the U.S. Table of Allocations as proposed to include the 50.4–51.4 GHz band, making clear the relative interference protection obligations between the co-primary services.

B. Federal Sites in 37–38.6 GHz

13. In response to the *Third FNPRM,* NTIA, on behalf of the Department, has identified one additional Federal site in the Upper 37 GHz band beyond the 14 military sites and three scientific sites identified in the Commission's rules. Specifically, it requests a small coordination zone around Edwards Air Force Base to the south of Federal facilities in China Lake, California. In addition, NTIA requests the conversion into a single area of the four overlapping coordination zones currently listed in the Table under the China Lake site. NTIA indicates that these changes would simplify the Table to ensure sufficient protection is available for the Department's operations in the China Lake coordination area, as well as ensuring sufficient protection for nearby Edwards Air Force Base, without impacting any Upper 37 GHz licensees' access to the surrounding population centers in southern California. The Commission amends the Table to consolidate the China Lake coordination zones and accommodate Edwards Air Force Base.

14. Further, the Department expects to deploy at additional sites in the future, and the lower 37 GHz band (37.0–37.6 GHz) may not be sufficient. Because of the Commission's forthcoming plans to auction spectrum in this band before the end of the year and because failure to address possible coordination with Federal users could create uncertainty for potential non-Federal bidders in the auction for spectrum in the Upper 37 GHz band, the Commission believes it's critical to address these needs for coordination here.

15. The Commission recognizes that 5G and other advanced technologies will support a wide variety of applications, including applications that can be used by Federal users. Although the Commission's rules identify the current military sites where licensees would be required to coordinate within a distance of 30 kilometers, the Department expects that there likely will be additional sites where it will need to use the band, but the Department cannot specifically identify these other locations at this time. Unlike the current sites where non-Federal licensees must coordinate with the Department of Defense, the Department seeks to coordinate its use of these additional sites with non-Federal licensees.

16. Accordingly, the Commission establishes a process that accommodates the military's needs, while protecting the interests of non-Federal licensees in the Upper 37 GHz spectrum band. The Department may submit requests for access to the Upper 37 GHz band for specific additional military bases and ranges, for the purpose of defense applications or national security. Such requests must include a justification regarding why the proposed operations could not be accommodated in the Lower 37 GHz band. The Department is willing to limit its requests to operations that cannot be accommodated in the Lower 37 GHz band. FCC staff will review the request to assess any potential impact on non-Federal licensees, contacting the potentially affected licensees and facilitating direct coordination with the Department and NTIA (including establishing a mechanism for appropriate notice to prospective future successors-in-interest to the affected licensees). The FCC will determine whether the request for access can be accommodated without creating a significant risk of harmful interference to current or planned deployments by potentially affected non-Federal licensees. NTIA would provide the applicable military departments any new or revised frequency assignments that are successfully coordinated. The Commission finds that this process strikes a reasonable balance among the stakeholders.

17. The Commission recognizes the concerns of commenters that increasing the number of Federal sites in the Upper 37 GHz band, or establishing a process for future Federal sites that lacks sufficient certainty, might negatively affect an auction of the Upper 37 GHz band and the value of the spectrum. The Commission nonetheless finds that the process it adopts here addresses the need for greater certainty for bidders in an auction, especially given the technical characteristics and expected deployments in the Upper 37 GHz band. First, requests by the Department are likely to be relatively rare, as the Commission anticipates that most such operations can be accommodated in the Lower 37 GHz band.[2] Second, military use, if it cannot be accommodated in the Lower 37 GHz band, will be limited to military bases and ranges, for the purpose of defense applications or national security, and most likely will be in remote areas. Third, the technical characteristics of operations in this region of the spectrum, marked by high path losses and use of advanced antennas and adaptive power control, can minimize any significant impact on licensees' operations. Fourth, as noted above, the FCC, after consultation with

[1] Radio signals in the 50 GHz band are more subject to attenuation from oxygen and water vapor than signals in the 24 GHz band. Thus, all other things being equal, radio signals in the 50 GHz band will not travel as far as signals in the 24 GHz band.

[2] The Commission is continuing discussions with the Department of Defense on how to effectuate usage of the Lower 37 GHz band, and the Commission intends to take steps towards specifying rules for sharing the band within three months, including exploring whether giving priority access to military use of the 37.0–37.2 GHz band would facilitate usage of the Lower 37 GHz band.

potentially affected licensees, NTIA, and the Department, will determine whether the request for access can be accommodated without creating a significant risk of harmful interference to current or planned deployments by potentially affected non-Federal licensees. Although commenters suggest that the Department's needs can be accommodated by secondary market transactions with non-Federal licensees, the Commission does not find that it would be appropriate for secondary markets to be the sole mechanism for addressing future needs for defense and national security applications. Moreover, the same argument that AT&T raises to support the likelihood of successful Department negotiations on the secondary market—that the Department already has the practical ability to control the deployment of facilities on its military bases and ranges—also supports the likelihood that, under the process described above, non-Federal licensees could successfully negotiate coordination agreements with the Department regarding access to the Upper 37 GHz band at such military sites. Accordingly, the Commission believes that the process it establishes will protect winning bidders from harmful interference while enabling the Department to carry out operations in the Upper 37 GHz band for specific additional military sites on a limited basis.

18. The Commission disagrees with T-Mobile's assertion that the process it establishes for coordination of future Department access to the Upper 37 GHz band is inconsistent with the Administrative Procedure Act. First, the Commission provided ample notice in the *Third FNPRM* for its decisions. In the *Third FNPRM,* the Commission asked not only whether it should amend its rules to add more specific sites for Federal operations, but also whether it should establish a process that would permit Federal entities in the future to identify a limited number of additional sites on an as-needed basis. Second, T-Mobile's assertion that the process the Commission adopts is arbitrary and capricious is based on a description that does not match the process its adopt in light of the record generated, and its need to balance competing objectives under section 309(j) of the Act. The statutory factors the Commission promotes here include, *e.g.,* ''development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;'' and ''efficient and intensive use of the electromagnetic spectrum . . . .'' T-Mobile claims that ''the proposed process would not include any guidelines for the location or number of additional military sites.'' However, the process the Commission adopts is limited to specific locations, *i.e.,* military bases and ranges, limits requests solely for the purpose of defense applications or national security, and only in those instances where the Department can justify that its proposed operations cannot by accommodated in the Lower 37 GHz band.

19. In addition, the Commission notes that the Department and the wireless industry are working together to advance spectrum-based technologies through various collaborative efforts, such as their participation in the National Spectrum Consortium and engagement in the Defense Advanced Research Projects Agency Spectrum Collaboration Challenge. Further, the Department and the wireless industry are working together to coordinate operations across many frequency bands, such as in the 3.5 GHz band. The Commission anticipates that those working relationships can facilitate successful coordination of operations in the 37 GHz band.

IV. Final Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third FNPRM* released in June 2018 in this proceeding. The Commission sought written public comment on the proposals in the *Third FNPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. This present FRFA conforms to the RFA.

A. Need for, and Objectives of, the Fifth Report and Order

21. In the *Fifth Report and Order,* the Commission authorizes FSS use of the 50.4–51.4 GHz band for individually licensed earth stations, which will allow FSS operators to provide additional capacity that can be used to provide faster and more advanced services to their customers. In authorizing FSS use of the 50.4–51.4 GHz band for individually licensed earth stations, the Commission will apply the licensing criteria it adopted for the 24.75–25.25 GHz band. Accordingly, in the *Fifth Report and Order* the Commission modify § 25.136 of its rules to include the 50.4–51.4 GHz band and make a minor conforming modification to § 25.130(b)(4) to include this newly modified rule section in the list of rules sections that FSS transmitting earth station applicants must comply with when seeking authorization in bands shared with UMFUS. Additionally, the Commission amends footnote NG65 to the U.S. Table of Allocations as proposed to include the 50.4–51.4 GHz band, making clear the relative interference protection obligations between the co-primary services.

22. With regard to Federal use in the 37 GHz band, the Commission establishes a process that accommodates the military's needs, while protecting the interests of non-Federal licensees in the Upper 37 GHz spectrum band. The Department may submit requests for access to the Upper 37 GHz band for specific additional military sites, such as military bases and ranges. Such requests must include a justification regarding why the proposed operations could not be accommodated in the Lower 37 GHz band. The FCC will review the request to assess any potential impact on non-Federal licensees, contacting the potentially affected licensees and facilitating direct coordination with the Department and NTIA (including establishing a mechanism for appropriate notice to prospective future successors-in-interest to the affected licensees). The FCC will determine whether the request for access can be accommodated without creating a significant risk of harmful interference to current or planned deployments by potentially affected non-Federal licensees. This action will accommodate military needs while providing certainty to potential applicants as the Commission begins the auction process for the Upper 37 GHz band, the 39 GHz band (38.6–40 GHz band), and the 47 GHz band (47.2–48.2 GHz) later this year.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

23. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

24. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

25. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

26. The RFA requires the Commission to describe and to estimate the number of small entities that may be affected by the rules adopted herein. 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.

27. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

28. 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).

29. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

30. *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 1,000 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.

31. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the UMFUS, the mmW service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licensees, and 467 mmW licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category 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 shows that there were 967 firms that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus, under this SBA category and the associated standard, the Commission estimates that the majority of fixed microwave service licensees can be considered small.

32. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that both the common carrier microwave fixed, and the private operational microwave fixed licensee categories includes some large entities.

33. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

34. *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 gross annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 1,442 firms that operated for the entire year. Of these firms, a total of 1400 firms had gross annual receipts of under $25 million and 42 firms had gross annual receipts of $25 million to $49, 999,999. Thus, the Commission estimates that a majority of ''All Other Telecommunications'' firms potentially affected by its actions can be considered small.

35. *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 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, the Commission concludes that a majority of manufacturers in this industry is small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

36. The Commission expects the rules adopted in the *Fifth Report and Order* will impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other applicants and licensees. FSS earth station applicants and licensees in the 50.4–51.4 GHz band will be subject to the reporting, recordkeeping, and compliance requirements applicable in the 24.75–25.25 GHz band. When they submit applications for authority to operate earth stations in the 50.4–51.4 GHz band, they will be required to demonstrate that the proposed earth stations comply with technical criteria designed to ensure that the earth stations would not unduly limit possible future terrestrial service. These demands are necessary to ensure that the proposed operations will comply with the technical rules, and not unduly preclude possible future terrestrial operation in the band and will require small businesses as well as other entities that intend to offer such satellite telecommunications services to use professional, accounting, engineering or survey services in order to meet these requirements. To attain consistency with the existing application of the Commission's rules, the reporting, recordkeeping, and other compliance requirements resulting from the Commission's actions in the *Fifth Report and Order* will apply to all entities in the same manner.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

37. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its 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.

38. Rather than creating a new framework for the licensing of FSS earth stations in the 50.4–51.4 GHz band, the Commission chose to apply the identical licensing criteria applicable to the 24.75–25.25 GHz band and adopt existing rule sections that FSS transmitting earth station applicants must comply with when seeking authorization in bands shared with UMFUS. These steps will minimize the significant economic impact on small entities by not increasing the cost of compliance with an entirely new set of rules and regulations. Moreover, to the extent an entity is already licensed and operating the 24.75–25.25 GHz band, they may have the processes and procedures and infrastructure in place to facilitate compliance with the Commission's rules, and therefore may only incur minimal incremental costs to comply with the rules adopted for the 50.4–51.4 GHz band.

V. Ordering Clauses

39. Accordingly, *it is ordered,* pursuant to sections 1, 2, 3, 4, 5, 7, 301, 302, 302a, 303, 304, 307, 309, and 310 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 301, 302, 302a, 303, 304, 307, 309, and 310, section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and § 1.411 of the Commission's Rules, 47 CFR 1.411, that this *Fifth Report and Order is hereby adopted.*

40. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fifth Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

41. *It is further ordered* that the amendments of the Commission's rules as set forth under Final Rules *are adopted,* effective thirty days from the date of publication in the **Federal Register**. Section 25.136(e), (f), and (g) contain new or modified information collection requirements that require review by OMB under the PRA. The Commission directs the Bureau to announce the compliance date for those information collections in a document published in the **Federal Register** after OMB approval and directs the Bureau to cause § 25.136(h) to be revised accordingly.

List of Subjects in 47 CFR Parts 2, 25 and 30

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25 and 30 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. In § 2.106, the Table of Frequency Allocations is amended as follows:

■ a. Revise page 60.

■ b. In the list of non-Federal Government (NG) Footnotes, footnote NG65 is revised.

The revisions read as follows:

§ 2.106 Table of Frequency Allocations.

50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.338A MOBILE Mobile-satellite (Earth-to-space)	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) US156 MOBILE MOBILE-SATELLITE (Earth-to-space) G117	50.4-51.4 FIXED FIXED-SATELLITE (Earth-to-space) US156 MOBILE MOBILE-SATELLITE (Earth-to-space) NG65	Satellite Communications (25)
51.4-52.6 FIXED 5.338A MOBILE 5.547 5.556	51.4-52.6 FIXED US157 MOBILE		
52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) 5.340 5.556	52.6-54.25 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US246		
54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive) 5.556B	54.25-55.78 EARTH EXPLORATION-SATELLITE (passive) INTER-SATELLITE 5.556A SPACE RESEARCH (passive)		Satellite Communications (25)
55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED 5.557A INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557	55.78-56.9 EARTH EXPLORATION-SATELLITE (passive) FIXED US379 INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US353 US532		
56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.558A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE G128 MOBILE 5.558 SPACE RESEARCH (passive) US532	56.9-57 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE 5.558 SPACE RESEARCH (passive) US532	
57-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) 5.547 5.557	57-58.2 EARTH EXPLORATION-SATELLITE (passive) FIXED INTER-SATELLITE 5.556A MOBILE 5.558 SPACE RESEARCH (passive) US532		RF Devices (15) Satellite Communications (25)
58.2-59 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) 5.547 5.556	58.2-59 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US353 US354		RF Devices (15) Page 60

Non-Federal Government (NG) Footnotes

* * * * *

NG65 In the bands 24.75–25.25 GHz, 47.2–48.2 GHz, and 50.4–51.4 GHz, stations in the fixed and mobile services may not claim protection from individually licensed earth stations authorized pursuant to 47 CFR 25.136. However, nothing in this footnote shall limit the right of Upper Microwave Flexible Use Service licensees to operate in conformance with the technical rules contained in 47 CFR part 30. The Commission reserves the right to monitor developments and to undertake further action concerning interference between Upper Microwave Flexible Use Service and Fixed-Satellite Service, including aggregate interference to satellite receivers, if appropriate.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. Amend § 25.130 by revising paragraph (b)(4) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(b) * * *

(4) Applicants for earth stations licensed in accordance with § 25.136 must demonstrate that the transmitting earth stations will meet the relevant criteria specified in that section, including any showings required under § 25.136(a)(4), (c), (d)(4), and/or (e)(4).

* * * * *

■ 5. Amend § 25.136 by:

■ a. Revising the section heading;

■ b. In paragraph (c)(2), removing ''table 1'' and ''Table 1'' and adding in their place ''table 2'' and ''Table 2'', respectively;

■ c. In paragraph (d)(4)(ii), removing ''table 1'' and ''Table 1'' and adding in their place ''table 3'' and ''Table 3'', respectively;

■ d. Revising paragraphs (e), (f), and (g); and

■ e. Adding paragraph (h).

The revisions and addition read as follows:

§ 25.136 Earth Stations in the 24.75–25.25 GHz, 27.5–28.35 GHz, 37.5–40 GHz, 47.2–48.2, GHz and 50.4–51.4 GHz bands.

* * * * *

(e) Notwithstanding that FSS is co-primary with the Upper Microwave Flexible Use Service in the 24.75–25.25 GHz and 50.4–51.4 GHz bands, earth stations in these bands shall be limited to individually licensed earth stations. An applicant for a license for a transmitting earth station in the 24.75–25.25 GHz or 50.4–51.4 GHz band must meet one of the following criteria to be authorized to operate without providing any additional interference protection to stations in the Upper Microwave Flexible Use Service:

(1) The FSS licensee also holds the relevant Upper Microwave Flexible Use Service license(s) for the area in which the earth station generates a power flux density (PFD), at 10 meters above ground level, of greater than or equal to −77.6dBm/m²/MHz;

(2) The earth station in the 24.75–25.25 GHz band was authorized prior to August 20, 2018; or the earth station in the 50.4–51.4 GHz band was authorized prior to June 12, 2019; or

(3) The application for the earth station in the 24.75–25.25 GHz band was filed prior to August 20, 2018; or the application for the earth station in the 50.4–51.4 GHz band was filed prior to June 12, 2019; or

(4) The applicant demonstrates compliance with all of the following criteria in its application:

(i) There are no more than two other authorized earth stations operating in the same frequency band within the county where the proposed earth station is located that meet the criteria contained in either paragraph (e)(1), (2), (3), or (4) of this section, and there are no more than 14 other authorized earth stations operating in the same frequency band within the Partial Economic Area where the proposed earth station is located that meet the criteria contained in paragraph (e)(1), (2), (3), or (4) of this section. For purposes of the requirement in this paragraph (e)(4), multiple earth stations that are collocated with or at a location contiguous to each other shall be considered as one earth station;

(ii) The area in which the earth station generates a power flux density (PFD), at 10 meters above ground level, of greater than or equal to −77.6 dBm/m²/MHz, together with the similar area of any other earth station operating in the same frequency band authorized pursuant to paragraph (e) of this section, does not cover, in the aggregate, more than the amount of population of the county within which the earth station is located as noted in table 4 to this paragraph (e)(4)(ii):

TABLE 4 TO PARAGRAPH (e)(4)(ii)

Population within the County where earth station is located	Maximum permitted aggregate population within −77.6 dBm/m²/MHz PFD contour of earth stations
Greater than 450,000	0.1 percent of population in county.
Between 6,000 and 450,000	450 people.
Fewer than 6,000	7.5 percent of population in county.

(iii) The area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to −77.6 dBm/m2/MHz does not contain any major event venue, urban mass transit route, passenger railroad, or cruise ship port. In addition, the area mentioned in paragraph (e)(4)(ii) of this section shall not cross any of the following types of roads, as defined in functional classification guidelines issued by the Federal Highway Administration pursuant to 23 CFR 470.105(b): Interstate, Other Freeways and Expressways, or Other Principal Arterial. The Federal Highway Administration Office of Planning, Environment, and Realty Executive Geographic Information System (HEPGIS) map contains information on the classification of roads. For purposes of this paragraph (e)(4), an urban area shall be an Adjusted Urban Area as defined in section 101(a)(37) of Title 21 of the United States Code; and

(iv) The applicant has successfully completed frequency coordination with the UMFUS licensees within the area in which the earth station generates a PFD, at 10 meters above ground level, of greater than or equal to −77.6 dBm/m2/MHz with respect to existing facilities constructed and in operation by the UMFUS licensee. In coordinating with UMFUS licensees, the applicant shall use the applicable processes contained in § 101.103(d) of this chapter.

(f) If an earth station applicant or licensee in the 24.75–25.25 GHz, 27.5–28.35 GHz, 37.5–40 GHz, 47.2–48.2 GHz and/or 50.4–51.4 GHz bands enters into an agreement with an UMFUS licensee, their operations shall be governed by that agreement, except to the extent that the agreement is inconsistent with the Commission's rules or the Communications Act.

(g) Any earth station authorizations issued pursuant to paragraph (a)(4), (c), (d)(4), or (e)(4) of this section shall be conditioned upon operation being in compliance with the criteria contained in the applicable paragraph.

(h) Paragraphs (e), (f), and (g) of this section contain new or modified information-collection and recordkeeping requirements. Compliance with these information-collection and recordkeeping requirements will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph (h) accordingly.

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

■ 5. The authority citation for part 30 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302, unless otherwise noted.

■ 6. Amend § 30.205 by:

■ a. Designating the table in paragraph (b) as table 4;

■ b. In newly designated table 4 to paragraph (b), revising the entry for ''China Lake, CA'' and adding an entry for ''Edwards AFB, CA'' immediately following the entry for ''White Sands Missile Range, NM''; and

■ c. Adding paragraph (c).

The revisions and additions read as follows:

§ 30.205 Federal coordination requirements.

* * * * *

(b) * * *

TABLE 4 TO PARAGRAPH (b)—COORDINATION AREAS FOR FEDERAL TERRESTRIAL SYSTEMS

Location	Agency	Coordination area (decimal degrees)
China Lake, CA	Navy	50 kilometer radius centered on latitude 35.614781 and longitude −117.454309.
*	*	* * * * *
Edwards AFB, CA	Air Force	20 kilometer radius centered on latitude 34.922905 and longitude −117.891219.
*	*	* * * * *

(c) In addition to the locations listed in table 4 to paragraph (b) of this section, requests may be submitted to the Commission for access to the 37.6–38.6 GHz band for specific additional military bases and ranges for the purpose of defense applications or national security when the proposed military operations cannot be accommodated in the 37–37.6 GHz band.

[FR Doc. 2019–09426 Filed 5–10–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151211999–6343–02]

RIN 0648–XG900

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Common Pool Measures for Fishing Year 2019; Correction

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

ACTION: Temporary rule; possession and trip limit implementation; correction.

SUMMARY: NMFS is correcting a temporary rule that implemented measures for Northeast multispecies common pool vessels for the 2019 fishing year. These measures included possession and trip limits and the allocation of zero trips into the Closed Area II Yellowtail Flounder/Haddock Special Access Program for common pool vessels to target yellowtail flounder. The trip limit for Gulf of Maine winter flounder was incorrect.

DATES: Effective May 10, 2019, through April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232.

SUPPLEMENTARY INFORMATION:

Need for Correction

NMFS published measures for the Northeast multispecies common pool fishery for fishing year 2019 on April 26, 2019 (84 FR 17926). These measures included possession and trip limits for all stocks of regulated multispecies.

The document incorrectly listed the trip limit for Gulf of Maine (GOM) winter flounder as 2,000 lb (907 kg) per trip, instead of the correct trip limit of 1,000 lb (454 kg) per trip. This correction will not adversely affect fishing operations. The corrected trip limit of 1,000 lb (454 kg) is the same as the 1,000 lb (454 kg) trip limit for the stock in the previous year. The 1,000 lb (454 kg) limit is based on past experience and anticipated fishing effort. There was no discussion of any increase because there was intended to be no change in the limit from the previous fishing year to prevent an overage from occurring in Trimester 1. This correction is necessary to prevent early trimester closures and overages of common pool quotas while facilitating optimized harvest.

Correction

In the **Federal Register** of April 26, 2019, in FR Doc. 2019–08441, on page 17927, table 1, is corrected to read as follows:

TABLE 1—2019 FISHING YEAR COMMON POOL POSSESSION AND TRIP LIMITS

Stock	2019 Trip limit
GB Cod (outside Eastern U.S./Canada Area)	250 lb (113 kg) per DAS, up to 500 lb (227 kg) per trip.
GB Cod (inside Eastern U.S./Canada Area)	
GB Cod [Closed Area II Yellowtail Flounder/Haddock SAP (for targeting haddock)].	500 lb (227 kg) per trip.
GOM Cod	50 lb (23 kg) per DAS, up to 100 lb (45 kg) per trip.
GB Haddock	100,000 lb (45, 359 kg) per trip.
GOM Haddock	500 lb (227 kg) per DAS, up to 1,000 lb (454 kg) per trip.
GB Yellowtail Flounder	100 lb (45 kg) per trip.
SNE/MA Yellowtail Flounder	100 lb (45 kg) per DAS, up to 200 lb (91 kg) per trip.
Cape Cod (CC)/GOM Yellowtail Flounder	750 lb (340 kg) per DAS, up to 1,500 lb (680 kg) per trip.
American Plaice	750 lb (340 kg) per DAS, up to 1,500 lb (680 kg) per trip.
Witch Flounder	600 lb (272 kg) per trip.
GB Winter Flounder	250 lb (113 kg) per trip.
GOM Winter Flounder	1,000 lb (454 kg) per trip.
SNE/MA Winter Flounder	2,000 lb (907 kg) per DAS, up to 4,000 lb (1814 kg) per trip.
Redfish	Unlimited.
White Hake	1,500 lb (680 kg) per trip.
Pollock	Unlimited.
Atlantic Halibut	1 fish per trip.
Windowpane Flounder	Possession Prohibited.
Ocean Pout	
Atlantic Wolffish	

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be contrary to the public interest. This action corrects an error that inadvertently identified the trip limit of GOM winter flounder for the Northeast multispecies common pool fishery at 2,000 lb (907 kg) per trip rather than the correct 1,000 lb (454 kg) per trip.

Delay of this action would leave the common pool fishery with a trip limit for GOM winter flounder that is too high to control catch and may lead to early closure of a trimester and quota overages. Any overage of the quota for either of the first two trimesters must be deducted from the Trimester 3 quota, which could substantially disrupt the trimester structure and intent to distribute fishing effort across the entire fishing year. An overage reduction in Trimester 3 would further reduce fishing opportunities for common pool vessels and likely result in early closure of Trimester 3. Additionally, any overage of the annual quota would be deducted from common pool's quota for the next fishing year, to the detriment of the fishery.

For the reasons above, delay of this action for prior notice and the opportunity for public comment and the 30-day delayed effectiveness period would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

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

Dated: May 8, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–09826 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 92
Monday, May 13, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0812; Product Identifier 2016–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), which would have applied to all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. The NPRM would have required reinforcement modifications of various structural parts of the fuselage, and related investigative and corrective actions if necessary. Since the NPRM was issued, we have determined that more restrictive maintenance requirements are necessary and that the NPRM does not adequately address the identified unsafe condition. Accordingly, the NPRM is withdrawn.

DATES: As of May 13, 2019, the proposed rule, which was published in the **Federal Register** on September 19, 2017 (82 FR 43715), is withdrawn.

ADDRESSES: You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0812; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, the NPRM (82 FR 43715, September 19, 2017) (''the NPRM''), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: 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 proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a NPRM for a new AD for all Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. The NPRM published in the **Federal Register** on September 19, 2017 (82 FR 43715). The NPRM would have required reinforcement modifications of various structural parts of the fuselage, and related investigative and corrective actions if necessary. The NPRM was prompted by an evaluation by the design approval holder (DAH) indicating that certain fuselage structures are subject to widespread fatigue damage (WFD). The proposed actions were intended to prevent crack initiation and undetected propagation in the fuselage, which could result in reduced structural integrity of the airplane.

Actions Since NPRM Was Issued

Since we issued the NPRM, Airbus SAS developed new modifications for Model A330–200 Freighter series airplanes and issued associated service information. In addition, for certain required modifications, upper thresholds in flight hours have been defined and the applicability of certain required actions was redefined to certain airplane configurations. In light of these changes, we are considering further rulemaking.

Comments

We gave the public the opportunity to participate in considering the proposal. The following presents the comments received on the proposal and the FAA's response to each comment.

Support for the NPRM

The commenters Grant Bingham, Ryan Pearson, Nicole Pfeffer, and Dyess Verfuth indicated their support for the NPRM.

Requests To Publish One AD for Each Individual Piece of Service Information

American Airlines (AAL) and Delta Airlines (DAL), speaking also on behalf of Hawaiian Airlines, requested that the proposed AD be separated into several ADs, preferably with one AD issued per one piece of service information. All commenters pointed to the extreme difficulty of capturing and tracking the various tasks and compliance times for each airplane configuration on the respective operator's maintenance tracking system. AAL contended that the variety of maintenance thresholds, tasks, and service information that fall under the requirements of one AD would force the development of an untested workaround within their maintenance tracking system. AAL noted that their system is optimally designed for one service bulletin per one AD. DAL further argued that the request to separate this proposed AD into one AD per individual piece of service information was consistently requested by numerous operators since 2014 at Industry Structures Task Group meetings.

Additionally, both commenters reasoned that if any of the associated service information was revised or the proposed AD was superseded, the resulting update and revision of their own associated internal documentation would cause a substantial burden on the operators. AAL pointed out that such a large-scale revision to compliance documentation may result in unnecessary confusion between the operators and the local FAA authority. AAL went on to note that if an alternate method of compliance were issued for a specific situation or piece of service information, AAL would be obligated to revise their internal documentation as well, resulting in an increased burden on operators.

AAL also expressed concern that, due to the wide range of maintenance thresholds, the possibility exists that they may never be able to show accomplishment of the proposed AD. AAL explained that in several instances the maintenance thresholds are so high that their airplanes may never reach the threshold specified by certain service information, which may result in the appearance that they have not yet accomplished service information that specifies action at higher thresholds, even as they are complying with other

service information that specifies action at lower thresholds.

We acknowledge the commenters' request and justifications. We have withdrawn this proposed AD. We are considering further rulemaking that clarifies the applicability of modifications to Airbus SAS Model A330–200 Freighter series airplanes and its associated service information, defines upper thresholds in flight hours for certain airplanes, and redefines the applicability of some required actions to certain airplane configurations.

Requests To Reference the Latest Service Information

AAL and DAL noted that, since the proposed AD was issued, revised service information is available and they have requested that we update the proposed AD to reference the latest service information. The commenters also requested that we revise the proposed AD to include previous revisions of the service information as credit for operators who have already accomplished the proposed actions using those revisions.

We acknowledge the commenter's requests. We are considering further rulemaking, which would refer to the latest service information available, and, if appropriate, allow previous revisions of the service information as credit for operators who have already accomplished the proposed actions using those revisions.

FAA's Conclusions

Upon further consideration, we have determined that more restrictive maintenance requirements are necessary and that the NPRM does not adequately address the identified unsafe condition. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2017–0812, Product Identifier (formerly Directorate Identifier) 2016–NM–198–AD, which was published in the **Federal Register** on September 19, 2017 (82 FR 43715).

Issued in Des Moines, Washington, on May 3, 2019.

Mike Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–09742 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0204; Product Identifier 2018–CE–042–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet 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 Learjet Inc. Model 60 airplanes. This proposed AD was prompted by a report of a reverse thrust command accelerating the airplane instead of decelerating the airplane. The acceleration with reverse thrust commanded occurred when the thrust reverser doors were in the stowed position instead of the deployed position. This proposed AD would require installing a Thrust Reverser (T/R) Voice Command Warning System (VCWS) to alert the crew of a T/R malfunction. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 27, 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 Learjet Inc., MS 53, P.O. Box 7707, Wichita, Kansas 67277–7707; telephone: (toll free) 1–866–538–1247; (514) 855–2999; internet: *https://my.businessaircraft.bombardier.com.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2019–0204; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: James Galstad, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107; email: *james.galstad@faa.gov* or *Wichita-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–2019–0204; Product Identifier 2018–CE–042–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We received a report of a high-speed rejected takeoff involving a Learjet Model 60 airplane that occurred when all four main landing gear (MLG) tires blew out during the takeoff roll. The tires blew out due to internal heat damage consistent with under-inflation, overloading, or a combination of both. Subsequently, damage from tires caused damage to various components,

including the MLG squat switches, brake hydraulic tubes, wheel speed sensor wiring, and anti-skid components. In the event of squat switch wiring failures, thrust reverser operation can be adversely affected. During the subject accident, forward thrust occurred when the thrust reverser doors stowed due to the failure, and at the same time the crew was still commanding reverse thrust. Squat switch wiring can also be damaged by other external factors, such as bird strikes or deer strikes.

We consider this NPRM to be the third of three ADs that are related to each other, and collectively address unsafe conditions that might result from damage to critical components on the landing gear or in the wheel well that affect the braking, spoiler, and thrust reverser systems. AD 2010–11–11, Amendment 39–16316 (75 FR 32255, June 8, 2010), was issued to prevent tire failure, and AD 2013–13–09, Amendment 39–17497 (78 FR 39574, July 2, 2013), was issued to prevent failure of the braking system or adverse operation of the spoiler and reverse thruster system due to external damage, particularly from tire failure, which could result in loss of control of the airplane. This proposed AD would require installing a T/R VCWS to alert the crew of a T/R malfunction. We are proposing this AD to mitigate failure of the engine thrust reverser system.

This condition, if not addressed, could result in the airplane overrunning the runway or a runway excursion.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Learjet 60 Service Bulletin SB 60–78–9, dated June 25, 2018. The service bulletin contains procedures for installing a T/R VCWS to alert the pilot of a T/R malfunction. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require installing the T/R VCWS.

Costs of Compliance

We estimate that this proposed AD affects 289 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install a T/R VCWS	20 work-hours × $85 per hour = $1,700	$28,274	$29,974	$8,662,486

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet Inc.: Docket No. FAA–2019–0204; Product Identifier 2018–CE–042–AD.

(a) Comments Due Date

We must receive comments by June 27, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Learjet Inc. Model 60 airplanes, serial numbers 60–001 through 60–430, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by a report of a reverse thrust command accelerating the airplane instead of decelerating the airplane because the engine thrust reverser doors were stowed instead of deployed. We are issuing this AD to mitigate failure of the engine thrust reverser system. The unsafe condition, if not addressed, could result in the airplane overrunning the runway or a runway excursion.

(f) Compliance

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

(g) Install a Thrust Reverser Voice Command Warning System

Within the next 1,200 hours time-in-service or within the next 48 months after the effective date of this AD, whichever occurs first, install a Thrust Reverser Voice Command Warning System and perform a functional test in accordance with sections 3.A. through 3.C. of the Accomplishment Instructions in Bombardier Learjet 60 Service Bulletin SB 60–78–9, dated June 25, 2018.

(h) Alternative Methods of Compliance (AMOCs)

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

(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

(1) For more information about this AD, contact James Galstad, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107; email: *james.galstad@faa.gov* or *Wichita-COS@faa.gov*.

(2) For service information identified in this AD, contact Learjet Inc., MS 53, P.O. Box 7707, Wichita, Kansas 67277–7707; telephone: (toll free) 1–866–538–1247; (514) 855–2999; internet: *https://my.businessaircraft.bombardier.com*. You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 3, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–09689 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0212]

RIN 1625–AA00

Safety Zone; Tall Ships Challenge Great Lakes 2019, Buffalo, NY, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Kenosha, WI and Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create safety zones around each tall ship visiting the Great Lakes during the Tall Ships Challenge 2019 race series. These safety zones will provide for the regulation of vessel traffic in the vicinity of each tall ship in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the hazards associated with the limited maneuverability of these tall ships and to ensure public safety during tall ships events. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 12, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0212 using the Federal eRulemaking Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LT Jason Radcliffe, 9th District Waterways Management, U.S. Coast Guard; telephone 216–902–6060, email *jason.a.radcliffe2@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

During the Tall Ships Challenge Great Lakes 2019, tall ships will be participating in maritime parades, training cruises, races, and mooring in the harbors of Buffalo, NY, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Kenosha, WI and Erie, PA. This is a tri-annual event that teaches character building and leadership through sail training. The Tall Ships event seeks to educate the public about both the historical aspects of sailing ships as well as their current use as training vessels for students. Tall ships are large, traditionally-rigged sailing vessels. The event will consist of festivals at each port of call, sail training cruises, tall ship parades, and races between the ports. More information regarding the Tall Ships Challenge 2019 and the participating vessels can be found at: *https://tallshipsnetwork.com/series/tall-ships-challenge-great-lakes-2019/*.

At 12:01 a.m. June 28, 2019, a safety zone will be established around each tall ship participating in this event. The safety zone around each ship will remain in effect as the tall ships travel throughout the Great Lakes. The safety zones will terminate at 12:01 a.m. on September 2, 2019.

These safety zones are necessary to protect the tall ships from potential harm and to protect the public from the hazards associated with the limited maneuverability of tall sailing ships. When operating under sail, they require a substantial crew to manually turn the rudder and adjust the sails, therefore they cannot react as quickly as modern ships. Additionally, during parades of sail, the tall ships will be following a set course through a crowded harbor, and it is imperative that spectator craft stay clear since maneuvering the tall ships to avoid large crowds of spectator craft would not be possible. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to the tall ships. The combination of large numbers of recreational boaters, congested waterways, boaters crossing commercially transited waterways and low maneuverability of the tall ships could easily result in serious injuries or fatalities. Therefore, the Coast Guard will enforce a safety zone around each

ship to ensure the safety of both participants and spectators in these areas. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish safety zones from 12:01 a.m. on June 28, 2019 until 12:01 a.m. on September 2, 2019. The safety zones would cover all navigable waters within 100 yards of a tall ship in the Great Lakes. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during the 2019 Tall Ships Challenge. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If the tall ships are operating in a confined area such as a small harbor and there is not adequate room for vessels to stay out of the safety zone because of a lack of navigable water, then vessels will be permitted to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. The navigation rules shall apply at all times within the safety zone. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone or through it at slow speed in congested areas. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting more than one week. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a

significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0073 to read as follows:

§ 165.T09–0073 Safety Zone; Tall Ships Challenge Great Lakes 2019; Buffalo, NY, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Kenosha, WI and Erie, PA.

(a) Definitions. The following definitions apply to this section:

(1) Navigation rules means the Navigation Rules, International and Inland (See, 1972 COLREGS and 33 U.S.C. 2001 *et seq.*).

(2) Official patrol means those persons designated by Captain of the Port Buffalo, Detroit, Sault Ste. Marie, Duluth and Lake Michigan to monitor a tall ship safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the cognizant Captain of the Port.

(3) Public vessel means vessels owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(4) Tall ship means any sailing vessel participating in the Tall Ships Challenge 2019 in the Great Lakes.

(b) Location. The following areas are safety zones: All navigable waters of the United States located in the Ninth Coast Guard District within a 100 yard radius of any tall ship.

(c) Regulations.

(1) No person or vessel is allowed within the safety zone unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(2) Persons or vessels operating within a confined harbor or channel, where there is not sufficient navigable water outside of the safety zone to safely maneuver are allowed to operate within the safety zone and shall travel at the minimum speed necessary to maintain a safe course. Vessels operating within the safety zone shall not come within 25 yards of a tall ship unless authorized by the cognizant Captain of the Port, their designated representative, or the on-scene official patrol.

(3) When a tall ship approaches any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the tall ship's safety zone unless ordered by or given permission from the cognizant Captain of the Port, their designated representative, or the on-scene official patrol to do otherwise.

(d) Effective period. This rule is effective from 12:01 a.m. on Wednesday, June 28, 2019 through 12:01 a.m. on Monday September 2, 2019.

(e) Navigation Rules. The Navigation Rules shall apply at all times within a tall ships safety zone.

Dated: May 8, 2019.

J.M. Nunan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2019–09821 Filed 5–10–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 175

46 CFR Part 25

[Docket No. USCG–2018–0099]

RIN 1625–AC41

Fire Protection for Recreational Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the rules for recreational vessels by moving fire extinguishing equipment standards for recreational vessels from the uninspected vessel subchapter, which includes requirements for both recreational and commercial vessels, to the subchapter applicable only to recreational vessels. This proposed move would relieve owners of recreational vessels from having to adhere to NFPA 10 fire extinguisher inspection, maintenance, and recordkeeping requirements intended to apply to commercial vessels only. This would not alter fire extinguishing equipment standards for commercial vessels, but would correct an incongruity in our regulations.

DATES: Comments and related material must be received by the Coast Guard on or before July 12, 2019. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before 60 days after publication in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0099 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or

email Sean Ramsey, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–ENG–4), Coast Guard; telephone 202–372–1392, email *Sean.M.Ramsey@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments
II. Abbreviations
III. Basis and Purpose
A. Purpose
B. Basis
IV. Background
V. Discussion of Proposed Rule
VI. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice of proposed rulemaking (NPRM) for alternate instructions. Documents mentioned in this NPRM, and all public comments, will be available in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

We are not planning to hold a public meeting, but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

CATEX Categorical exclusion
CFR Code of Federal Regulations
''Fire Protection'' rule Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment final rule, 81 FR 48220, published July 22, 2016
FR Federal Register
NBSAC National Boating Safety Advisory Council
NFPA 10 National Fire Protection Association Standard for Portable Fire Extinguishers, 2010 edition
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
RA Regulatory analysis
§ Section symbol
U.S.C. United States Code

III. Basis and Purpose

A. Purpose

This proposed rule would update Coast Guard regulations pertaining to fire extinguishing equipment requirements and the associated standards used by recreational vessels. The Coast Guard proposes removing some requirements and burdens that were unintentionally applied to the recreational vessel community by the final rule titled, ''Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment'' (the ''Fire Protection'' rule), 81 FR 48220, published July 22, 2016. The Coast Guard also proposes moving fire extinguishing equipment rules for recreational vessels from subpart 25.30 (Fire Extinguishing Equipment) of subchapter C (Uninspected Vessels) of Title 46 of the Code of Federal Regulations (CFR) to part 175 of subchapter S (Boating Safety) of Title 33, where other recreational vessel rules already exist.

B. Basis

Section 4302(a)(2) of Title 46 of the United States Code (U.S.C.) authorizes the Secretary of Homeland Security to prescribe regulations requiring the installation, carrying, or use of firefighting equipment and prohibiting the installation, carrying, or use of equipment that does not conform to the safety standards established under section 4302. The Secretary of Homeland Security delegated this authority to the Coast Guard by the Department of Homeland Security Delegation No. 0170.1(II)(92)(b).

IV. Background

Portable fire extinguishers may be rechargeable or non-rechargeable (disposable). Rechargeable extinguishers can be refilled after use or after a certain amount of time has elapsed, while non-rechargeable extinguishers must be discarded. Recreational vessels typically carry non-rechargeable extinguishers. This is because rechargeable extinguishers are not common in the 5–B size that is required for recreational vessels, and can be difficult to find and purchase. Also, rechargeable units of this size tend to be special purpose extinguishers such as carbon dioxide or clean agent extinguishers commonly used in an areas such as server rooms, not on recreational vessels, and come at a significantly higher price than non-rechargeable extinguishers.

Through the ''Fire Protection'' rule, the Coast Guard sought to harmonize and align Coast Guard regulations with current international and industry consensus standards, including the National Fire Protection Association's ''Standard for Portable Fire Extinguishers,'' 2010 edition (NFPA 10).[1] NFPA 10 requires vessel owners and operators to complete monthly visual inspections and annual maintenance—defined in NFPA 10 as a thorough examination, and repair or replacement if needed—of portable fire extinguishers, and to maintain records of the inspections and maintenance. In the ''Fire Protection'' rule, the Coast Guard allowed the monthly inspections of all fire extinguishers to be carried out by the vessel owner, operator, person-in-charge, or a designated member of the crew, rather than by a certified person as provided in NFPA 10. The ''Fire Protection'' rule also allowed these individuals to perform annual maintenance on non-rechargeable (disposable) extinguishers, but retained the NFPA 10 requirement that rechargeable extinguishers be maintained by a certified person such as a licensed servicing agency.

As part of the regulatory analysis (RA) for the 2016 ''Fire Protection'' rule, the Coast Guard estimated that recreational vessel owners would not be burdened by any costs from the implementation of NFPA 10. The Coast Guard did not

[1] NFPA is a nonprofit organization that develops technical codes and consensus standards to eliminate death, injury, property and economic loss due to fire, electrical and related hazards. NFPA 10 is one of those standards that lists requirements to ensure that portable fire extinguishers will work as intended to provide a first line of defense against fires of limited size.

receive public comments on this topic during the public comment period on that rule. After publication of the rule, however, we realized the requirements to visually inspect and maintain non-rechargeable (disposable) extinguishers as described in NFPA 10, and to keep records of those activities in compliance with NFPA 10, represented new burdens on recreational vessel owners and operators. We did not account for those burdens in the RA for the 2016 rule and we lacked the data to justify placing those burden on recreational vessel owners and operators.

Finally, after publication of the ''Fire Protection'' rule, the Coast Guard noted an incongruity in our vessel safety regulations regarding fire extinguishers. The current recreational vessel fire extinguishing equipment rules exist separately from other recreational vessel rules. This proposed rule would consolidate the recreational vessel fire extinguishing equipment requirements from 46 CFR subpart 25.30 into 33 CFR part 175, where other recreational vessel-specific rules are located. This proposed rule would also create a clear distinction between fire extinguishing equipment regulations intended for commercial vessels and the regulations intended for recreational vessels.

In support of this effort, on October 22, 2016, the National Boating Safety Advisory Council (NBSAC) passed a resolution (NBSAC Resolution 2016–96–02) recommending that the Coast Guard remove the NFPA 10 recordkeeping requirements from recreational vessels and consolidate recreational vessel fire protection and boating safety requirements into 33 CFR subchapter S. The 50 States and 6 U.S. territories that enforce boating safety requirements may choose to incorporate Coast Guard regulations into their own legislation or regulations. We alerted the States to the NBSAC Resolution 2016–96–02 and to the fact that we did not intend for recreational vessel owners and operators to be subject to the NPFA 10 monthly visual inspection, annual maintenance, and recordkeeping requirements.

V. Discussion of Proposed Rule

This proposed rule is discussed in detail in the following three steps:

(1) Remove recreational vessel fire extinguishing equipment regulations from 46 CFR subpart 25.30 (Fire Extinguishing Equipment).

(a) Fire extinguishing equipment regulations in 46 CFR subpart 25.30 (Fire Extinguishing Equipment) currently apply to all motorboats and motor vessels (as defined by 46 CFR 24.10–1), both recreational and commercial. In order to make subpart 25.30 regulations apply to commercial vessels only, the Coast Guard proposes to revise the applicability section in 46 CFR 25.30–1 so that the fire extinguishing equipment regulations in subpart 25.30 would explicitly not apply to recreational vessels. We would change only the applicability of the fire extinguishing equipment regulations, and would not change the applicability of any other requirements in part 25.

(b) The other requirements in part 25 (life preservers, navigation lights, ventilation, etc.) will not be changed or moved to Title 33 of the CFR because they either expressly exclude recreational vessels or already exist in the Title 33 provisions for recreational vessels.

(2) Move all of the fire extinguishing equipment regulations for recreational vessels from 46 CFR subpart 25.30 to 33 CFR part 175, subpart E, and revise the regulations to no longer require recreational vessel owners and operators to follow the monthly visual inspection, annual maintenance, and recordkeeping requirements of NFPA 10.

(a) The Coast Guard would create a new subpart E, Fire Protection Equipment, under part 175 (Equipment Requirements) in 33 CFR subchapter S (Boating Safety), and add the fire extinguishing equipment regulations from 46 CFR subpart 25.30 to that new subpart.

(b) The Coast Guard would limit the applicability of this new subpart to recreational vessels, as defined in 33 CFR 175.3, with propulsion machinery to clarify that the fire extinguishing equipment requirements would not apply to non-motorized sail boats, kayaks, canoes, and other human powered recreational vessels that do not require portable fire extinguishers. The fire extinguishing equipment requirements added to subpart E would be the same as in current 46 CFR subpart 25.30, but would be modified to clarify the regulatory language, update outdated information, and omit the requirement for recreational vessels to comply with NFPA 10. Instead of applying NFPA 10 and requiring monthly visual inspections, annual maintenance, and recordkeeping, we would indicate that fire extinguishers should be maintained in good and serviceable condition. Both the ''good and serviceable condition'' standard and the NFPA 10 requirements (monthly visual inspection, annual maintenance, and recordkeeping) exist to achieve the same result—that fire extinguishers remain in a working condition. However, the NFPA 10 requirements are very specific and prescriptive. The good and serviceable condition'' standard is goal oriented and non-prescriptive. The ''good and serviceable condition'' standard relieves the owners and operators of recreational vessels of the burden of following the specifics of NFPA 10 while allowing them the freedom to achieve the same result as the NFPA 10 requirements. For these reasons, the Coast Guard has opted to follow the goal-based standard to ensuring fire extinguishers remain in working condition instead of NFPA 10's prescriptive and regimented inspection, maintenance and recordkeeping requirements for recreational vessels.

(3) Update text in 33 CFR part 175, new subpart E—Fire Protection Equipment.

(a) The Coast Guard would make several small administrative changes to the text being moved from 46 CFR subpart 25.30 to new 33 CFR part 175 subpart E, to clarify the regulatory language and update outdated information. For example, we would remove reference to the no longer published COMDTINST M16714.3, and remove references to the Marine Safety Center as an approving entity for fire extinguishers as they no longer approve fire extinguishers.

(b) The Coast Guard would change the terms ''motorboats'' and ''motor vessels,'' as currently used in subpart 25.30, to more clear terms of ''Recreational vessels 65 feet and less in length'' and ''Recreational vessels more than 65 feet in length'' respectively. This change would align the language used in new subpart E with the terminology already used in 33 CFR part 175, and reinforce the subpart's intent to apply the requirements to recreational vessels, and not all motorboats and motor vessels. It would also make clearer the distinction between the two vessel size categories, allowing readers to easily find the fire extinguishing equipment requirements appropriate for a particular type of vessel.

(c) The Coast Guard would add new language to clarify acronyms, and update cross-references to 46 CFR subpart 25.30. For example, replacing the B.H.P. acronym with ''brake horse power'' and updating references to clearly point towards 46 CFR instead of chapter I.

(d) The Coast Guard would modify the language moved from 46 CFR subpart 25.30 to refer to recreational vessels by model years, as opposed to contracting or manufacturing dates. The latter are applicable to commercial vessels only. This change would allow the recreational boating community to more easily identify their vessel

requirements, and it would align with industry and market naming practices.

(e) Because this rule is not intended to and would not change any exceptions that already apply to recreational vessels, the Coast Guard proposes to retain all the existing recreational fire extinguishing equipment exemptions, such as those for vessels manufactured before August 22, 2016, and the fire extinguishing equipment exemptions for vessels manufactured before November 19, 1952, as provided in 46 CFR 25.30–80 and 46 CFR 25.30–90. Where we previously allowed exemptions for vessels manufactured or contracted before August 22, 2016, we would apply the same exemptions to recreational vessels with model years before 2017. Where regulations previously exempted vessels manufactured or contracted before November 19, 1952, we would apply those exemptions to recreational vessels with model years before 1953. We would also retain the exemption in 46 CFR 25.30–20(a) that allows recreational vessels less than 26 feet in length propelled by outboard motors and not carrying passengers for hire to not have to carry portable fire extinguishers if the construction of the vessel will not permit the entrapment of explosive or flammable gases or vapors.

In summary, the Coast Guard proposes separating recreational vessel fire extinguishing equipment rules from commercial vessel fire extinguishing equipment rules, and consolidating recreational vessel-specific requirements into one part, which would not contain NFPA 10 visual inspection, annual maintenance, and recordkeeping requirements for recreational vessels. This change would affect only recreational vessels with propulsion machinery, and would not affect commercial vessels.

VI. Regulatory Analyses

The Coast Guard developed this NPRM after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs, and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. OMB considers this rule to be an Executive Order 13771 deregulatory action. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). An RA follows.

The Coast Guard promulgates regulations to ensure that maritime organizations and employees engage in activities that protect the environment, human, and marine life, and that reflect safe boating practices. To meet this mission, this proposed rule would correct errors resulting from the ''Fire Protection'' final rule (81 FR 48220), effective as of August 22, 2016. The ''Fire Protection'' update to the fire extinguishing equipment rules in 46 CFR subpart 25.30 (Requirements) of subchapter C (Uninspected Vessels) inadvertently applied NFPA 10 monthly visual inspection, annual maintenance, and recordkeeping requirements to both recreational and commercial vessels, which created unintended regulatory requirements for recreational vessels—the largest regulated vessel community under the Coast Guard's purview. The proposed rule would remove the NFPA 10 recordkeeping and monthly visual inspection requirements together with the requirement for annual maintenance from the recreational vessel community, and require extinguishers be kept in good and serviceable condition. The proposed rule would not change the fire extinguishing equipment requirements for commercial vessels in 46 CFR subpart 25.30 or any other recreational vessel requirements.

Additionally, the Coast Guard proposes to correct an incongruity in our vessel safety equipment regulations by shifting recreational vessel fire extinguishing equipment requirements from 46 CFR subpart 25.30, (Fire Extinguishing Equipment) to 33 CFR part 175, new subpart E (Equipment Requirements). This would move all the recreational vessel fire extinguishing equipment rules from a commercial vessel subpart in 46 CFR subpart 25.30 to a recreational vessel section in 33 CFR part 175. This alignment would not alter the regulations for commercial vessels, but would separate commercial regulations from regulations for the recreational vessel community.

The Coast Guard considered a potential cost of this proposed rule. There is a possibility that States and territorial jurisdictions had chosen to update their statutes and regulations to incorporate NFPA 10 into their legislation or regulations. Based on available data and a thorough search of state legislative documents, the Coast Guard finds no evidence of the States and territorial jurisdictions changing their regulations to satisfy NFPA 10. Therefore, we determine that the States and territorial jurisdictions will not need to revise their regulations and incur any cost.[2]

There are no costs to the regulated public. The primary cost savings of this rule would be from correcting the unintended regulatory requirements of NFPA 10 inspection, maintenance, and recordkeeping requirements placed on the recreational vessel community.

Table 1 presents a summary of the impacts of this proposed rule.

[2] Per Coast Guard subject matter expert review and communication with State & territorial jurisdictions.

TABLE 1—SUMMARY OF IMPACTS OF THE PROPOSED RULE

Category	Summary
Applicability	Recreational vessels are no longer required to comply with the fire extinguishing equipment requirements in 46 CFR subpart 25.30.
Affected population	11,005,841 recreational vessels with disposable fire extinguishers (50 States and 6 Territorial jurisdictions).
Costs (2016$, 7% discount rate)	No Cost.
Cost Savings	Removes NFPA 10 inspection, maintenance, and recordkeeping requirements from the recreational vessel community. Savings equate to 12 minutes per year per vessel.
Benefits	Shifts recreational vessel fire extinguishing equipment requirements from 46 CFR subpart 25.30 to 33 CFR part 175, subpart E, creating a clear distinction between fire extinguishing equipment regulations intended for commercial vessels and those intended for recreational vessels.

Affected Population

The affected population consists of recreational vessels subject to the provisions of 46 CFR subpart 25.30 and the 50 State and 6 territorial jurisdictions. The RA performed for the ''Fire Protection'' final rule (81 FR 48220) used recreational vessel population data from the Coast Guard Office of Auxiliary and Boating Safety's document titled, *2013 Recreational Boating Statistics,*[3] to estimate the affected population. For this analysis, the Coast Guard uses the most recently published data from the *2016 Recreational Boating Statistics* to identify a population of 11,005,841[4] registered motorized recreational vessels that would be affected by the fire extinguishing equipment requirements in 46 CFR subpart 25.30.

Cost Analysis

This NPRM proposes 18 changes to the fire extinguishing equipment regulations in 33 CFR part 175, subpart E, and 46 CFR subpart 25.30. These changes are summarized as follows:

- Remove recreational vessel fire extinguishing equipment regulations from 46 CFR subpart 25.30 (Fire Extinguishing Equipment).
- Move the recreational vessel fire extinguishing equipment regulations from 46 CFR subpart 25.30 to new 33 CFR part 175, subpart E. This would include new § 175.301 to 33 CFR part 175, subpart E, to specify the applicability of subpart E to recreational vessels. It would also include new §§ 175.305, 175.310, 175.315, 175.320, 175.380, and 175.390 to reflect requirements previously applied by 46 CFR subpart 25.30, but excluding those that require recreational vessel owners and operators to follow the monthly visual inspection, annual maintenance, and recordkeeping requirements of NFPA 10.

Update recreational vessel fire extinguishing equipment regulations to clarify regulatory language and update outdated information. Overall, there are no costs to the regulated public associated with these 18 changes to the regulatory text. The changes and economic impacts of these changes are described in Table 2.

TABLE 2—ASSESSMENT OF COST IMPACTS OF THE PROPOSED RULE TO THE REGULATED PUBLIC

Existing 46 CFR part 25 sections	Proposed 33 CFR part 175 sections	Description of proposed change	Cost impact
Definitions			
§ 25.30–1(b) & (c)	§ 175.3	Add the definition of *Model Year* to the section	No cost.
Applicability			
§ 25.30–1	§ 175.301	Adopt existing text from 46 CFR 25.30–1, with new text to clarify the applicability of this subpart to recreational vessels with propulsion machinery only.	No cost.
General Provisions			
§ 25.30–5(a)	§ 175.305	Adopt existing text from 46 CFR 25.30–5(a), with text edits to clarify approved equipment must be approved by the Commandant (CG–ENG–4).	No cost.
Portable Fire Extinguishers and Semi-Portable Fire Extinguishing Systems			
§ 25.30–5(b)	§ 175.310(a)	Adopt existing text from 46 CFR 25.30–5(b)	No cost.
§ 25.30–10(a)	§ 175.310(b)	Adopt existing text from 46 CFR 25.30–10(a), with edits removing the requirement that the extinguishers be maintained, inspected, and recorded in accordance with NFPA 10. Add new text, extracted from relevant sections of NFPA 10, requiring that fire extinguishers must accessible, have a good operating pressure, not be expired, or previously used, and be maintained in accordance with the manufacturer's instructions.	No cost.
§ 25.30–10(f)	§ 175.310(c)	Adopt text from 46 CFR 25.30–10(f), with text edits for clarification.	No cost.

[3] Recreational Boating Statistics 2013. Accessed at *https://www.uscgboating.org/assets/1/AssetManager/2013RecBoatingStats.pdf.*

[4] Recreational Boating Statistics 2016, Table 37. Accessed at *https://www.uscgboating.org/library/accident-statistics/Recreational-Boating-Statistics-2016.pdf.*

TABLE 2—ASSESSMENT OF COST IMPACTS OF THE PROPOSED RULE TO THE REGULATED PUBLIC—Continued

Existing 46 CFR part 25 sections	Proposed 33 CFR part 175 sections	Description of proposed change	Cost impact
§ 25.30–10(g)	§ 175.310(d)	Adopt text from 46 CFR 25.30–10(g)	No cost.
§ 25.30–10(h)	§ 175.310(e)	Adopt text from 46 CFR 25.30–10(h)(1)–25.30–10(h)(4), with edits changing the motorboat references to recreational vessel references.	No cost.
§ 25.30–10 (h)(4)(i)	§ 175.310(f)	Adopt text from 46 CFR 25.30–10(h)(4)(i), with edits changing the motorboat references to recreational vessel references.	No cost.
§ 25.30–10(j)	§ 175.310(g)	Adopt text from 46 CFR 25.30–10(j)	No cost.
Fixed Fire Extinguishing Systems			
§ 25.30–15(a)	§ 175.315(a)	Adopt existing text from 46 CFR 25.30–315(a) with text edits to clarify approved equipment must be approved by the Commandant (CG–ENG–4).	No cost.
§ 25.30–15(b)	§ 175.315(b)	Adopt existing text from 46 CFR 25.30–315(b)	No cost.
§ 25.30–15(c)	§ 175.315(c)	Adopt existing text from 46 CFR 25.30–315(c) with edits to update references from NFPA 13 to the 46 CFR source.	No cost.
Fire Extinguishing Equipment Required			
§ 25.30–20(a)	§ 175.320(a)	Adopt text from 46 CFR 25.30–20(a)(1) and 25.30–20(a)(2), with edits changing the motorboat references to recreational vessels not more than 65 feet.	No cost.
Table 25.30–20(A)(1)	Table 1 to § 175.320(a)	Adopt Table 25.30–20(A)(1) from 46 CFR 25.30–20(a), with edits changing the table numbering for clarity.	No cost.
Figure 25.30–20(A1)	Figure 1 to § 175.320(a)(2)	Adopt Figure 25.30–20(A1) from 46 CFR 25.30–20(a), with edits changing the figure numbering for clarity.	No cost.
Figure 25.30–20(A2)	Figure 2 to § 175.320(a)(2)	Adopt Figure 25.30–20(A2) from 46 CFR 25.30–20(a), with edits changing the figure numbering for clarity.	No cost.
§ 25.30–20(c)	§ 175.320(b)	Adopt text from 46 CFR 25.30–20(c)(1) 2012; 25.30–20(c)(4), with edits changing the motor vessels references to recreational vessels over 65 feet, and text edits for clarity.	No cost.
Table 25.30–20(B)(1)	Table 1 to § 175.320(b)	Adopt Table 25.30–20(B)(1) from 46 CFR 25.30–20(b), with edits changing the table numbering for clarity.	No cost.
§ 25.30–20(b)(2)(1)	§ 175.320(b)	Adopt text from 46 CFR 25.30–20(a), with edits changing the motor vessels references to recreational vessels over 65 feet.	No cost.
§ 25.30–20(a)(3) & § 25.30–20(c)(5).	§ 175.320(c)	Combine the text from 46 CFR 25.30–20(a)(3) & 25.30–20(c)(5) into a new section that clarifies Table 1 to 46 CFR 175.320(a) and Table 1 to 46 CFR 175.320(b) contain the minimum number of extinguishers needed on a vessel.	No cost.
Location and Number of Fire Extinguishers Required for Vessels Constructed prior to August 22, 2016			
§ 25.30–80	§ 175.380	Adopt text from 46 CFR subpart 25.30–80 with updated references to Table 1 to 46 CFR 175.320(a) and Table 1 to 46 CFR 175.320(b).	No cost.
Vessels Contracted prior to November 19, 1952			
§ 25.30–90	§ 175.390	Adopt text from 46 CFR 25.30–90 with updated references to the new 46 CFR 175 and text edits for clarity.	No cost.
Proposed Edits to 46 CFR Part 25.30			
§ 25.30–1		Edit and reorganize paragraph for clarity.	No cost.
§ 25.30–1		Remove applicability to non-commercial vessels	No cost.

Costs

The Coast Guard considered all potential costs of this proposed rule. We considered the possibility that States and territorial jurisdictions may choose to update their statutes and regulations if they had previously changed their regulations to satisfy NFPA 10. However, based on available data and a thorough search of State and territorial jurisdictions' legislative documents, the Coast Guard finds no evidence of the States and territorial jurisdictions changing their regulations to satisfy NFPA 10. Therefore, they will not incur any costs as no State or territory will need to change back their regulations.[5]

Cost Savings

The primary savings of this proposed rule stem from the correction of the unintended regulatory requirements placed on the recreational vessel community by the ''Fire Protection'' rule with regards to recordkeeping and monthly visual inspection requirements associated with the type of fire extinguisher on board a recreational vessel.

NFPA 10 has specific inspection requirements for both rechargeable and non-rechargeable portable fire extinguishers. Owners of vessels with

[5] Per Coast Guard subject matter expert review and communication with State & territorial jurisdictions.

non-rechargeable (disposable) extinguishers, commonly used in the recreational vessel community, are subject to a monthly visual inspection ensuring the fire extinguisher is available and still operational and maintain records of their compliance by placing an initial in a log book as confirmation of a visual inspection. For rechargeable fire extinguishers, NFPA 10 requires an annual inspection by a qualified technician permitted by State and local authorities in addition to monthly visual inspections. Rechargeable extinguishers are not common in the 5–B size that is required for recreational boats, and must be actively sought and bought from a more industrial distributor. Rechargeable units of this size tend to be special purpose extinguishers such as carbon dioxide or clean agent extinguishers commonly used in areas such as server rooms, not on recreational boats, and come at a significantly higher price. Non-rechargeable or disposable units are intended for use by the public and are the primary type of fire extinguisher on recreational vessels. They are primarily marketed to the general public because of their low operating and maintenance costs, low upfront cost, reliability as well as the ease of care and can be purchased at retail stores. As a result, rechargeable fire extinguishers are generally purchased by commercial vessel owners and operators, while non-rechargeable units are purchased by recreational vessel owners. Therefore, we estimate the savings to recreational boaters will stem from no longer needing to perform a monthly visual inspection along with its associated minor recordkeeping requirement confirming the inspection. We estimate such monthly inspections would take 1 minute per month to complete for an annual total of 12 minutes per fire extinguisher.[6] Data on how many recreational vessel owners have complied with current NFPA 10 requirements since 2016 is non-existent as is data on the various labor categories of the recreational vessel owners. Therefore, while the proposed rule may reduce the regulatory burden to some recreational vessel owners, we do not have enough information on the potential scale of this reduction and consequently, do not attempt to monetize these potential cost savings. However, as mentioned above, we estimate a time savings component of approximately 12 minutes per year per fire extinguisher (1 minutes/month).[7]

Benefits

By shifting the recreational vessel fire extinguishing equipment requirements from 46 CFR subpart 25.30 to 33 CFR part 175, subpart E, this rule would create a clear distinction between fire extinguishing equipment regulations intended for commercial vessels and those intended for recreational vessels.

Alternatives

Alternative 1: Preferred Alternative

The preferred alternative would be to: (1) Move the fire extinguishing equipment requirements for recreational vessels from 46 CFR subpart 25.30 to 33 CFR part 175, new subpart E; (2) separate recreational vessel fire protection regulations from commercial vessel regulations; (3) remove all NFPA 10 inspection, maintenance and recordkeeping requirements from recreational vessels; and (4) consolidate recreational vessel fire extinguishing equipment requirements into one subchapter. The preferred alternative follows the NBSAC recommendation.

Alternative 2: No-Action Alternative

Under this alternative, recreational vessel fire protection rules would remain in 46 CFR subpart 25.30, and NFPA 10 would continue to apply to recreational vessels. The Coast Guard did not select this alternative because it maintains an unintended burden on recreational vessel owners and does not follow the NBSAC's recommendation.

Alternative 3: Policy Over Regulation

This alternative would create a new Coast Guard policy based on the NBSAC's recommendation that would outline fire extinguishing equipment standards. The Coast Guard did not select this option because States adopt Coast Guard regulations, not Coast Guard policy recommendations. Furthermore, it is not considered a good regulatory practice to determine shipping regulations via policy instruments. Finally, this alternative would not follow the NBSAC's recommendation.

Alternative 4: Add Exemption From NFPA 10 Requirements

Alternative 4 would add language to 46 CFR subpart 25.30 explicitly stating that NFPA 10 does not apply to recreational vessels. The Coast Guard did not select this option because this alternative would not follow the NBSAC's recommendation.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Coast Guard has considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The proposed rule corrects the unintended regulatory requirements placed on 11,005,841 recreational vessels and would move fire extinguishing equipment requirements for recreational vessels from subpart 25.30 of part 25 in Title 46 of the CFR to a new subpart E (Fire Protection Equipment) of part 175 in Title 33 of the CFR. The Coast Guard's economic analysis concluded that these proposed changes would not impose costs on any of the recreational vessels that comprise the affected population described in this NPRM, and thus not have a cost impact on small entities that own and operate the recreational vessels. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this NPRM. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this NPRM. The Coast Guard will not retaliate against

[6] The value of a person's recreational time is dependent on a number of factors such as income, age, and employment status. We did not have this information for owners of the recreational vessels subject to this proposed rulemaking and therefore were unable to monetize the cost savings associated with the 12 minute burden reduction. This is a 12 minute- reduction per fire extinguisher, and we estimate that 5.3 percent of the affected population of recreational vessels carry more than one fire extinguisher.

[7] Estimate based on Coast Guard subject matter experts.

small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. While the proposed rule would remove recordkeeping requirements of NFPA 10, the Coast Guard did not account for this burden in the Collection of Information analysis performed for the ''Fire Protection'' final rule (81 FR 48220), which modified the Collection of Information, *Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, Shipping Papers, and NFPA 10 Certificates, OMB Control Number 1625–0037,* because the Coast Guard never intended to apply these requirements to recreational vessels. Therefore, this action will not modify the existing collection of information.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. The Coast Guard regulates recreational vessel safety, including firefighting equipment, under the authority contained in 46 U.S.C. 4302. Chapter 43 of 46 U.S.C. contains an express preemption provision for recreational vessel safety standards. Under 46 U.S.C. 4306, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard, or impose a requirement for associated equipment unless: (1) The standard is identical to a Coast Guard regulation prescribed under 46 U.S.C. 4302; (2) the Coast Guard specifically provides an exemption under 46 U.S.C. 4305; or (3) the State standard regulates marine safety articles carried or used to address a hazardous condition or circumstance unique to that State (as long as the Coast Guard does not disapprove). This proposed rule would establish minimum requirements, under 46 U.S.C. 4302, for fire extinguishing equipment for recreational vessels, and therefore, the States may not issue regulations that differ from Coast Guard regulations within the categories of safety standards or equipment for recreational vessels, except in the limited circumstances identified above. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule would have implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this NPRM.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, the Coast Guard did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland

Security Management Directive 023–01, Revision 01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available where indicated under the ''Public Participation and Request for Comments'' section of this NPRM.

This proposed rule meets the criteria for categorical exclusion (CATEX) under paragraphs L52, L54, and L57 of Table 1 in Appendix A of DHS Directive 023–01 (series). The CATEX L52 pertains to regulations concerning vessel operation safety standards; CATEX L54 pertains to regulations that are editorial or procedural, such as those updating addresses or establishing application procedures; and CATEX 57 pertains to regulations concerning manning, documentation, admeasurements, inspection, and equipping of vessels.

This proposed rule is intended to update Coast Guard regulations pertaining to fire extinguishing requirements and the associated standards used by recreational vessels. The Coast Guard seeks any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 175

Fire prevention, Marine safety.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 175 and 46 CFR part 25 as follows:

Title 33—Navigation and Navigable Waters

PART 175—EQUIPMENT REQUIREMENTS

■ 1. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 175.3, add in alphabetic order the definition of ''Model year'' to read as follows:

§ 175.3 Definitions.

* * * * *

Model year means the period beginning August 1 of any year and ending on July 31 of the following year. Each model year is designated by the year in which it ends.

* * * * *

■ 3. Add new subpart E to read as follows:

Subpart E—Fire Protection Equipment

Sec.
175.301 Applicability.
175.305 General provisions.
175.310 Portable fire extinguishers and semi-portable fire extinguishing systems.
175.315 Fixed fire extinguishing systems.
175.320 Fire extinguishing equipment required.
175.380 Condition and number of fire extinguishers required for recreational vessels built before model year 2017.
175.390 Condition and number of fire extinguishers required for recreational vessels built before model year 1953.

§ 175.301 Applicability.

(a) This subpart applies to recreational vessels that are propelled or controlled by propulsion machinery.

(b) Recreational vessels constructed prior to August 22, 2016, will be deemed built before model year 2017 and must meet the requirements of 33 CFR 175.380.

(c) Recreational vessels constructed prior to November 19, 1952, will be deemed built before model year 1953 and must meet the requirements of 33 CFR 175.390.

§ 175.305 General provisions.

Where fire extinguishing equipment in this subpart is required to be of an approved type, such equipment must be approved as provided in 46 CFR subchapter Q. A listing of current and formerly approved equipment and materials may be found on the internet at: *http://cgmix.uscg.mil/equipment.* Each OCMI may be contacted for information concerning approved equipment.

§ 175.310 Portable fire extinguishers and semi-portable fire extinguishing systems.

(a) All portable and semi-portable fire extinguishers must be of an approved type.

(b) Portable and semi-portable fire extinguishers must be maintained in good and serviceable working condition and must—

(1) Be carried aboard the vessel;

(2) Have a pressure gauge reading or indicator in the operable range or position, if there is one;

(3) Not be expired or appear to have been previously used; and

(4) Be maintained in accordance with the manufacturer's instructions.

(c) Vaporizing-liquid type fire extinguishers containing carbon tetrachloride, chlorobromomethane, or other toxic vaporizing liquids are not acceptable as equipment required by this subpart.

(d) Portable or semi-portable extinguishers, which are required by their name plates to be protected from freezing, must not be located where freezing temperatures may be expected.

(e) The use of dry chemical stored pressure fire extinguishers not fitted with pressure gauges or indicating devices, manufactured prior to January 1, 1965, is permitted on board recreational vessels if such extinguishers are maintained in good and serviceable condition. The following maintenance and inspections are required for such extinguishers:

(1) When the date on the inspection record tag on the extinguishers shows that 6 months have elapsed since the last weight check ashore, then such extinguishers are no longer accepted as meeting required maintenance conditions until they are reweighed ashore, found to be in a serviceable condition, and within required weight conditions.

(2) If the weight of the container is ^{14} ounce less than that stamped on the container, it must be serviced.

(3) If the outer seal or seals (which indicate tampering or use when broken) are not intact, the boarding officer or marine inspector will inspect such extinguishers to see that the frangible disc in the neck of the container is intact; and if such disc is not intact, the container must be serviced.

(4) If there is evidence of damage, use, or leakage, such as dry chemical powder observed in the nozzle or elsewhere on the extinguisher, the extinguisher must be serviced or replaced.

(f) Dry chemical extinguishers, stored pressure extinguishers, and fire extinguishers without pressure gauges or indicating devices, manufactured after January 1, 1965, cannot be labeled with the marine type label described in 46 CFR 162.028–4. These extinguishers, may be carried onboard recreational vessels as excess equipment, subject to paragraphs (a) and (b).

(g) Semi-portable extinguishers must be fitted with a suitable hose and nozzle, or other practicable means, so that all portions of the space concerned may be covered.

§ 175.315 Fixed fire extinguishing systems.

(a) A fixed fire extinguishing system must be of a type approved or accepted under 46 CFR part 162 when it is installed.

(b) A carbon dioxide system must be designed and installed in accordance with 46 CFR 76.15.

(c) An automatic sprinkler system must be designed and installed in accordance with 46 CFR 25.30–15(c).

§ 175.320 Fire extinguishing equipment required.

(a) Recreational vessels 65 feet or less in length.

(1) Recreational vessels 65 feet or less in length must carry at least the minimum number of portable fire extinguishers set forth in Table 1 to § 175.320(a). Vessels less than 26 feet in length, propelled by outboard motors, are not required to carry portable fire extinguishers if the construction of the vessels will not permit the entrapment of explosive or flammable gases or vapors.

TABLE 1 TO § 175.320(A)

Length (feet)	Minimum number of 5–B portable fire extinguishers required [1]	
	If no fixed fire extinguishing system in machinery space	If fixed fire extinguishing system in machinery space
Under 16	1	0
16 or more, but less than 26	1	0
26 or more, but less than 40	2	1
40 or more, but not more than 65	3	2

[1] One 20–B portable fire extinguisher may be substituted for two 5–B portable fire extinguishers.

(2) Figure 1 to § 175.320(a)(2) illustrates the conditions under which fire extinguishers are required to be carried on board. Figure 2 to § 175.320(a)(2) illustrates conditions that do not, in themselves, require that fire extinguishers be carried.

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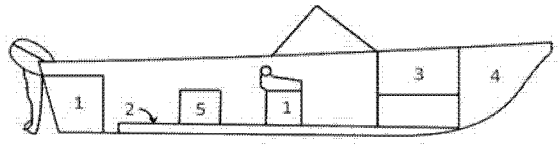

Figure 1 to § 175.320(a)(2)

Note 1 to Figure 1 to § 175.320(a)(2). Fire extinguishers are required if any one or more of the following conditions exist (numbers identifying conditions are the same as those placed in Figure 1 to § 175.320(a)(2)):

1. Closed compartment under thwarts and seats wherein portable fuel tanks may be stored.
2. Double bottoms not sealed to the hull or which are not completely filled with flotation material.
3. Closed living spaces.
4. Closed stowage compartments in which combustible or flammable materials are stowed.
5. Permanently installed fuel tanks.

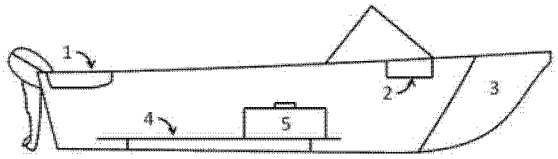

Figure 2 to § 175.320(a)(2)

Note 1 to Figure 2 to § 175.320(a)(2). The following conditions do not, in themselves, require that fire extinguishers be carried (numbers identifying conditions are the same as those placed in Figure 2 to § 175.320(a)(2)):

1. Bait wells.
2. Glove compartments.
3. Buoyant flotation material.
4. Open slatted flooring.
5. Ice chests.

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(b) Recreational vessels more than 65 feet in length.

(1) Recreational vessels more than 65 feet in length must carry at least the minimum number of portable fire extinguishers specified for their tonnage as set forth in Table 1 to § 175.320(b).

TABLE 1 TO § 175.320(B)

Gross tonnage—		Minimum number of 20–B portable fire extinguishers
More than	Not more than	
	50	1
50	100	2
100	500	3
500	1,000	6
1,000		8

(2) In addition to the portable fire extinguishers required by Table 1 to § 175.320(b), the following fire extinguishing equipment must be fitted in the machinery space:

(i) One 20–B fire extinguisher must be carried for each 1,000 brake horsepower of the main engines or fraction. However, not more than six such extinguishers are required to be carried.

(ii) On recreational vessels of more than 300 gross tons, either one 160–B semi-portable fire extinguishing system must be fitted, or alternatively, a fixed fire extinguishing system must be fitted in the machinery space.

(3) The frame or support of each 160–B semi-portable fire extinguisher required by paragraph (b)(2)(ii) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

(4) If an approved semi-portable fire extinguisher has wheels, it must be securely stowed when not in use to prevent it from rolling out of control under heavy sea conditions.

(c) Extinguishers with larger numerical ratings or multiple letter designations. Extinguishers with larger numerical ratings or multiple letter designations may be used to meet the requirements of Table 1 to § 175.320(a) and Table 1 to § 175.320(b).

§ 175.380 Condition and number of fire extinguishers required for recreational vessels built before model year 2017.

Recreational vessels with a model year between 1953 and 2017 must meet the following requirements:

(a) Previously installed extinguishers with extinguishing capacities that are less than what is required in Table 1 to § 175.320(a) or Table 1 to § 175.320(b) of this subpart need not be replaced but must be maintained in good condition.

(b) All extinguishers installed after August 22, 2016, must meet the applicable requirements in §§ 175.305 through 175.320.

§ 175.390 Condition and number of fire extinguishers required for recreational vessels built before model year 1953.

Recreational vessels built before model year 1953 must meet the applicable number and general type of equipment provisions of §§ 175.305 through 175.320. Existing items of

equipment and installations previously approved but not meeting the applicable requirements for type approval may be continued in service provided they are in good condition. All new installations and replacements must meet the requirements of §§ 175.305 through 175.320.

Title 46—Shipping

PART 25—REQUIREMENTS

■ 4. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 2103, 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1(II)(77), (92)(a), 92(b).

■ 5. Revise § 25.30–1 to read as follows:

§ 25.30–1 Applicability.

(a) This subpart applies to all vessels, except for recreational vessels as defined in 33 CFR 175.3.

(b) All vessels, except recreational vessels, contracted for before August 22, 2016, and after November 19, 1952, must meet the requirements of 46 CFR 25.30–80.

(c) All vessels, except recreational vessels, contracted for before November 19, 1952, must meet the requirements of 46 CFR 25.30–90.

Dated: May 6, 2019.

John P. Nadeau,

Assistant Commandant for Prevention Policy, U.S. Coast Guard.

[FR Doc. 2019–09699 Filed 5–10–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0159; FRL–9993–51–Region 9]

Partial Approval, Partial Disapproval and Limited Approval, Limited Disapproval of Arizona Air Plan Revisions, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). These revisions concern the District's demonstration regarding reasonably available control technology (RACT) requirements and negative declarations for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or ''standards'') in the portion of the Phoenix-Mesa ozone nonattainment area under the jurisdiction of the PCAQCD. The EPA is also proposing a limited approval and limited disapproval of two rules PCAQCD submitted with its RACT SIP demonstration. We are proposing action on a local SIP revision under the Clean Air Act (CAA or ''Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 12, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0159 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.* EPA Region IX is located at 75 Hawthorne Street, San Francisco, CA 94105–3901.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. The State's Submittal
- A. What documents did the State submit?
- B. Are there other versions of these documents?
- C. What is the purpose of the submitted documents?

II. The EPA's Evaluation and Proposed Action
- A. How is the EPA evaluating the submitted documents?
- B. Do the documents meet the evaluation criteria?
- C. What are the deficiencies?
- D. EPA Recommendations To Further Improve the RACT SIP and the Submitted Rules
- E. Public Comment and Proposed Action

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

I. The State's Submittal

A. What documents did the State submit?

Table 1 lists the documents addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED DOCUMENTS

Local agency	Document	Adopted	Submitted
PCAQCD	Reasonably Available Control Technology (RACT) Analysis, Negative Declaration and Rules Adoption.	11/30/2016	2/3/2017
PCAQCD	Chapter 5, Article 13 Surface Coating Operations 5–13–100, ''General''. 5–13–200, ''Definitions''. 5–13–300, ''Standards''. 5–13–400, ''Administrative Requirements''. 5–13–500, ''Monitoring and Records''.	11/30/2016	2/3/2017

TABLE 1—SUBMITTED DOCUMENTS—Continued

Local agency	Document	Adopted	Submitted
PCAQCD	Note: the submittal explicitly excludes 5–13–390 ''Spray Paint and Other Surface Coating Operations'' (as amended 10/12/95). Chapter 5, Article 20 Storage and Loading of Gasoline at Gasoline Dispensing Facilities. 5–20–100 ''General''. 5–20–200 ''Definitions''. 5–20–300 ''Standards''. 5–20–400 ''Administrative Requirements''. 5–20–500 ''Monitoring and Records''.	11/30/2016	2/3/2017

On August 3, 2017, the submittals for PCAQCD's RACT SIP, negative declarations, and two rules were deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these documents?

There are no previous versions of the RACT SIP and negative declarations in the PCAQCD portion of the Arizona SIP for the 2008 8-hour ozone NAAQS. There are no previous versions of Chapter 5, Articles 13 or 20 in the PCAQCD portion of the Arizona SIP.

C. What is the purpose of the submitted documents?

Volatile Organic Compounds (VOCs) and oxides of nitrogen (NO_X) help produce ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO_X emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NO_X. The PCAQCD is subject to this requirement as it regulates the Pinal County portion of the Phoenix-Mesa ozone nonattainment area that is currently designated and classified as a Moderate nonattainment area for the 2008 8-hour ozone NAAQS. Therefore, the PCAQCD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO_X within the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO_X is a major stationary source in a Moderate ozone nonattainment area (CAA section 182(b)(2), (f) and 302(j)).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) discusses RACT requirements. It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific CTG. Id. at 12278. It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS. See Id. and 70 FR 71612, 71652 (November 29, 2005). The submitted RACT SIP (''*2016 RACT SIP*'') and negative declarations provide PCAQCD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. PCAQCD also adopted and submitted for SIP approval the following two rules with its *2016 RACT SIP.*

Chapter 5, Article 13 is a new rule that establishes VOC content limits for surface coating operations in the Pinal County portion of the Phoenix-Mesa 8-hour ozone nonattainment area. It contains: Definitions; VOC content limits; various partial exemptions; requirements for coating application methods, cleanup of application equipment, work practices for the handling, disposal and storage of VOC containing materials, and emission control systems; and requirements for monitoring, testing, and recordkeeping.

Chapter 5, Article 20 is a new rule that establishes limits for VOC emissions from gasoline during storage and loading of gasoline at gasoline dispensing facilities. It contains: Definitions; various exemptions; requirements for vapor recovery equipment, general housekeeping, gasoline storage equipment, and gasoline loading operations; and requirements for monitoring, testing, and recordkeeping.

The EPA's technical support document (TSD) has more information about the District's RACT SIP, negative declarations, rules, and the EPA's evaluations thereof.

II. The EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the submitted documents?

SIP rules must require RACT for each category of sources covered by a CTG document as well as each major source of VOCs or NO_X in ozone nonattainment areas classified as Moderate or above (CAA section 182(b)(2)). The PCAQCD regulates a Moderate ozone nonattainment area (40 CFR 81.303) so the District's rules must implement RACT.

States should also submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.[1] To do so, the submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the portion of the ozone nonattainment area that is regulated by the PCAQCD.

The District's analysis must demonstrate that each major source of VOCs or NO_X in the ozone nonattainment area is covered by a RACT-level rule. In addition, for each CTG source category, the District must either demonstrate that a RACT-level rule is in place, or submit a negative declaration. Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. EPA Office of Air Quality Planning and Standards, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and

[1] 57 FR 13498, 13512 (April 16, 1992).

Deviations,'' May 25, 1988 (''the Bluebook,'' revised January 11, 1990).

3. EPA Region IX, ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' August 21, 2001 (''the Little Bluebook'').

4. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, (November 25, 1992).

5. Memorandum dated May 18, 2006, from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Subject: ''RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers.''

6. ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005).

7. ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' 80 FR 12264 (March 6, 2015).

Rules that are submitted for inclusion into the SIP must be enforceable (CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (CAA section 193).

In addition to the documents listed above, guidance and policy documents that we use to evaluate enforceability, stringency, and revision/relaxation requirements include the following:

1. ''Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations,'' EPA–450/R–75–102, November 1975.

2. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' EPA–450/2–78–015, June 1978.

3. ''Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings,'' EPA 453/R–08–003, September 2008.

4. ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' June 1992.

5. Memorandum dated March 17, 2011, from Scott Mathias, Interim Director, Air Quality Policy Division, U.S. EPA to Regional Air Division Directors, Subject: ''Approving SIP Revisions Addressing VOC RACT Requirements for Certain Coatings Categories.''

B. Do the documents meet the evaluation criteria?

PCAQCD's *2016 RACT SIP* provides the District's demonstration that the applicable SIP for the PCAQCD satisfies CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. This conclusion is based on the District's analysis of SIP-approved requirements that apply to the following: (1) Source categories for which a CTG has been issued, and (2) major non-CTG stationary sources of VOC or NO_X emissions.

With respect to CTG source categories, PCAQCD determined that it only had sources subject to the CTGs covering surface coatings and gasoline service stations. PCAQCD submitted for SIP approval two rules to implement RACT for these categories: Chapter 5, Article 13 Surface Coating Operations, and Chapter 5, Article 20 Storage and Loading of Gasoline at Gasoline Dispensing Facilities. We find that these rules meet the enforceability, stringency, and SIP relaxation/revision requirements, with the exception of a number of identified deficiencies. Specifically, we find that Article 13 largely incorporates the VOC content limits from Table 2 of the 2008 Miscellaneous Metal and Plastic Parts (MMPP) Coatings CTG. However, Article 13 does not contain all of the recommended metal parts coating categories from the CTG, it allows some exemptions not found in the CTG, and it does not address recommended categories and limits in Tables 3 through 6 of the MMPP CTG. We also find that Article 20 needs to be strengthened to correct an enforceability issue. These approvability issues preclude full approval of these two rules. In spite of these deficiencies, inclusion of these two rules would substantially strengthen the SIP because the SIP does not currently contain rules covering these sources. Our TSD has more information about our evaluation of Articles 13 and 20.

Where there are no existing sources covered by a particular CTG document, or no major non-CTG sources, states may, in lieu of adopting RACT requirements for those sources, adopt negative declarations certifying that there are no such sources in the relevant nonattainment area. Appendix C of the *2016 RACT SIP* lists the District's negative declarations where it has no sources subject to the applicable CTG for the 2008 8-hour ozone NAAQS. These negative declarations are re-listed in Table 2 below. The District concludes that it has no sources subject to the CTGs based on a review of its permit files and emission inventory as well as business listings and county planning records.

In addition, the *2016 RACT SIP* states ''[t]here is one Title V (*i.e.,* major source) in the Pinal County portion of the nonattainment area which is a landfill . . . [and the] facility is currently subject to the 40 CFR part 60, subpart WWW Standards of Performance (NSPS) for Municipal Solid Waste Landfills and the 40 CFR part 63, subpart AAAA National Emission Standards for Hazardous Air Pollutants (NESHAP) for Municipal Waste Landfills.'' Appendix A of the *2016 RACT SIP* indicates this landfill has a potential to emit of 15.1 tpy of VOC. As described in more detail in our TSD, this landfill has a potential to emit less than 100 tpy of VOC and thus is not a major source. The District is therefore not required to demonstrate that this source is implementing RACT-level controls.

We reviewed PCAQCD's list of permitted facilities and list of negative declarations in the *2016 RACT SIP* Appendices A and C, respectively. We also searched the EPA's National Emissions Inventory for 2011 and 2014 to verify the District's conclusion that it has no stationary sources subject to the CTG source categories for which it has adopted a negative declaration. We agree with the District's negative declarations in the *2016 RACT SIP* Appendix C. However, our review found that the cutback asphalt CTG and certain sections of the MMPP CTG were not addressed by either a negative declaration or a RACT rule. Also, the District must adopt negative declarations for major VOC and major NO_X sources since available data shows the District does not have stationary sources in the ozone nonattainment area that emit at least 100 tpy. These approvability issues preclude full approval of the *2016 RACT SIP.* Our TSD has more information on our evaluation of the *2016 RACT SIP.*

TABLE 2—PCAQCD NEGATIVE DECLARATIONS

EPA document No.	Title
EPA–450/2–77–008	Surface Coating of Cans.
EPA–450/2–77–008	Surface Coating of Coils.
EPA–450/2–77–008	Surface Coating of Paper.
EPA–450/2–77–008	Surface Coating of Fabric.
EPA–450/2–77–008	Surface Coating of Automobiles and Light-Duty Trucks.
EPA–450/2–77–022	Solvent Metal Cleaning.
EPA–450/2–77–025	Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.
EPA–450/2–77–026	Tank Truck Gasoline Loading Terminals.
EPA–450/2–77–032	Surface Coating of Metal Furniture.
EPA–450/2–77–033	Surface Coating of Insulation of Magnet Wire.
EPA–450/2–77–034	Surface Coating of Large Appliances.
EPA–450/2–77–035	Bulk Gasoline Plants.
EPA–450/2–77–036	Storage of Petroleum Liquids in Fixed-Roof Tanks.
EPA–450/2–78–029	Manufacture of Synthesized Pharmaceutical Products.
EPA–450/2–78–030	Manufacture of Pneumatic Rubber Tires.
EPA–450/2–78–032	Factory Surface Coating of Flat Wood Paneling.
EPA–450/2–78–033	Graphic Arts-Rotogravure and Flexography.
EPA–450/2–78–036	Leaks from Petroleum Refinery Equipment.
EPA–450/2–78–047	Petroleum Liquid Storage in External Floating Roof Tanks.
EPA–450/2–78–051	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.
EPA–450/3–82–009	Large Petroleum Dry Cleaners.
EPA–450/3–83–006	Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.
EPA–450/3–83–007	Leaks from Natural Gas/Gasoline Processing Plants.
EPA–450/3–83–008	Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.
EPA–450/3–84–015	Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.
EPA–450/4–91–031	Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.
EPA–453/R–96–007	Wood Furniture Manufacturing Operations.
EPA–453/R–94–032, 61 FR 44050; 8/27/96.	ACT Surface Coating at Shipbuilding and Ship Repair Facilities Shipbuilding and Ship Repair Operations (Surface Coating).
EPA–453/R–97–004, 59 FR 29216; 6/06/94.	Aerospace MACT and Aerospace (CTG & MACT).
EPA–453/R–06–001	Industrial Cleaning Solvents.
EPA–453/R–06–002	Offset Lithographic Printing and Letterpress Printing.
EPA–453/R–06–003	Flexible Package Printing.
EPA–453/R–06–004	Flat Wood Paneling Coatings.
EPA 453/R–07–003	Paper, Film, and Foil Coatings.
EPA 453/R–07–004	Large Appliance Coatings.
EPA 453/R–07–005	Metal Furniture Coatings.
EPA 453/R–08–004	Fiberglass Boat Manufacturing Materials.
EPA 453/R–08–005	Miscellaneous Industrial Adhesives.
EPA 453/R–08–006	Automobile and Light-Duty Truck Assembly Coatings.

C. What are the deficiencies?

On March 11, 2019,[2] the EPA provided comments to PCAQCD on the approvability issues in the *2016 RACT SIP* and the submitted rules. The following provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the *2016 RACT SIP* and submitted rules.

1. 2016 RACT SIP

a. Missing negative declarations for major VOC sources and major NO_X sources.

b. Missing negative declaration (or rule) for cutback asphalt.

2. Chapter 5, Article 13—Surface Coating Operations

a. Rule exempts categories that are recommended for regulation by the CTG.

b. One VOC content limit is less stringent than the CTG, and some CTG coating categories and Tables 3 through 6 of the MMPP CTG are not addressed.[3]

c. The emission control system requirements are potentially confusing and should be clarified.

3. Chapter 5, Article 20—Storage and Loading of Gasoline at Gasoline Dispensing Facilities

a. An exemption to verify that a gasoline cargo tank has a valid vapor tightness certification decal prior to loading gasoline is overly broad and challenging to verify or enforce.

b. One section must be reworded to state a prohibition.

Our TSD has additional information on the deficiencies in the RACT SIP and submitted rules.

D. EPA Recommendations To Further Improve the RACT SIP and the Submitted Rules

Our March 11, 2019 comment letter and TSD include recommendations for the next time the local agency modifies the rules. These recommendations would strengthen and improve enforceability of the rules. Our comment letter also includes a recommendation to adopt a negative declaration for the 2016 CTG for the Oil and Natural Gas Industry. Our comment letter and TSD are included in the docket materials.

[2] Letter dated March 11, 2019, from Doris Lo, Manager, Rules Office, EPA, Region IX, to Michael Sundblom, Director, Pinal County Air Quality Control District, Subject: ''RE: EPA Comments on the Pinal County Air Quality Control District Reasonably Available Control Technology (RACT) Analysis, Negative Declaration and Rules Adoption.''

[3] The deficiency regarding the lack of coverage for Tables 3 through 6 can be addressed by either modifying Chapter 5, Article 13 to cover these categories of sources, or through a negative declaration for these tables.

E. Public Comment and Proposed Action

For the reasons discussed above and explained more fully in our TSD, the EPA proposes to partially approve and partially disapprove the ADEQ's February 3, 2017 submittal of the PCAQCD *2016 RACT SIP* as a revision to the Arizona SIP. Under CAA section 110(k)(3), we propose to approve the *2016 RACT SIP,* with the exception of major VOC sources, major NO_X sources, and the following CTG source categories: Cutback asphalt, MMPP coatings, Gasoline Service Stations, and Surface Coating of Miscellaneous Metal Parts and Products, as satisfying the RACT requirements of CAA section 182(b)(2) and (f) for the Pinal County portion of the Phoenix-Mesa ozone nonattainment areas.

Also under CAA section 110(k)(3), we propose to disapprove the *2016 RACT SIP* as it pertains to major VOC sources, major NO_X sources, cutback asphalt, and the MMPP coatings CTG (Tables 3 through 6) based on the EPA's finding that these categories were not adequately addressed in the *2016 RACT SIP.*

Because the inclusion of Chapter 5, Articles 13 and 20 would strengthen the SIP, we are proposing a limited approval of Chapter 5, Article 13 (excluding 5–13–390) [4] and Article 20, as authorized by sections 110(k)(3) and 301(a) of the Act. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of Chapter 5, Articles 13 and 20, under section 110(k)(3) based on the stringency and enforceability issues the EPA identified in these rules.

Because Chapter 5, Article 13 is the rule the District submitted in fulfillment of its RACT SIP obligation for the 1978 CTG for Surface Coating of Miscellaneous Metal Parts and Products, and the 2008 CTG for MMPP Coatings (except for Tables 3 through 6), the proposed limited approval and limited disapproval of Chapter 5, Article 13 would not fully satisfy the District's RACT SIP obligation for these two CTG source categories. Once the EPA approves a SIP revision to correct the deficiencies in Chapter 5, Article 13, the District's RACT SIP obligation will be met for the Surface Coating of Miscellaneous Metal Parts and Products CTG, and the MMPP Coatings CTG (except for Tables 3 through 6).[5] Similarly, because Chapter 5, Article 20 was submitted in fulfillment of the District's RACT SIP obligation for the 1975 Gasoline Service Stations CTG, the proposed limited approval and limited disapproval of this rule would not fully satisfy the District's RACT SIP obligation for this CTG source category. Once the EPA approves a SIP revision to correct the deficiencies in Chapter 5, Article 20, the District's RACT SIP obligation will be met for the Gasoline Service Stations CTG source category.

The EPA is committed to working with the ADEQ and PCAQCD to resolve the identified RACT deficiencies. However, should we finalize the proposed partial disapproval of the above-enumerated elements of the *2016 RACT SIP* and the limited disapproval of Chapter 5, Articles 13 and 20, the action would trigger a 2-year clock for the federal implementation plan (FIP) requirement under section 110(c). In addition, final disapproval would trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the deficiencies in the *2016 RACT SIP* and two submitted rules within 18 months of the effective date of the final action.

We will accept comments from the public on the proposed partial approval and partial disapproval for the *2016 RACT SIP* and the proposed limited approval and limited disapproval for Chapter 5, Articles 13 and 20 until June 12, 2019. If finalized, this action would incorporate the *2016 RACT SIP,* negative declarations, and submitted rules into the SIP, including those provisions identified as deficient. Our proposed approval of the submitted rules is limited because the EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3).

Note that the submitted rules have been adopted by the PCAQCD, and the EPA's final limited disapproval would not prevent the local agency from enforcing them. The limited disapproval also would not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP as discussed in a Memorandum dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, U.S. EPA to EPA Regional Air Directors, Regions I–X, Subject: ''Processing of State Implementation Plan (SIP) Submittals,'' found at: *https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf.*

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the PCAQCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX 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

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not an Executive Order 13771 regulatory action because SIP approvals, including limited approvals, are exempted under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed action does

[4] PCAQCD's SIP submittal explicitly excludes section 5–13–390.

[5] We will evaluate how the District addresses the MMPP CTG Tables 3 through 6 in its future submittal. As noted above, the District may either modify Chapter 5, Article 13 to cover these sources, or adopt a negative declaration.

not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this proposed action.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this proposed action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this proposed action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 30, 2019.

Michael Stoker,

Regional Administrator, Region IX.

[FR Doc. 2019–09830 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0041; FRL–9991–91]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before June 12, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, 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:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 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: Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting 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.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11136. (EPA–HQ–OPP–2019–0048). Monsanto Company (1300 I Street NW, Suite 450 East, Washington, DC 20005) requests to establish an exemption from the requirement of a tolerance for residues of formic acid (CAS Reg. No. 64–18–6) and sodium formate (CAS Reg. No. 141–53–7) when used as an inert ingredient in pesticide formulations applied to growing crops pre- and post-harvest under 40 CFR 180.910 for use as adjuvants or pH buffering agents. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

PP IN–11242. (EPA–HQ–OPP–2018–0736). Arkema Inc. c/o Lewis & Harrison, LLC, 2461 South Clark Street, Arlington, VA 22202, requests to establish an exemption from the requirement of a tolerance for residues of 2-propenoic acid, methyl ester, polymer with ethene and 2,5-furandione (CAS Reg. No. 88450–35–5), with a minimum number average molecular weight of 10,694 daltons, when used as an inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD

PP IN–11244. (EPA–HQ–OPP–2019–0099). Solvay USA Inc., c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192, requests to establish an exemption from the requirement of a tolerance for residues of 2-propenoic acid, ethyl ester, polymer, with sodium 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonate (1:1), oxidized (CAS Reg. No. 2230086–40–3) when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

PP IN–11247. (EPA–HQ–OPP–2019–0098). LNouvel, Inc., 4657 Courtyard Trail, Plano, TX 75024, requests to establish an exemption from the requirement of a tolerance for residues of tetraethyl orthosilicate (CAS Reg. No. 78–10–4) when used as a pesticide inert ingredient in pesticide formulations at a maximum of 50,000 parts per million (ppm) under 40 CFR 180.910 and 180.930. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

PP IN–11248. (EPA–HQ–OPP–2019–0138). LNouvel, Inc., 4657 Courtyard Trail, Plano, TX 75024–2114, requests to establish an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), alpha-(3-(1,3,3,3-tetramethyl-1-((trimethylsilyl)oxy)disiloxanyl)propyl)-omega-hydroxy- (CAS Reg. No. 67674–67–3), when used as an inert ingredient in pesticide formulations under 40 CFR 180.930. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD

PP IN–11251. (EPA–HQ–OPP–2019–0096). Keller and Heckman LLP, 1001 G Street, NW, Suite 500 West, Washington, DC 20001 on behalf of Kuraray Co. Ltd., requests to establish an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethene and ethenol with a minimum number average molecular weight (in amu), 20,000 (CAS Reg. No. 26221–27–2) when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

PP IN–11254. (EPA–HQ–OPP–2019–0093). The Clariant Corporation, 4000 Monroe Road, Charlotte, NC, requests to amend an exemption from the requirement of a tolerance for residues of Alkyl Alcohol Alkoxylate (AAA) surfactants to include Oxirane, 2-methyl-, polymer with oxirane, mono undecyl ether branched and linear (CAS Reg. No. 2222805–23–2) when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.910, 180.930, 180.940 and 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

Authority: 21 U.S.C. 346a.

Dated: April 16, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2019–09776 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 92
Monday, May 13, 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

Submission for OMB Review; Comment Request

May 8, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 12, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Location of Irradiation Treatment Facilities in the United States.

OMB Control Number: 0579–0383.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering into the United States, preventing the spread of pests and noxious weeds not widely distributed into the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act (7 U.S.C. 7701—*et seq.*) authorizes USDA to carry out this mission. Under the Plant Protection Act, the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests in the United States.

Need and Use of the Information: APHIS will use the following information collection activities to provide criteria for the approval/certification of irradiation treatment facilities in an effort to prevent the introduction or spread of plant pests and plant diseases in the United States: Request for Initial Certification and Inspection of Facility; Certification and Recertification of Facility; Denial and Withdrawal of Certification; Compliance Agreement; Irradiation Facilities Treating Imported Articles; Irradiation Treatment Framework Equivalency Work plan; Irradiation Facilities Notification; Recordkeeping; Facility to Maintain and Provide Updated Map Identifying Places Horticultural/Crops are Grown; Facility Contingency Plan; Letter of Concurrence or Non-Agreement; Treatment Arrangements; Pest Management Plan; and Facility Map—Detailed Layout of Facility. If the information is not collected, APHIS would have no practical way of determining that any given commodity had actually been irradiated.

Description of Respondents: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Number of Respondents: 24.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 988.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–09758 Filed 5–10–19; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Jersey Advisory Committee to the Commission will convene by conference call, on Friday, May 17, 2019 at 11:30 a.m. (EDT). The purpose of the meeting is to announce the selection of the topic of the Committee's civil rights project, identify the members appointed to the Planning Workgroup and to discuss plans for the Briefing Meeting.

DATES: Friday, May 17, 2019, at 11:30 a.m. (EDT).

ADDRESSES: Public Call-In Information: Conference call number: 1–888–394–8218 and conference call ID number: 6970676.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–394–8218 and conference call ID number: 6970676. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no

charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–888–394–8218 and conference call ID number: 6970676.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjVAAQ*; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Friday, May 17, 2019 at 11:30 a.m. (EDT)

I. Welcome and Roll Call

II. Planning Meeting

—Announce Committee Selection of Civil Rights Project

—Identify members Appointed to the Planning Workgroup

—Discuss Plans for the Briefing Meeting

III. Other Business

IV. Next Meeting

V. Public Comment

VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: May 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09749 Filed 5–10–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Delaware Advisory Committee to the Commission will convene by conference call, on Monday, May 20, 2019 at 4:00 p.m. (EDT). The purpose of the meeting is to discuss and vote on the Committee's report on implicit bias and policing in communities of color in Delaware.

DATES: Monday, May 20, 2019 at 4:00 p.m. (EDT).

Public Call-In Information: Conference call number: 1–888–254–3590 and conference call ID: 4124362.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–888–254–3590 and conference call ID: 4124362. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number:1–888–254–3590 and conference call ID: 4124362.

Members of the public are invited make statements during the Public Comment section of the meeting or to submit written comments; the written comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlEAAQ* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Monday, May 20, 2019 at 4:00 p.m. (EDT)

I. Welcome and Roll Call

II. Project Planning

—Discuss and Vote on Draft Report

III. Other Business

IV. Public Comment

V. Next Meeting

VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: May 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09744 Filed 5–10–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the District of Columbia Advisory Committee to the Commission will convene by conference

call, at 12:00 p.m. (EDT) Thursday, June 6, 2019. The purpose of the planning meeting is to continue project planning for a future briefing meeting on the Committee's civil rights project that examines the intersection of homelessness, mental health and the criminal justice system, including a review of the DC Mental Health Court.

DATES: Thursday, June 6, 2019 at 12:00 p.m. (EDT).

ADDRESSES: Public Call-In Information: Conference call number: 1–877–260–1479 and conference call ID number: 1929821.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–877–260–1479 and conference call ID number: 1929821.

Members of the public are invited to make statements during the Public Comments section of the meeting or to submit written comments. The comments must be received in the regional office by Monday, July 8, 2019. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlKAAQ.* Please click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

Thursday, June 6, 2019, at 12:00 p.m. (EDT)

I. Welcome and Rollcall
II. Discuss Project and Hearing Planning
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Dated: May 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09746 Filed 5–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: American Community Survey Methods Panel Tests, 2019 Due Dates Test.

OMB Control Number: 0607–0936.

Form Number(s): ACS–1, ACS internet.

Type of Request: Non-substantive Change Request.

Number of Respondents: 144,000.

Average Hours per Response: 40 minutes.

Burden Hours: No additional burden hours are requested under this non-substantive change request.

Needs and Uses: The American Community Survey (ACS) collects detailed socioeconomic data from about 3.5 million housing units in the United States and 36,000 in Puerto Rico each year. The ACS also collects detailed socioeconomic data from about 195,000 residents living in Group Quarter (GQ) facilities. An ongoing data collection effort with an annual sample of this magnitude requires that the ACS continue research, testing, and evaluations aimed at reducing respondent burden, improving data quality, achieving survey cost efficiencies, and improving ACS questionnaire content and related data collection materials. The ACS Methods Panel is a research program designed to address and respond to issues and survey needs.

Residents of sampled housing units are invited to self-respond to the ACS through a series of up to five mailings. These mailings are sent to respondents over approximately six and a half weeks. Research has shown that when a request has a sense of urgency, people are more likely to comply with the request (Kotter, 2008; Gunelius, 2009). One way of creating a sense of urgency is through deadline or due date messaging. The current ACS mailings contain implied due date messages, such as ''. . . please complete the survey online as soon as possible'' or ''If you have not already responded, please do so now'' but do not provide an explicit due date. The purpose of this test is to assess the effect on self-response of an explicit due date message in the fifth mailing.

Six experimental treatments are proposed. One treatment will serve as the control and will not contain an explicit due date. The other treatments will vary the use and placement of a due date.

This test will study the impact on self-response and cost of including a due date in the fifth mailing. To field this test, the Census Bureau plans to use the ACS production sample (clearance number: 0607–0810, expires 06/30/2020). Thus, there is no increase in burden from this test since each treatment will result in the same burden estimate per interview (40 minutes). The Census Bureau proposes to test the use of due date messages as part of the ACS September or October 2019 panel, adhering to the same data collection protocols as production ACS.

The ACS sample design consists of randomly assigning each monthly sample panel into 24 groups of approximately 12,000 addresses each. Each group, called a methods panel group, within a monthly sample is representative of the full monthly sample. Each monthly sample is a representative subsample of the entire annual sample and is representative of the sampling frame. The Census Bureau proposes to use two randomly selected methods panel groups for each treatment. Hence, each treatment will have a sample size of approximately 24,000 addresses. In total, approximately 144,000 addresses will be used for the six experimental treatments. The remaining sample will receive production materials.

The Census Bureau proposes to evaluate treatment comparisons by comparing self-response rates. For each comparison a two-tailed test will be used so that the Census Bureau can measure the impact on the evaluation measure in either direction with 80 percent power, at the $\alpha = 0.1$ level. The sample size will be able to detect differences of approximately 1.74 percentage points between the self-response return rates between two experimental treatments. Additionally, a cost analysis will also be conducted.

Affected Public: Individuals or households.

Frequency: One-time test as part of the monthly American Community Survey.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–09767 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 1903292999–9299–01]

RIN 0691–XC090

BE–9: Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE–9). The data collected on the BE–9 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–9 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–9 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. offices, agents, or other representatives of foreign airline operators that had total reportable revenues or total reportable expenses that were $5 million or more during the prior year, or are expected to be $5 million or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign airline operators' revenues and expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–9 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-9help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0068. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 6 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0068, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09790 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329314–9314–01]

RIN 0691–XC099

BE–577: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public

that it is conducting the mandatory survey titled Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (BE–577). The data collected on the BE–577 survey are needed to measure the size and economic significance of U.S. direct investment abroad and its impact on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Jessica Hanson, Chief, Direct Transactions and Positions Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9595; or via email at *Jessica.Hanson@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–577 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–577 survey forms and instructions are available at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–577.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/dia* and submitted through mail or fax. Form BE–577 inquiries can be made by phone to BEA at (301) 278–9261 or by sending an email to *be577@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0004. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0004, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09809 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329307–9307–01]

RIN 0691–XC094

BE–30: Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers (BE–30). The data collected on the BE–30 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–30 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–30 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. ocean carriers that had total reportable revenues or total reportable expenses that were $500,000 or more during the prior year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. ocean freight carriers' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–30 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-30help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09796 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329300–9300–01]

RIN 0691–XC091

BE–11: Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of U.S. Direct Investment Abroad (BE–11). The data collected on the BE–11 survey are needed to measure the size and economic significance of U.S. direct investment abroad and its impact on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Ricardo Limés, Chief, Multinational Operations Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9659; or via email at *Ricardo.Limes@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–11 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. A completed report covering the entity's fiscal year ending during the previous calendar year is due by May 31, 2019. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–11 survey forms and instructions are available at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–11.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. parent companies and their foreign affiliates.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/dia* and submitted through mail or fax. Form BE–11 inquiries can be made by phone to BEA at (301) 278–9418 or by sending an email to *be10/11@bea.gov.*

When To Report: A completed report covering an entity's fiscal year ending during the previous calendar year is due by May 31, 2019.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0053. 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 control number assigned by OMB. A complete response includes one BE–11A form (with an estimated average reporting burden of 7 hours) for reporting domestic operations and one or more BE–11B (12 hours), BE–11C (2 hours), or BE–10D (1 hour) forms for reporting foreign operations. Public reporting burden for this collection of information is estimated to average a total of 103.4 hours per complete response. Additional

information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0053, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09792 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329312–9312–01]

RIN 0691–XC098

BE–185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE–185). The data collected on the BE–185 survey are needed to measure U.S. trade in financial services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–185 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801, and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 4908(b)). Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–185 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had reportable sales of financial services to foreign persons that exceeded $20 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year; or had reportable purchases of financial services from foreign persons that exceeded $15 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions in financial services between U.S. financial services providers and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–185 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-185help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0065. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 10 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0065, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108 and 15 U.S.C. 4908(b).

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09804 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329309–9309–01]

RIN 0691–XC096

BE–45: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45). The data collected on the BE–45 survey are needed to measure U.S. trade in insurance services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–45 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 60 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 90 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–45 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. persons whose reportable transactions exceeded $8 million (positive or negative) during the prior calendar year, or are expected to exceed that amount during the current calendar year. See BE–45 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on cross-border insurance transactions between U.S. insurance companies and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–45 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-45help@bea.gov.*

When To Report: Reports are due to BEA 60 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0066. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 9 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0066, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09808 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190401316–9316–01]

RIN 0691–XC100

BE–605: Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent (BE–605). The data collected on the BE–605 survey are needed to measure the size and economic significance of foreign direct investment in the United States and its impact on the U.S. economy. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Jessica Hanson, Chief, Direct Transactions and Positions Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9595; or via email at *Jessica.Hanson@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–605 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described

separately in 15 CFR part 801. The BE–605 survey forms and instructions are available at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–605.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/fdi* and submitted through mail or fax. Form BE–605 inquiries can be made by phone to BEA at (301) 278–9422 or by sending an email to *be605@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0009. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0009, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09818 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329308–9308–01]

RIN 0691–XC095

BE–37: Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37). The data collected on the BE–37 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–37 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–37 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. airline operators that had total reportable revenues or total reportable expenses that were $500,000 or more during the prior year, or are expected to be $500,000 or more during the current year.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. airline operators' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–37 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-37help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be

viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09802 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329311–9311–01]

RIN 0691–XC097

BE–125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125). The data collected on the BE–125 survey are needed to measure U.S. trade in services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–125 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–125 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had combined reportable sales of services or intellectual property to foreign persons that exceeded $6 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of services or intellectual property from foreign persons that exceeded $4 million during the prior fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–125 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. international trade in selected services and intellectual property.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–125 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-125help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 90 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0067. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 21 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0067, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09810 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329301–9301–01]

RIN 0691–XC092

BE–15: Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Direct Investment in the United States

(BE–15). The data collected on the BE–15 survey are needed to measure the size and economic significance of foreign direct investment in the United States and its impact on the U.S. economy. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Ricardo Limés, Chief, Multinational Operations Branch (BE–49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9659; or via email at *Ricardo.Limes@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–15 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. A completed report covering the entity's fiscal year ending during the previous calendar year is due by May 31, 2019 (or by June 30 for reporting companies that use BEA's eFile system). This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–15 survey forms and instructions are available at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, and that meets the additional conditions detailed in Form BE–15.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. affiliates of foreign companies.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/fdi* and submitted through mail or fax. Form BE–15 inquiries can be made by phone to BEA at (301) 278–9247 or by sending an email to *be12/15@bea.gov.*

When To Report: A completed report covering an entity's fiscal year ending during the previous calendar year is due by May 31, 2019 (or by June 30 for reporting companies that use BEA's eFile system).

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0034. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 19.7 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0034, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09794 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 190329302–9302–01]

RIN 0691–XC093

BE–29: Annual Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29). The data collected on the BE–29 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278–9189; or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–29 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 90 days after the end of each calendar year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–29 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. agents of foreign carriers who handle 40 or more foreign ocean carrier port calls in the reporting period, or had reportable expenses of $250,000 or more in the reporting period for all foreign ocean vessels handled by the U.S. Agent. See BE–29 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign ocean carriers' expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–29 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-29help@bea.gov.*

When To Report: Reports are due to BEA 90 days after the end of each calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0012. 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 control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 3 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; and to the Office of Management and Budget, Paperwork Reduction Project 0608–0012, 725 17th Street NW, Washington, DC 20503, or via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2019–09795 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–76–2018]

Foreign-Trade Zone (FTZ) 70—Detroit, Michigan, Authorization of Production Activity, Fluid Equipment Development Company, LLC (Energy Recovery Turbines and Centrifugal Pumps), Monroe, Michigan

On November 28, 2018, the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, submitted a notification of proposed production activity to the FTZ Board on behalf of Fluid Equipment Development Company, LLC, within Site 77, in Monroe, Michigan.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (83 FR 63154–63155, December 7, 2018). On May 7, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: May 7, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–09789 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–954]

Certain Magnesia Carbon Bricks From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is issuing a final no shipments determination in the final results of the antidumping duty administrative review on certain magnesia carbon bricks (MCBs) from the People's Republic of China (China), for the September 1, 2016 through August 31, 2017 period of review (POR).

FOR FURTHER INFORMATION CONTACT: Christian Llinas, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4877.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2018, Commerce published the preliminary results of the seventh administrative review of the antidumping duty order on MCBs from China for the POR.[1] For a history of the events that occurred since the *Preliminary Results,* see the Issues and Decision Memorandum.[2] On January 28, 2019, Commerce tolled the deadlines in this case and the final results by 40 days.[3] On March 5, 2019, Commerce extended the deadline for the final results to May 7, 2019.[4]

Scope of the Order

The scope of the order includes certain chemically-bonded MCBs from China.[5]

Analysis of Comments Received

All issues raised by interested parties in their case and rebuttal briefs, and our analysis thereof, are addressed in the Issues and Decision Memorandum. The issues are identified in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit

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[1] *See Certain Magnesia Carbon Bricks from the People's Republic of China; Preliminary Results of the Antidumping Duty Administrative Review; 2016–2017,* 83 FR 51435 (October 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Magnesia Carbon Bricks from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2016 Antidumping Duty Administrative Review,'' which is dated concurrently with these final results and is hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See* Memorandum to the Record, from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[4] *See* ''Administrative Review of the Antidumping Duty Order on Certain Magnesia Carbon Bricks from the People's Republic of China: Extension of Deadline for the Final Results,'' dated March 5, 2019.

[5] For a complete description of the scope of the order, *see* ''Certain Magnesia Carbon Bricks from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Seventh Antidumping Duty Administrative Review: 2016–2017,'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

(CRU), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

Commerce preliminarily found that Fedmet, Fengchi Imp. and Exp. Co., Ltd. of Haicheng City, Fengchi Mining Co., Ltd. of Haicheng City, and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi), and RHI Refractories Liaoning Co., Ltd. (RHI) had no reviewable entries, shipments, or sales of the subject merchandise to the United States during the POR.[6] After the *Preliminary Results,* with respect to Fengchi and RHI, no party commented on our preliminary no shipments finding, nor has any party submitted record evidence which would call this finding into question. Therefore, for the final results, we continue to find that Fengchi and RHI had no shipments of subject merchandise during the POR. With respect to Fedmet, we placed entry packages obtained from Customs and Border Protection (CBP) on the record of this review, and interested parties submitted comments on this information.[7] As discussed in the Issues and Decision Memorandum, we continue to find that Fedmet also did not have any reviewable entries, shipments, or sales of subject merchandise to the United States during the POR.[8] Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

Assessment Rates

We have not calculated any assessment rates in this administrative review. Pursuant to Commerce's assessment practice, because we have determined that Fedmet, Fengchi, and RHI had no reviewable entries, shipments, or sales of the subject merchandise to the United States during the POR, any suspended entries that entered under their case numbers (*i.e.,* at that exporter's rate) will be liquidated at the China-wide entity rate.[9] We will instruct CBP to liquidate entries from the China-wide entity at the current rate for the China-wide entity (*i.e.,* 236.00 percent). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication date of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate previously established for the China-wide entity (*i.e.,* 236.00 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction. We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issue
V. Discussion of the Issue: Treatment of Fedmet
VI. Recommendation

[FR Doc. 2019–09785 Filed 5–10–19; 8:45 am]

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[6] *See Preliminary Results* at ''Preliminary Determination of No Shipments.''

[7] *See* Memo to the File, ''Placement of U.S. Customs and Border Protection (CBP) Entry Summary Packages Regarding Fedmet Resources Corporation on the Record of the Administrative Review,'' dated December 4, 2018 (CBP Entry Package Memo); the petitioners' December 14, 2018 submission; Fedmet's December 14, 2018 submission.

[8] *See* Issues and Decision Memorandum.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Fresh Tomatoes From Mexico: Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 13, 2019.

SUMMARY: On February 6, 2019, the Department of Commerce (Commerce) gave 90 days' notice of intent to withdraw from the 2013 Suspension Agreement on Fresh Tomatoes from Mexico (2013 Agreement), terminate the 2013 Agreement, and continue the antidumping duty (AD) investigation initiated in 1996. Because a new suspension agreement has not been signed, Commerce is withdrawing from and terminating the suspension agreement, rescinding the administrative review of the 2013

Agreement, and continuing the antidumping duty (AD) investigation.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Rebecca Lee, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–6188, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1996, Commerce initiated an AD investigation to determine whether imports of fresh tomatoes from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV).[1] On May 16, 1996, the United States International Trade Commission (ITC) notified Commerce of its affirmative preliminary injury determination.

On October 10, 1996, Commerce and certain tomato growers/exporters from Mexico initialed a proposed agreement to suspend the AD investigation. On October 28, 1996, Commerce issued its *1996 Preliminary Determination* and found imports of fresh tomatoes from Mexico were being sold at LTFV in the United States.[2] On the same day, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed an agreement to suspend the investigation (1996 Agreement).[3]

On May 31, 2002, certain tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico provided written notice to Commerce of their withdrawal from the 1996 Agreement, effective July 30, 2002. Because the 1996 Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, effective July 30, 2002, Commerce terminated the 1996 Agreement, terminated the sunset review of the suspended investigation, and resumed the AD investigation.[4]

On November 8, 2002, Commerce and certain tomato growers/exporters from Mexico initialed a proposed agreement suspending the resumed AD investigation on imports of fresh tomatoes from Mexico. On December 4, 2002, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed a new suspension agreement (2002 Agreement).[5]

On November 26, 2007, certain tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States provided written notice to Commerce of their withdrawal from the 2002 Agreement, effective 90 days from the date of their withdrawal letter (*i.e.,* February 24, 2008), or earlier, at Commerce's discretion.

On November 28, 2007, Commerce and certain tomato growers/exporters from Mexico initialed a new proposed agreement to suspend the AD investigation on imports of fresh tomatoes from Mexico. On December 3, 2007, Commerce released the initialed agreement to interested parties for comment. On December 17 and 18, 2007, several interested parties filed comments in support of the initialed agreement.

Because the 2002 Agreement would no longer cover substantially all imports of fresh tomatoes from Mexico, Commerce published a notice of intent to terminate the 2002 Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the AD investigation.[6] On January 16, 2008, Commerce published a notice of termination of the 2002 Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the AD investigation, effective January 18, 2008.[7] On January 22, 2008, Commerce signed a new suspension agreement (2008 Agreement) with producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico.[8]

On August 15, 2012, certain growers/exporters of fresh tomatoes from Mexico filed a letter with Commerce requesting consultations under Section IV.G.[9] of the 2008 Agreement, and Commerce agreed to consult. As a result of these consultations, on February 2, 2013, Commerce and tomato growers/exporters from Mexico accounting for a significant percentage of all fresh tomatoes imported into the United States from Mexico initialed a draft agreement that would suspend a resumed AD investigation on fresh tomatoes from Mexico. On February 8, 2013, Commerce published a notice of intent to terminate the 2008 Agreement, intent to terminate the five-year sunset review of the suspended investigation, and intent to resume the AD investigation.[10] On March 1, 2013, Commerce issued a notice of termination of the 2008 Agreement, termination of the five-year sunset review of the suspended investigation, and resumption of the AD investigation.[11] On March 4, 2013, Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed a new suspension agreement (2013 Agreement).[12]

On January 9, 2018, Commerce issued a letter that formally opened consultations with the Mexican tomato growers/exporters to negotiate possible revisions to the 2013 Agreement.[13] Since that time, Commerce has continued to negotiate with representatives of the Mexican growers/exporters and, in parallel, has continually consulted with representatives of the domestic industry.

On February 1, 2018, Commerce initiated a five-year sunset review of the suspended investigation.[14] On March 29, 2018, the Florida Tomato Exchange (FTE), a member of the U.S. petitioning industry, filed a request that Commerce conduct an administrative review on

[1] *See Initiation of Antidumping Duty Investigation: Fresh Tomatoes from Mexico,* 61 FR 18377 (April 25, 1996).

[2] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes from Mexico,* 61 FR 56608 (November 1, 1996) (*1996 Preliminary Determination*).

[3] *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 61 FR 56618 (November 1, 1996).

[4] *See Notice of Termination of Suspension Agreement, Termination of Sunset Review, and Resumption of Antidumping Investigation: Fresh Tomatoes from Mexico,* 67 FR 50858 (August 6, 2002).

[5] *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 67 FR 77044 (December 16, 2002).

[6] *See Fresh Tomatoes from Mexico: Notice of Intent to Terminate Suspension Agreement, Intent to Terminate the Five-Year Sunset Review, and Intent to Resume Antidumping Investigation,* 72 FR 70820 (December 13, 2007).

[7] *See Fresh Tomatoes from Mexico: Notice of Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation,* 73 FR 2887 (January 16, 2008).

[8] *See Suspension of Antidumping Investigation: Fresh Tomatoes from Mexico,* 73 FR 4831 (January 28, 2008).

[9] Section IV.G. of the 2008 Agreement states that Commerce will consult with signatory producers/exporters regarding the operations of the 2008 Agreement. A party may request such consultations in any April or September (*i.e.* prior to the beginning of each season) following the first year of the signing of the 2008 Agreement.

[10] *See Fresh Tomatoes from Mexico: Intent To Terminate Suspension Agreement and Resume Antidumping Investigation and Intent To Terminate Sunset Review,* 78 FR 9366 (February 8, 2013).

[11] *See Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Termination of Five-Year Sunset Review, and Resumption of Antidumping Investigation,* 78 FR 14771 (March 7, 2013).

[12] *See Fresh Tomatoes from Mexico: Suspension of Antidumping Investigation,* 78 FR 14967 (March 8, 2013).

[13] *See* Letter from Commerce to CAADES *et al.,* ''Consultations on the 2013 Agreement Suspending the Antidumping Investigation on Fresh Tomatoes from Mexico,'' dated January 9, 2018.

[14] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 4641 (February 1, 2018).

growers/exporters of fresh tomatoes from Mexico covered by the 2013 Agreement. On May 2, 2018, Commerce initiated the administrative review of the 2013 Agreement.[15] On August 27, 2018, Commerce published in the **Federal Register** the preliminary results of the five-year sunset review of the suspended investigation.[16]

On November 14, 2018, the FTE filed a request that Commerce terminate the 2013 Agreement and resume the AD investigation under Section VI.B of the 2013 Agreement.[17] Section VI.B of the 2013 Agreement states that ''the signatories or the Department may withdraw from this Agreement upon ninety days written notice to the other party.'' On November 27, 2018, the Fresh Produce Association of the Americas filed a rebuttal to FTE's request to terminate.[18] On November 26, 2018 and November 28, 2018, respectively, Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., Asociación Mexicana de Horticultura Protegida, A.C., Asociación de Productores de Hortalizas del Yaqui y Mayo, and Sistema Producto Tomate (collectively, CAADES *et al.* or the Mexican growers) submitted responses to FTE's previous request for Commerce to terminate the 2013 Agreement.[19] [20] On December 18, 2018, NS Brands, Ltd (NatureSweet), a signatory to the 2013 Agreement, filed a letter in support of the November 28, 2018 response by the Mexican growers.[21] On December 27, 2018, Commerce published in the **Federal Register** the final results of the five-year sunset review of the suspended investigation on fresh tomatoes from Mexico, finding that termination of the suspended investigation would be likely to lead to continuation or recurrence of dumping.[22]

On February 6, 2019, in accordance with Section VI.B of the 2013 Agreement, Commerce notified Mexican signatories that Commerce intends to withdraw from the 2013 Agreement.[23] Since the notification, as noted above, Commerce has held consultations with representatives of the Mexican growers/exporters and the domestic industry to discuss a possible new suspension agreement.

Scope of the Investigation

The merchandise subject to the investigation is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this suspended investigation, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), are covered by the investigation.

Commercially grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheading of the Harmonized Tariff Schedule of the United States (HTSUS), according to the season of importation: 0702. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Termination of Suspension Agreement and Continuation of the AD Investigation

In accordance with Section VI.B of the 2013 Agreement, Commerce is withdrawing from the 2013 Agreement, effective May 7, 2019, which is 90 days after our February 6, 2019 notice to the signatories. Accordingly, Commerce is terminating the 2013 Agreement, effective May 7, 2019, and continuing the underlying AD investigation. The statute does not identify the timing for completion of the investigation in this particular scenario. Therefore, we are looking to section 734(i)(1)(B) of the Tariff Act of 1930, as amended (the Act), for guidance. Consistent with section 734(i)(1)(B) of the Act, Commerce will continue the investigation as if it had published the affirmative preliminary determination under section 733(b) of the Act on the effective date of the termination, May 7, 2019. As explained in its *1996 Preliminary Determination,* Commerce previously postponed the final determination until the 135th day after the date of the preliminary determination.[24] Commerce, therefore, intends to issue its final determination in the investigation 135 days after the effective date of withdrawal from and termination of the 2013 Agreement, *i.e.,* by September 19, 2019, unless a new suspension agreement becomes effective prior to or on this date. If Commerce and producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico sign a new suspension agreement, following the notice and comment period provided in accordance with section 734(c) of the Act, the continued investigation will be suspended.

Rescission of the Administrative Review

On May 2, 2018, Commerce initiated an administrative review of the 2013 Agreement for the period March 1, 2017 through February 28, 2018.[25] Because Commerce has terminated the 2013 Agreement, there is no longer an agreement of which to conduct an administrative review. Therefore, Commerce is rescinding the administrative review of the 2013 Agreement, effective on the date of termination of the 2013 Agreement, *i.e.,* May 7, 2019.

Period of Investigation

The original period of investigation was March 1, 1995, through February 29, 1996. Due to the unusual procedural posture of this proceeding, in which we are terminating a suspension agreement and continuing an investigation that covers a period of investigation that dates back more than 23 years,

[15] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews* (*Initiation of Administrative Review*), 83 FR 19215 (May 2, 2018).

[16] *See Fresh Tomatoes from Mexico: Preliminary Results of the Five-Year Sunset Review of the 2013 Suspension Agreement on Fresh Tomatoes from Mexico,* 83 FR 43642 (August 27, 2018).

[17] *See* Letter to Wilbur Ross, Secretary of Commerce, from the FTE, ''Fresh Tomatoes from Mexico: Request to Terminate Antidumping Suspension Agreement,'' dated November 14, 2018.

[18] *See* Letter to Wilbur Ross, Secretary of Commerce, from the Fresh Produce Association of the Americas, ''Re: Fresh Tomatoes from Mexico: FTE's Misleading Request to Terminate Agreement,'' dated November 27, 2018.

[19] *See* Letter to Wilbur Ross, Secretary of Commerce, from CAADES *et al.,* ''2013 Suspension Agreement on Fresh Tomatoes from Mexico,'' dated November 26, 2018.

[20] *See* Letter to Wilbur Ross, Secretary of Commerce, from CAADES *et al.,* ''2013 Suspension Agreement on Fresh Tomatoes from Mexico,'' dated November 28, 2018.

[21] *See* Letter to Wilbur Ross, Secretary of Commerce, from NS Brands, Ltd., ''2013 Suspension Agreement on Fresh Tomatoes from Mexico: NS Brands' Response to Petitions Request to Terminate 2013 Suspension Agreement,'' dated December 18, 2018.

[22] *See Fresh Tomatoes from Mexico: Final Results of the Full Sunset Review of the Suspended Antidumping Duty Investigation,* 83 FR 66680 (December 27, 2018).

[23] *See Fresh Tomatoes from Mexico: Intent To Terminate Suspension Agreement, Rescind the Sunset and Administrative Reviews, and Resume the Antidumping Duty Investigation,* 84 FR 7872 (March 5, 2019).

[24] *See 1996 Preliminary Determination* at 56609.

[25] *See Initiation of Administrative Review,* 83 FR at 19217.

Commerce will be requesting information corresponding to the most recent four full quarters, *i.e.,* April 1, 2018 through March 31, 2019.

Respondent Selection

In light of the unusual procedural posture of this proceeding, Commerce finds it appropriate to reconsider respondent selection. Commerce intends to evaluate U.S. Customs and Border Protection (CBP) data for U.S. imports of fresh tomatoes from Mexico for the most recent four quarters under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the ''Scope of the Investigation'' section above and select mandatory respondents in accordance with section 777A(c) of the Act.

We are releasing CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO concurrently with the issuance of this notice.

Interested parties wishing to comment on the CBP data must do so within two business days of the publication date of this notice. Comments must be filed electronically using Commerce's electronic records system, ACCESS at *http://access.trade.gov* in accordance with 19 CFR 351.303.[26] An electronically filed document must be received successfully in its entirety by ACCESS no later than 5:00 p.m. Eastern Time, two business days after the publication date of this notice.

Suspension of Liquidation

Commerce will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of fresh tomatoes from Mexico that are entered, or withdrawn from warehouse, for consumption on or after May 7, 2019, the effective date of the termination of the 2013 Suspension Agreement. CBP shall require antidumping duty cash deposits or bonds for entries of the subject merchandise based on the preliminary dumping margins, which are as follows:

Grower/exporter	Weighted-average percentage margin
San Vincente Camalu	4.16
Exportadora Agricola Sacramento S.A. de C.V.[27]	11.89
Arturo Lomeli Villalobas S.A. de C.V	26.97
Eco-Cultivos S.A. de C.V	188.45
Productora Agricola Industrial del Noroeste, S.A. de C.V.[28]	10.26
Administradora Horticola del Tamazula	28.30
Agricola Yory, S. de P.R. de R.I	11.95
All Others	17.56

International Trade Commission

Commerce will notifythe International Trade Commission (ITC) of its withdrawal from and termination of the 2013 Suspension Agreement and continuation of the AD investigation. If Commerce makes a final affirmative determination, the ITC is scheduled to make its final determination concerning injury within 45 days after publication of Commerce's final determination. If both Commerce's and the ITC's final determinations are affirmative, Commerce will issue an AD order.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[29] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[30] Parties must use the certification formats provided in 19 CFR 351.303(g).[31] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

Administrative Protective Order Access and Letters of Appearance

Commerce will issue new administrative protective orders (APO) for the continued investigation that will supersede the previously issued firm-specific APOs. Those authorized applicants that were granted APOs during the original investigation, as indicated in the most recent APO service list on Commerce's website, will continue to have access to business proprietary information under APO. Any new APO applications or necessary amendments for changes in staff under the pre-existing APOs should be submitted promptly, and in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. These applications must be filed electronically using ACCESS at *http://access.trade.gov.* Those procedures apply to this continued investigation. Parties wishing to participate in this continued investigation should ensure that they meet the requirements of these procedures, *e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d).

This determination is issued and published in accordance with section 733(f) and 777(i)(1) of the Act.

Dated: May 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–09786 Filed 5–10–19; 8:45 am]

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[26] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[27] Exportadora Agricola Sacramento S.A. de C.V. (Sacramento) is formerly known as Ernesto Fernando Echavarria Salazar Grupo Solidario. *See* Commerce's verification agenda to Sacramento dated October 11, 2002, and the Sacramento verification report dated November 12, 2002, at Home Market Exhibit 1.

[28] Productora Agricola Industrial del Noroeste, S.A. de C.V. (Noroeste) was formerly known as Ranchos Los Pinos S. de R.L. de C.V. *See* Noroeste's entry of appearance dated October 18, 2002, the Noroeste cost verification report dated November 12, 2002, at 3, and the Noroeste sales verification report dated November 13, 2002, at 1, 4.

[29] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[30] *See* section 782(b) of the Act.

[31] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (Final Rule). Answers to frequently asked questions regarding the Final Rule are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–GAR–A002

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The NMFS Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow five commercial lobster vessels to participate in a lobster growth and abundance study, under the direction of Massachusetts Division of Marine Fisheries in state waters off the coast of Massachusetts.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notice to provide interested parties the opportunity to comment on Exempted Fishing Permit applications.

DATES: Comments must be received on or before May 28, 2019.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on MA DMF Lobster Study EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MA DMF Lobster Study EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225.

SUPPLEMENTARY INFORMATION: The Massachusetts Division of Marine Fisheries (MA DMF) submitted a complete renewal application for an Exempted Fishing Permit (EFP) to conduct a lobster abundance survey that Federal regulations would otherwise restrict. The purpose of this study is to provide fishery-independent data on lobster growth and abundance in Massachusetts state waters of statistical areas 514 and 538.

This survey has occurred annually since 2006 in Massachusetts state waters. On average, 15,604 lobsters per year were sampled from 2007–2016. The EFP would authorize the five participating vessels to deploy three standard and three ventless traps per six-pot trawl. Stations would be sampled twice per month from June to October 2019. Sampling trips would occur after a soak time of 3 to 5 days and at least one MA DMF scientist would be on board for the sampling trips. MA DMF personnel would not be on board when traps are baited and deployed. All gear would be Atlantic Large Whale Take Reduction Plan compliant. Survey traps will be separate from each vessel's commercial lobster traps and would be tagged as, ''MADMF Research Traps.''

All catch during sampling trips would be retained temporarily to collect biological data. MA DMF staff may collect lobster and/or Jonah crab, including undersized, oversized, v-notched, and egg-bearing lobsters. Collected samples would be used for research projects on growth and maturity. No catch from the experimental trips would be landed for sale.

If approved, MA DMF may request minor modifications and extensions to the EFP throughout the study. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: May 8, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–09787 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Agency Information Collection Activities; Proposed Information Collection; Comment Request; State and Local Implementation Grant Program 2.0 Closeout Documentation

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 12, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, (202) 482–0336, Department of Commerce, Room 6612, 1401 Constitution Avenue NW, Washington, DC 20230 (or via email at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be sent to Natalie Romanoff, Program Director, State and Local Implementation Grant Program 2.0, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4078, Washington, DC 20230 (or via email at *nromanoff@ntia.gov* or phone 202–482–2236).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Middle Class Tax Relief and Job Creation Act of 2012 (Act) (Pub. L. 112–96, H.R. 3630, 126 Stat. 156) was enacted February 22, 2012.[1] The Act meets a long-standing national priority and critical infrastructure need to create a single, interoperable, nationwide public safety broadband network (NPSBN) that allows law enforcement officers, fire fighters, emergency medical service professionals, and other public safety officials to effectively communicate with each other across

[1] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012) (Act) (codified at 47 U.S.C. 1401 *et seq.*).

agencies and jurisdictions. Public safety responders have been hindered in their ability to respond in a crisis situation due to incompatible communications networks and often outdated communications equipment. Therefore, the design and deployment of this NPSBN, established by the Act, is critical to provide emergency responders the ability to communicate on a secure, reliable, and dedicated interoperable network during emergencies and to use technology to improve response time, keep communities safe, and save lives.

The Act established the First Responder Network Authority (FirstNet) as an independent authority within the National Telecommunications and Information Administration (NTIA) and authorized it to take all actions necessary to ensure the design, construction, and operation of a nationwide NPSBN, based on a single, national network architecture.[2] FirstNet's responsibilities are, at a minimum, to ensure nationwide standards for the use of and access to the network; issue open, transparent, and competitive requests for proposals (RFPs) to build, operate, and maintain the network; encourage these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and oversee contracts with non-federal entities to build, operate, and maintain the network.[3]

The Act also charged NTIA with establishing a grant program, the State and Local Implementation Grant Program (SLIGP), to assist State, regional, tribal, and local jurisdictions with identifying, planning, and implementing the most efficient and effective means to use and integrate the infrastructure, equipment, and other architecture associated with the NPSBN to satisfy the wireless broadband and data services needs of their jurisdictions.[4]

The Act's framework outlined that FirstNet closely coordinates its activities with State, regional, tribal, and local governments and imposed a statutory requirement that FirstNet consult with these entities as it takes all actions necessary to build, deploy, and operate the NPSBN.[5] Specifically, the Act requires FirstNet to consult with state, regional, tribal, and local governments about the distribution and expenditure of any amounts required to carry out its responsibilities to plan, build, operate, and maintain the NPSBN.

Additionally, the Act specifies that these required consultations occur between FirstNet and the single point of contact (SPOC) that the state designated in its original SLIGP grant application.[6] The original SLIGP award provided recipients with funding to support their engagement in consultations as required of FirstNet under the Act.

SLIGP 2.0

In 2013, NTIA originally awarded $116.5 million in grant funds to 54 state and territorial recipients between July 2013 and June 2014. The original grants expired February 28, 2018, and many recipients spent less than expected, leaving leftover funds. NTIA leveraged excess funds of $33.3 million from the original SLIGP grants to make a second round of grant awards, SLIGP 2.0. The SLIGP 2.0 provides funding to assist State, regional, tribal, and local jurisdictions to engage effectively with FirstNet and provide it with information needed to continue with planning the NPSBN in an effective and timely manner, as required by the Act.

SLIGP 2.0 recipients' periods of performance are currently scheduled to end in early 2020. Following the award end date, recipients will be required to complete grant closeout activities within 90 days. The purpose of closeout is to capture a final account of recipient activities and how these activities contributed to overall program goals. To ensure effective grant oversight and management, NTIA developed a closeout report form for SLIGP 2.0 recipients to complete as part of post-award monitoring and closeout activities at the end of the period of performance. The closeout report form serves as a summary of grant-funded recipient activities over the entire award period and ensures that recipients comply with all necessary closeout procedures. The closeout report form will ask recipients to aggregate their cumulative progress toward program priority areas identified in their quarterly performance progress reports (PPRs), including individuals sent to broadband conferences, staff hired, contracts executed, governance meetings held, and stakeholder events convened. Recipients will also be asked to report on their cumulative expenditures throughout the period of performance in each object class category, including personnel, fringe, travel, equipment, materials/supplies, contractual, other, and indirect costs.

NTIA will use the collection of information to monitor and evaluate how SLIGP 2.0 grant recipients are achieving the core purposes of the program established by the Act. The information collected in the closeout report form will ensure that final data effectively assesses the success of SLIGP 2.0 recipients in implementing their project goals. The publication of this notice allows NTIA to begin the process to obtain the approval for the standard three years.

II. Method of Collection

Recipients will complete the closeout report and submit the form to the SLIGP 2.0 Program Office via email.

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: State, regional, local, and tribal government organizations.

Frequency: Once (at the end of the period of performance).

Number of Respondents: 46.

Average Time per Response: Final closeout report, 25 hours.

Estimated Total Annual Burden Hours: 1,150 hours.

Estimated Total Annual Cost to Public: $53.176.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–09766 Filed 5–10–19; 8:45 am]

BILLING CODE 3510–60–P

[2] 47 U.S.C. 1424, 1426(b)(1).

[3] 47 U.S.C. 1426(b)(1)(A)–(D).

[4] 47 U.S.C. 1442(a).

[5] 47 U.S.C. 1422(b)(2)(B).

[6] 47 U.S.C. 1426(c)(2)(B); 47 U.S.C. 1442(d).

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0026]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew with change an existing information collection titled, ''Policy to Encourage Trial Disclosure Programs.''

DATES: Written comments are encouraged and must be received on or before July 12, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2019–0026 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Policy to Encourage Trial Disclosure Programs.

OMB Control Number: 3170–0039.

Type of Review: Revision of a currently approved information collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 100.

Abstract In subsection 1032(e) of the Dodd-Frank Act, 12 U.S.C. 5532(e), Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs. This authority can be used to help further the Bureau's statutory objective, stated in subsection 1021(b)(5) of the Act, to ''facilitate access and innovation'' in the ''markets for consumer financial products and services.'' In accordance with this authority, the Bureau published its Policy to Encourage Trial Disclosure Programs (Policy) on October 10, 2013 (78 FR 64389). Under the Policy, an application for permission to conduct a trial disclosure program should include certain information. A supporting statement for the existing information collections under this control number may be found here at *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201605-3170-011.* In addition the Bureau has published a notice in the **Federal Register** on September 10, 2018, 83 FR 45574 proposing revisions to the Policy (Proposal). The Proposal and comments thereon may be viewed at *https://www.regulations.gov/docket?D=CFPB-2018-0023.* The Bureau is currently reviewing those comments in as it contemplates any changes or revisions to the Proposal.

Request for comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 7, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–09720 Filed 5–10–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0025]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Equal Access to Justice Act.''

DATES: Written comments are encouraged and must be received on or before July 12, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2019–0025 in the subject line of the message.
- *Mail:* Comment intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this

document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 3170–0040.

Type of Review: Renewal without change of an approved information collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 3.

Estimated Total Annual Burden Hours: 15.

Abstract: The Equal Access to Justice Act (the Act) provides for payment of fees and expenses to eligible parties who have prevailed against the Bureau in certain administrative proceedings. In order to obtain an award, the statute and associated regulations require the filing of an application that shows that the party is a prevailing party and is eligible to receive an award under the Act. The Bureau regulations implementing the Act require the collection of information related to the application for an award are in 12 CFR part 1071, subparts B, C. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 7, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–09723 Filed 5–10–19; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors, National Defense University; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Chairman Joint Chiefs of Staff, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Visitors, National Defense University will take place.

DATES: Tuesday, May 21, 2019 from 12:30 p.m. to 4:15 p.m. and Wednesday, May 22, 2019 from 11 a.m. to 11:45 a.m.

ADDRESSES: Normandy Hall, Joint Forces Staff College, 7800 Hampton Blvd., Naval Support Activity Hampton Roads, Norfolk, VA 23511–1702.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Shaw, (202) 685–4685 (Voice), (202) 685–3920 (Facsimile), *brian.r.shaw8.civ@mail.mil; brian.r.shaw.civ@ndu.edu; joycelyn.a.stevens.civ@mail.mil; stevensj7@ndu.edu* (Email). Mailing address is National Defense University, Fort McNair Washington, DC 20319–5066. Website: *http://www.ndu.edu/About/Board-of-Visitors/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Board of Visitors, National Defense University was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on May 21, 2019 through May 22, 2019 of the Board of Visitors, National Defense University. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Purpose of the Meeting: The purpose of the meeting will include discussion on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the National Defense University.

Agenda: Tuesday, May 21, 2019 from 12:30 p.m. to 4:15 p.m.: Welcome and Administrative Notes; State of the University Address; Review of Past Meeting Minutes and the Chairman of the Joint Chiefs of Staff's Response to the Letter from the Board of Visitors; Updates on Information and Educational Technology, NDU Facilities and the NDU Budget and Project 2024. Wednesday, May 22, 2019 from 11 a.m. to 11:45 a.m.: Public Comment; Board of Visitors Member Feedback and Wrap-up and Closing Remarks.

Meeting Accessibility: Limited space is available for observers and will be allocated on a first come, first served basis. Meeting location is handicap accessible. Visitors must enter Naval Support Activity Hampton Roads via Gate A from Terminal Blvd. & Meredith St.

Base Access Requirements: All visitors without U.S. Department of Defense Common Access Cards (CACs) must be vetted in advance in order to gain entry onto the base. Visitors must complete and sign, the Department of the Navy Local Population ID Card/Base Access Pass Registration (Form SECNAV 5512). To download the form, please visit *https://forms.documentservices.dla.mil/order/.*

Once on the site, to locate SECNAV 5512/1, go to the Search Criteria (top of page). Click the down arrow to choose ''Form Number'' and type in ''SECNAV 5512''. When the list comes up, either open the form by clicking on the disc icon to the left of the form and save to your desktop; or right-click on the disc icon, then save the link to save the form to your desktop. Please fax the completed form to CDR Brandy McNabb, Operations Officer at (757) 443–6033. *Please note vetting may take 5–14 working days.*

To find out if you have been cleared for base access go to CNIC website at *https://www.cnic.navy.mil/regions/cnrma.html.* Go to popular links bottom right corner, click on DBIDS/Day Visitor list. Visitors who successfully complete vetting and identity proofing will be issued a DBIDS credential or paper access pass.

The pass can be picked up the day prior or morning of the meeting at the Pass & ID Office at Norfolk Naval Station, 9040 Hampton Blvd., CD9, Norfolk, VA 23511. Please bring your ID. Additional supporting documents (including directions to Normandy Hall) are available at *http://www.ndu.edu/About/Board-of-Visitors/.* For questions

or additional information, you may contact CDR McNabb at (757) 443–6269.

Vehicle Search: Non-DoD/nonfederally affiliated visitors' vehicles are subject to search.

Building Access to Normandy Hall: Directions to Normandy Hall will be provided at Gate A, Naval Support Activity Hampton Roads. Visitors should report to the Front Security Desk in the lobby and from there, they will be directed to the meeting room.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to Ms. Joycelyn Stevens at (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

Dated: May 8, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–09780 Filed 5–10–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Chief Management Officer, Department of Defense. ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Closed to the public Wednesday, May 8, 2019 from 7:20 a.m. to 9:45 a.m. Open to the public Wednesday, May 8, 2019 from 10:00 a.m. to 11:30 a.m.

ADDRESSES: The closed and open portions of the meeting will be in Room 3E869 in the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roma Laster, (703) 695–7563 (Voice), (703) 614–4365 (Facsimile), *roma.k.laster.civ@mail.mil* (Email). Mailing address is Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155. Website: *http://dbb.defense.gov/.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Business Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its May 8, 2019 meeting of the Defense Business Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Agenda: The meeting will begin in a Closed Session where the Board will receive a classified briefing on 5G technology and a classified Indo-Pacific foreign area briefing. The meeting will then move to a Public Session where the Board will provide an update on current DBB activities; present, deliberate, and vote on its Defense Acquisition Industry-Government Exchange study; and provide an overview of the Board's support to DoD reform efforts.

Meeting Agenda:

Closed Session

7:20 a.m.–8:15 a.m.—(TS) 5G Technology Brief

8:15 a.m.–9:45 a.m.—(TS) Indo-Pacific Foreign Area Brief

Public Session

10:00 a.m.–10:05 a.m.—Opening remarks—Board Designated Federal Officer

10:05 a.m.–10:20 a.m.—Update on Current Board Activities

10:20 a.m.–11:00 a.m.—DBB Study: ''Defense Acquisition Industry-Government Exchange''

11:00 a.m.–11:30 a.m.—Overview of Board Support to DoD Reform Efforts

11:30 a.m.–Closing remarks—Board Designated Federal Officer

Meeting Accessibility: In accordance with section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the Board's meeting will be partially closed to the public. Specifically, the CMO, in consultation with the DoD Office of General Counsel, has determined in writing that a portion of the meeting will be closed to the public because it will consider classified information and other matters covered by 5 U.S.C. 552b(c)(1). The 5 U.S.C. 552b(c)(1) determination is based on the consideration that the 5G technology and foreign area briefings will involve classified matters of national defense or foreign policy. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without disclosing secret or otherwise classified material.

Pursuant to FACA and 41 CFR 102–3.140, that portion of the meeting from 10:00 a.m. to 11:30 a.m. is open to the public. Public attendees requiring escort should arrive at the Pentagon Visitor Center (adjacent to the Pentagon Metro Entrance) with sufficient time to complete security screening no later than 9:15 a.m. on May 8, 2019. To complete security screening, come prepared to present two forms of identification one of which must be a pictured identification card.

Written Statements: Written comments may be submitted to the Designated Federal Officer (DFO) via email to mailbox address: *osd.pentagon.odam.mbx.defense-business-board@mail.mil* in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: May 7, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–09737 Filed 5–10–19; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m.–3:00 p.m., May 22, 2019.

PLACE: DEFENSE Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to

significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: May 9, 2019.

Bruce Hamilton,

Chairman.

[FR Doc. 2019–09884 Filed 5–9–19; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0065]

Agency Information Collection Activities; Comment Request; Significant Disproportionality State Survey

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 a new information collection.

DATES: Interested persons are invited to submit comments on or before July 12, 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–0065. 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 Mary Louise Dirrigl, 202–245–7324.

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: Significant Disproportionality State Survey.

OMB Control Number: 1820–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 100.

Abstract: This new collection will collect detailed information on the State's use of the standard methodology, or another methodology based upon risk ratios and risk ratio thresholds, to identify significant disproportionality in the LEAs of the State. The Department will use this information to support States and LEAs in their efforts to comply with the statutory requirement at section 618(d) of the IDEA. Specifically, the collection will include information about the extent to which each State has implemented the standard methodology, and steps necessary for States to be in compliance with the December 2016 regulation, including anticipated obstacles States will face and the extent to which States have considered safeguards to ensure compliance with federal law and the U.S. Constitution. This information will allow the Department to determine the appropriate time and manner for the States to report their standards required under 34 CFR § 300.647(b)(7), and to fulfill its role of monitoring and enforcement for reasonableness under 34 CFR § 300.647(b)(1)(iii).

Dated: May 8, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–09811 Filed 5–10–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0063

Agency Information Collection Activities; Comment Request; Educational Opportunity Centers Program (EOC) Annual Performance Report

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 July 12, 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–0063. 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 Rachael Wiley, 202–453–6078.

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: Educational Opportunity Centers Program (EOC) Annual Performance Report.

OMB Control Number: 1840–0830.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 140.

Total Estimated Number of Annual Burden Hours: 1,120.

Abstract: Educational Opportunity Centers Program (EOC) grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collection is also aggregated to provide information on project participants and program outcomes.

Dated: May 7, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–09722 Filed 5–10–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2019–1 of the Defense Nuclear Facilities Safety Board, Uncontrolled Hazard Scenarios and 10 CFR 830 Implementation at the Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: On February 20, 2019, the Defense Nuclear Facilities Safety Board issued Recommendation 2019–1, *Uncontrolled Hazard Scenarios and 10 CFR 830 Implementation at the Pantex Plant,* to the Department of Energy. In accordance with the Atomic Energy Act of 1954, the Secretary of Energy's response to the Recommendation is provided in this notice.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before June 12, 2019.

ADDRESSES: Please send to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Chaves, Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Environment, Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or telephone number (301) 903–5999, or email *Christopher.Chaves@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On February 20, 2019, the Defense Nuclear Facilities Safety Board issued Recommendation 2019–1, *Uncontrolled Hazard Scenarios and 10 CFR 830 Implementation at the Pantex Plant,* to the Department of Energy. Recommendation 2019–1 was published in the **Federal Register** on March 19, 2019 (84 FR 10196). In accordance with section 315(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2286d(c)), the Secretary of Energy's response to the Recommendation is printed in full at the conclusion of this notice.

Signed in Washington, DC, on May 6, 2019.

Joe Olencz,

Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Environment, Health, Safety and Security.

April 16, 2019

The Honorable Bruce Hamilton
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW, Suite 700
Washington, DC 20004

Dear Chairman Hamilton:

The Department of Energy (DOE) acknowledges receipt of Defense Nuclear Facilities Safety Board (Board) Recommendation 2019-1, *Uncontrolled Hazard Scenarios and 10 CFR 830 Implementation at the Pantex Plant*, which was published in the Federal Register on March 19, 2019.

The Department shares the Board's view that we should continue to improve the configuration management and implementation of the safety basis for nuclear explosive operations at the Pantex Plant. Processes are in place at the Pantex Plant to ensure all nuclear explosive operations are planned and executed in a manner that protects the environment, the public, and the worker. I accept Recommendation 2019-1, which aligns with improvement actions that the Department of Energy's National Nuclear Security Administration (DOE/NNSA) has already taken as outlined in the DOE/NNSA Administrator's January 28, 2019, response to Draft Recommendation 2018-1, *Uncontrolled Hazard Scenarios and 10 CFR 830 Implementation at the Pantex Plant* (see enclosure). We look forward to briefing the Board on improvement actions planned and underway.

The Department is committed to the safe operation of its nuclear facilities consistent with the principles of Integrated Safety Management and the Department's nuclear safety requirements. We will continue to prioritize Pantex safety basis efforts and maintain a dialogue with your staff. I have assigned Geoffrey L. Beausoleil, Manager, DOE/NNSA Production Office,

to be the Department's responsible manager for this recommendation.

If you have any questions, please contact Mr. Geoffrey L. Beausoleil at (865) 576-0752

Sincerely,

Lisa E. Gordon-Hagerty

Enclosure

ENCLOSURE

Department of Energy's National Nuclear Security Administration's (DOE/NNSA) Administrator January 28, 2019, Response to DNFSB Draft Recommendation 2018-1, *Uncontrolled Hazard Scenarios and 10 CFR 830 Implementation at the Pantex Plant.*

General Comments

Throughout last year, DOE/NNSA and Consolidated Nuclear Security (CNS), the Pantex Management & Operating Contractor, have taken numerous actions aimed at improving the quality, configuration management, and implementation of the Pantex Plant (Pantex) safety basis. Key actions during this period include the following:

▪ In September 2018, DOE/NNSA approved a Safety Basis Supplement (SBS) by CNS that fulfilled two primary objectives. First, the SBS provides a framework for analyzing and addressing legacy issues in the Pantex safety basis associated with scenarios previously determined not to require application of safety controls because they were evaluated to be ''sufficiently unlikely.'' Requirements have been established to assure ''sufficiently unlikely'' scenarios are identified and resolved. Second, the SBS included significant improvements in safety protocols through the identification of compensatory measures for preventing events that could result from ''Falling Man'' scenarios. CNS has implemented the new ''Falling Man'' compensatory measures in all active nuclear explosive cells and bays.

▪ In October 2018, DOE/NNSA initiated a project to identify options for ''redesigning'' the Pantex safety basis, with the goal of reducing the complexity of the safety basis activities and documents; simplifying development, review, approval, and maintenance of the documents; and correspondingly improving implementation of the identified safety controls. Members of this project team include representatives from DOE/NNSA, the production plants, the national laboratories, and the Nevada National Security Site. This initiative will take substantial effort to achieve, but is essential for ensuring the long-term success of the Pantex national security mission.

▪ DOE/NNSA approved a comprehensive Corrective Action Plan by CNS that includes numerous actions for improving the Pantex safety basis development process and addressing legacy-improvement opportunities in the current documents. Execution of this plan will drive significant progress in the overall quality of the Pantex safety basis within the next two years. To date, CNS has completed all actions on schedule.

Several elements of the DNFSB's Draft Recommendation arise from inconsistencies between long-standing Pantex practices and DOE guidance documents. Examples include DNFSB concerns related to the structure of the Pantex Unreviewed Safety Question (USQ) procedure, the longevity of some Justifications for Continued Operations, and the frequency within which safety control implementation is re-verified. By definition, the referenced DOE Guides (e.g., DOE Guide 423.1-1B, *Implementation Guide for Use in Developing Technical Safety Requirements*, and DOE Guide 424.1-1B, *Implementation Guide for Use in Addressing Unreviewed Safety Question Requirements*) provide supplemental information that DOE/NNSA uses to encourage performance of operations and activities across the complex with a focus on best practices. Similarly, several of the concerns in the DNFSB's Draft Recommendation related to Special Tooling are understood to be suggestions to adopt industry best practices rather than reflecting deficiencies against DOE regulations or requirements. DOE/NNSA identified similar issues with the Special Tooling program as part of our oversight activities. DOE/NNSA will ensure the DNFSB suggestions are evaluated as it continues to develop additional improvement actions, but do not believe the issues result in challenging adequate protection of public health or safety.

Safety Controls Associated With Low-Probability/High-Consequent Events

The DNFSB raised concerns that some scenarios determined to be ''sufficiently unlikely'' (i.e., expected to occur between once-in-a-million and once-in-a-billion years) in the applicable Pantex safety basis documents did not have clearly identified safety controls for preventing or mitigating the potentially high consequences (e.g., worker fatality, environmental radiological contamination, or public radiological exposure). DOE/NNSA provides the following perspective regarding these concerns:

▪ As noted in the DNFSB's Draft Recommendation, questions associated with ''new information'' related to potential accident scenarios are evaluated via the Pantex Problem Identification and Evaluation process and the requirements in DOE-NA-STD-3016-2018, *Hazard Analysis reports for Nuclear Explosive Operations*. This process ensures that appropriate operational restrictions or compensatory measures are implemented while resolving any potential safety issues associated with the adequacy of safety controls. During the past year, DOE/NNSA has verified this process has been effectively executed by CNS, and has driven improvements to the process as warranted.

▪ One of the concerns raised by the DNFSB, associated with the adequacy of safety controls for ''sufficiently unlikely'' scenarios, was reliance on Key Elements of Safety Management Programs to prevent high-consequences during potential ''Falling Man'' scenarios. In September 2018, the DOE/NNSA approved a SBS that identified additional ''Falling Man'' controls, which are structured, credited, and protected as Specific Administrative Controls (SACs) rather than programmatic Key Elements. As noted above, CNS implemented these ''Falling Man'' SACs in all active nuclear explosive cells and bays.

▪ Other than the control adequacy issues discussed above, the remaining control adequacy concerns generally relate to weaknesses in the safety basis documentation. The two most common examples are (a) controls that are already implemented in the field but are not specifically linked to and credited for scenarios in the safety basis that were dispositioned as ''sufficiently unlikely'' and (b) scenarios that were inappropriately deemed as ''sufficiently unlikely'' in the safety basis where, lacking sufficient technical bases, they are not credible (e.g., the scenario would require deliberate or malicious procedural violations).

The aforementioned SBS provides a framework for evaluating and categorizing these documentation-related issues. CNS developed a Corrective Action Plan that DOE/NNSA approved in November 2018 that includes commitments to perform extent-of-condition reviews of *all* Pantex safety basis documents by the end of 2019, with the objective of identifying and correcting all instances of these documentation-related issues. To date, CNS has executed on schedule the actions captured in this Corrective Action Plan.

Configuration Management of the Pantex Safety Basis

The DNFSB raised concerns related to the processes used to maintain

configuration management of the Pantex safety basis. Specifically, the DNFSB expressed concern that: (a) updates to Pantex safety basis documents are not always completed on an annual basis; (b) the Pantex USQ procedure allows discrepant-as-found conditions to be corrected without suspending impacted operations or making necessary notifications; and (c) some Justifications for Continued Operations (JCOs) are extended beyond a year. DOE/NNSA provides the following perspectives regarding these concerns:

▪ The DNFSB's concern related to the timeliness of updating safety basis documents appears to be based on data collected during 2017. The vast majority of Pantex safety basis documents were updated on-time in 2018, the lone exception being the update associated with the Site-wide Safety Analysis Report. CNS is committed to updating this document by March 2019. The aforementioned Corrective Action Plan, approved by DOE/NNSA in November 2018, includes actions to revise the administrative procedures for developing and revising Pantex safety basis documents. These actions specifically identify improving configuration management of safety basis documents as an objective, which, when executed effectively, should preclude similar issues from occurring in the future.

▪ The DNFSB's Draft Recommendation states that ''the Pantex USQ procedures allow three days to correct discrepant-as-found conditions... without stopping operations, notifying DOE, or initiating the Pantex process for addressing a potential inadequacy of the safety analysis.'' While the Pantex USQ procedure does allow three days to correct a discrepant-as-found condition prior to declaring a Potential Inadequacy of the Safety Analysis, and given that 10 CFR 830 Subpart B does not have rules for specific numeric durations (other than ''as appropriate'') Pantex procedures require: (a) suspending operations whenever a safety question is raised (e.g., discovery of discrepant-as-found conditions); (b) making appropriate notifications to the DOE/NNSA Production Office (NPO); and (c) initiating the DOE-Approved Pantex USQ process. Therefore, we believe the proper safety control is in place.

▪ The DNFSB's Draft Recommendation includes a concern with the processes for handling JCOs and the extension of some for an extended period of time. The goal in the Pantex USQ procedure of addressing JCOs in less than a year is derived from guidance in DOE Guide 424.1-1B. The intent is to ensure JCOs and their compensatory measures are used to address temporary changes to the safety basis until permanent solutions can be identified and incorporated. While one year is a viable goal for limiting use of a JCO, it is not always practical to resolve issues in nuclear or nuclear explosive operations in that time frame. Many of the issues identified in JCOs involve complex operations or hazard scenarios where a permanent solution cannot be developed without extensive analysis or physical changes to facilities, systems, or equipment. Several JCO extensions were to allow additional time to develop permanent solutions, instead of incorporating compensatory measures into the safety basis only to revise the documents again once the permanent solution was developed. Each extension was approved by the Safety Basis Approval Authority after NPO fully evaluated the JCO conditions and compensatory measures, and concluded operations could be continued safely with implementation of the JCO compensatory measures.

Special Tooling Program

The DNFSB expressed concerns that deficiencies exist within the Pantex Special Tooling Program. Examples of the identified deficiencies include: (a) inconsistencies between Pantex tooling procedures and site practices; (b) additional Non-Destructive Evaluation techniques being used to inspect welds on tooling; (c) reliance on worker knowledge and skill-of-the-craft during tooling inspection, maintenance, and testing activities; (d) tool-specific performance criteria not being listed in the Pantex safety basis; and (e) weaknesses in analysis and testing for mechanical impact scenarios involving tooling. DOE/NNSA provides the following perspectives regarding these concerns:

▪ Subsequent to the DNFSB's September 2017 review, tooling-specific deviations from Pantex procedures were reviewed and confirmed that continued use of the subject tools meets applicable requirements. Additional corrective actions have been taken to prevent recurrence of the inconsistencies.

▪ Subsequent to the DNFSB's September 2017 review, CNS engaged an outside expert to review the Pantex welding program, who concluded that Pantex processes meet expectations. That is, welds are performed and inspected by qualified welders in accordance with applicable industry standards.

▪ Pantex tools are maintained and tested by trained and qualified journeymen mechanics in accordance with programmatic and tool-specific requirements.

[FR Doc. 2019–09782 Filed 5–10–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB).

DATES: Comments regarding this proposed information collection must be received on or before July 12, 2019. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Scott Whiteford at (202) 287–1563 or by fax at (202) 287–1656 or by email at *scott.whiteford@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Scott Whiteford at (202) 287–1563 or by email at *scott.whiteford@hq.doe.gov.* Information for the Excess Personal Property Furnished to Non-Federal Recipients and the Exchange/Sale Report is collected using GSA's Personal Property Reporting Tool and can be found at the following link: *https://gsa.inl.gov/property/*.

Information for the Federal Fleet Report is collected using the Federal Automotive Statistical Tool and can be found at the following link: *https://fastweb.inel.gov/*.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

This information collection request contains: (1) *OMB No.* 1910–1000; (2) *Information Collection Request Title:* Exchange/Sale Report, Excess Personal Property Furnished to Non-Federal Recipients, Federal Automotive Statistical Tool Report; (3) *Type of Review:* Renewal; (4) *Purpose:* The information being collected is data required in order to submit annual personal property reports as required by 41 CFR part 102 and the Office of Management and Budget. Respondents to this information collection request will be the Department of Energy's Management and Operating Contractor and other major site contractors; (5) *Respondents:* 92 respondents for each of the three reports equals 276 total respondents; (6) *Estimated number of burden hours:* The total estimated number of burden hours is 1,656. A breakout of burden hours for each report is listed below:

○ The burden hours for responding to the Exchange/Sale Report are estimated at 2 hours for each of the 92 estimated respondents, for a total of 184 burden hours.

○ The burden hours for responding to the Excess Personal Property Furnished to Non-Federal Recipients are estimated at 2 hours for each of the 184 estimated respondents, for a total of 184 burden hours.

○ The burden hours for responding to the Federal Automotive Statistical Tool at 18 hours for each of the 92 estimated respondents, for a total of 1,656 burden hours.

Authority: (A) 41 CFR 102–39.85, (B) 41 CFR 102–36.295 and 102–36.300, (C) OMB Circular A–11 section 25.5, (D) 41 CFR 102–34.335.

Signed in Washington, DC, on April 25, 2019.

Scott Whiteford,

Director, Office of Asset Management.

[FR Doc. 2019–09783 Filed 5–10–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Defense Programs Advisory Committee

AGENCY: Office of Defense Programs, National Nuclear Security Administration, Department of Energy.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces a closed meeting of the Defense Programs Advisory Committee (DPAC). The Federal Advisory Committee Act requires that public notice of meetings be announced in the **Federal Register**. Due to national security considerations, the meeting will be closed to the public and matters to be discussed are exempt from public disclosure under Executive Order 13526 and the Atomic Energy Act of 1954.

DATES: May 20–21, 2019 8:30 a.m. to 5:00 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Dana Hunter, Office of RDT&E (NA–11), National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, (202) 287–6287 or Email: *Dana.Hunter@NNSA.Doe.Gov.*

SUPPLEMENTARY INFORMATION:

Background: The DPAC provides advice and recommendations to the Deputy Administrator for Defense Programs on the stewardship and maintenance of the Nation's nuclear deterrent.

Purpose of the Meeting: The purpose of this meeting of the DPAC is to discuss programmatic updates, the current status of the High Performance Computing Subcommittee, and review the charter for Stockpile Responsiveness Subcommittee.

Type of Meeting: In the interest of national security, the meeting will be closed to the public. The Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(d), and the Federal Advisory Committee Management Regulation, 41 CFR 102–3.155, incorporate by reference the Government in the Sunshine Act, 5 U.S.C. 552b, which, at 552b(c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters will be discussed. Such data and matters will be discussed at this meeting.

Tentative Agenda: New Member Swearing In; Annual Ethics Training; Defense Programs Programmatic Updates; Update on High Performance Computing Subcommittee; Update on SRP Review Subcommittee; Conclusion.

Public Participation: There will be no public participation in this closed meeting. Those wishing to provide written comments or statements to the Committee are invited to send them to Dana Hunter at the address listed above.

Minutes: The meeting minutes will not be available.

Signed in Washington, DC, on May 7, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019–09762 Filed 5–10–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–66–000; CP17–67–000]

Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Plaquemines LNG and Gator Express Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Plaquemines LNG and Gator Express Pipeline Project, proposed by Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC in the above-referenced dockets. Venture Global requests authorization to construct and operate a new liquefied natural gas (LNG) export terminal and associated facilities along the west bank of the Mississippi River in Plaquemines Parish, Louisiana (Terminal) and to construct and operate two new 42-inch-diameter natural gas pipeline laterals that would connect to the LNG Terminal. The new liquefaction facilities would have a nameplate production capacity of 20.0 million metric tons per annum (MTPA) of LNG and peak production capacity of 24 MTPA.

The final EIS assesses the potential environmental effects of the construction and operation of the Plaquemines LNG and Gator Express Pipeline Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the final EIS, would have some adverse environmental impacts. These impacts would be reduced to less-than-significant levels with the implementation of Venture Global's proposed mitigation measures and the additional measures recommended in the final EIS.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Environmental Protection Agency, and U.S. Department of Transportation participated as cooperating agencies in the preparation

of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- *LNG Terminal:* Construction and operation of various liquefaction, LNG distribution, and appurtenant facilities within the boundaries of the site leased by Venture Global on the Mississippi River, including:
  - Six pretreatment facilities (three in each phase);
  - a liquefaction plant with 18 integrated single-mixed refrigerant blocks and support facilities (otherwise referred to as liquefaction blocks or blocks) to be constructed in two phases (nine blocks in each phase);
  - four 200,000-cubic-meter aboveground LNG storage tanks;
  - three LNG loading docks within a common LNG berthing area; and
  - air-cooled electric power generation facilities.
- *Pipeline System:* Construction and operation of two parallel 42-inch-diameter natural gas pipelines that share one right-of-way corridor for the majority of their respective routes and appurtenant aboveground facilities, including the following:
  - 15.1-mile-long Southwest Lateral Tennessee Gas Pipeline, LLC (TGP) Pipeline;
  - 11.7-mile-long Southwest Lateral Texas Eastern Transmission, LP (TETCO) Pipeline;
  - TGP metering and regulation station; and
  - TETCO metering and regulation station.

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 final EIS 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 final EIS 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.,* CP17–66 or CP17–67). 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.

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 that 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: May 3, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09719 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1781–000]

MeterGenius, 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 MeterGenius, 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 May 27, 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: May 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09706 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP17–458–001.

Applicants: Midship Pipeline Company, LLC.

Description: Abbreviated Application for Certificate Authority of Midship Pipeline Company, LLC.

Filed Date: 5/1/19.
Accession Number: 20190501–5445.
Comments Due: 5 p.m. ET 5/22/19.

Docket Number: PR19–58–000.
Applicants: Bayonne Energy Center, LLC.
Description: Tariff filing per 284.224/.123: Baseline Refiling to be effective 10/1/2019.
Filed Date: 5/1/19.
Accession Number: 201905015318.
Comments/Protests Due: 5 p.m. ET 5/22/19.

Docket Numbers: RP19–1185–000.
Applicants: Alliance Pipeline L.P.
Description: Operational Purchases and Sales Report of Alliance Pipeline L.P. under RP19–1185.
Filed Date: 4/30/19.
Accession Number: 20190430–5451.
Comments Due: 5 p.m. ET 5/13/19.

Docket Numbers: RP19–423–001.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: Pre-Arranged/Pre-Agreed (Petition for Approval of Settlement) Filing, et al. of Tallgrass Interstate Gas Transmission, LLC under RP19–423.
Filed Date: 5/1/19.
Accession Number: 20190501–5451.
Comments Due: 5 p.m. ET 5/13/19.

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 date(s). 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: May 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09714 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1213–000.
Applicants: Total Peaking Services, L.L.C.
Description: Compliance filing TPS Order No. 587–Y Compliance Filing Changes to be effective 8/1/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5137.
Comments Due: 5 p.m. ET 5/20/19.

Docket Numbers: RP19–257–003.
Applicants: Southwest Gas Storage Company.
Description: Compliance filing SWG Cost and Revenue Study in Compliance.
Filed Date: 5/6/19.
Accession Number: 20190506–5061.
Comments Due: 5 p.m. ET 5/20/19.

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: May 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–09772 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–70–000]

Indicated Generation Owners; Notice of Petition for Declaratory Order

Take notice that on May 3, 2019, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2017), Indicated Generation Owners [1] (collectively Petitioners), filed a petition for a declaratory order regarding proposed revenue requirements and cost-based rates for merchant generators providing reactive power service to the PJM Interconnection, L.L.C. market, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 3, 2019.

Dated: May 3, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09708 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

[1] Ares EIF Management, LLC, Competitive Power Ventures, Inc., Invenergy Thermal Development LLC, J–POWER USA Development Co., Ltd., Panda Power Generation Infrastructure Fund, LLC, Tenaska, Inc., Vistra Energy Corp.

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: EC19–84–000.

Applicants: Oregon Trail Wind Park, LLC, Payne's Ferry Wind Park, LLC, Pilgrim Stage Station Wind Park, LLC, Yahoo Creek Wind Park, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Oregon Trail Wind Park, LLC, et al.
Filed Date: 5/2/19.
Accession Number: 20190502–5140.
Comments Due: 5 p.m. ET 5/23/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–95–000.
Applicants: Glen Ullin Energy Center, LLC.
Description: Self-Certification of EG or FC of Glen Ullin Energy Center, LLC.
Filed Date: 5/3/19.
Accession Number: 20190503–5112.
Comments Due: 5 p.m. ET 5/24/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2718–032; ER10–2719–032.
Applicants: Cogen Technologies Linden Venture, L.P., East Coast Power Linden Holding, L.L.C.
Description: Supplement to November 26, 2018 Notice of Non-Material Change in Status of Cogen Technologies Linden Venture, L.P., *et al.*
Filed Date: 5/3/19.
Accession Number: 20190503–5084.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER17–1531–003.
Applicants: CPV Fairview, LLC.
Description: Supplement to January 17, 2019 Notice of Change in Status of CPV Fairview, LLC.
Filed Date: 5/3/19.
Accession Number: 20190503–5100.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1153–001.
Applicants: California Independent System Operator Corporation.
Description: Tariff Amendment: 2019–05–03 Deficiency Filing Inverter-Based Interconnection Requirements to be effective 4/30/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5081.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1339–001.
Applicants: Duke Energy Progress, LLC.
Description: Tariff Amendment: Clarifying Amendment to Recovery of Storm Rates and Reqt for Expedited Action to be effective 5/15/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5066.
Comments Due: 5 p.m. ET 5/10/19.

Docket Numbers: ER19–1374–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–05–02_SA 3271 Bondurant-Montezuma 345kV Structure Replacement Sub MPFCA to be effective 3/20/2019.
Filed Date: 5/2/19.
Accession Number: 20190502–5095.
Comments Due: 5 p.m. ET 5/13/19.

Docket Numbers: ER19–1375–001.
Applicants: Midcontinent Independent System Operator, Inc..
Description: Tariff Amendment: 2019–05–03_SA 3273 150 Mvar Cap Bank at Blackhawk 345kV Sub MPFCA to be effective 3/20/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5036.
Comments Due: 5 p.m. ET 5/13/19.

Docket Numbers: ER19–1378–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–05–03_SA 3274 1x50 Mvar Cap Bank at Midport 161 kV MPFCA Sub to be effective 3/20/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5096.
Comments Due: 5 p.m. ET 5/13/19.

Docket Numbers: ER19–1639–001.
Applicants: South Peak Wind LLC.
Description: Tariff Amendment: Amendment to market-based rate application to be effective 6/21/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5042.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1771–000.
Applicants: GridLiance Heartland LLC.
Description: Limited Revisions to Attachment O Formula Rate Template and Implementation Protocols of GridLiance Heartland LLC..
Filed Date: 5/2/19.
Accession Number: 20190502–5139.
Comments Due: 5 p.m. ET 5/23/19.

Docket Numbers: ER19–1772–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4121, Queue No. NQ113 to be effective 2/25/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5041.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1773–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Three Rocks Solar (Evergreen Solar) LGIA Filing to be effective 4/22/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5043.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1774–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Turkey Run LGIA Filing to be effective 4/22/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5044.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1775–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE Recollation of TO Tariff Filing 2b of 3 to be effective 5/1/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5048.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1776–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notice of Cancellation GIA & DSA Dwight ES 1 Project SA Nos. 1055–1056 to be effective 4/29/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5062.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1777–000.
Applicants: Midwest Energy, Inc.
Description: Petition for Temporary Waiver of Midwest Energy, Inc.
Filed Date: 5/3/19.
Accession Number: 20190503–5063.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1778–000.
Applicants: Glen Ullin Energy Center, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 5/6/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5092.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1779–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–05–03_SA 1632 ITC Midwest-Osceola Windpower 3rd Rev GIA (G426 G538) to be effective 4/19/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5094.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1780–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3550 WAPA & City of Moorhead MN Interconnection Agreement to be effective 5/2/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5114.
Comments Due: 5 p.m. ET 5/24/19.

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: May 3, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09718 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–218–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

Take notice that on April 24, 2019, Equitrans, L.P., 2200 Energy Drive Canonsburg, PA 15317, filed a prior notice application pursuant to sections 157.205, 157.208(c), and 157.216(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Equitrans blanket certificate issued in Docket No. CP96–532–000. Equitrans requests authorization to abandon and replace two segments of its TP–4555 pipeline (Bare Pipe Replacement Project), one of the pipelines which comprises Equitrans' Allegheny Valley Connector System. The replacement segments, which are located in Westmoreland County, Pennsylvania, total approximately 3.92 miles, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Equitrans is proposing to abandon approximately 3.85 miles of 20-inch diameter pipeline on the TP–4555 pipeline and replace it with approximately 3.92 miles of 20-inch diameter pipeline. The TP–4555 pipeline is part of Equitrans' Allegheny Valley Connector System.

Any questions regarding this application should be directed to Matthew Eggerding Assistant General Counsel, 2200 Energy Drive, Canonsburg, PA 15317, or call (412) 553–5786, or by email: *meggerding@equitransmidstream.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: May 3, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09707 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1778–000]

Glen Ullin Energy Center, LLC.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Glen Ullin Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 28, 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: May 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09705 Filed 5–10–19; 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: EC19–85–000.
Applicants: Convergent Energy and Power LP, Hazle Spindle, LLC, Stephentown Spindle, LLC, ECP ControlCo, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Convergent Energy and Power LP, et al.
Filed Date: 5/3/19.
Accession Number: 20190503–5160.
Comments Due: 5 p.m. ET 5/24/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1066–001.
Applicants: Nevada Power Company.
Description: Tariff Amendment: OATT Revision To Tariffs 05.03.19 to be effective 12/31/9998.
Filed Date: 5/6/19.
Accession Number: 20190506–5000.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1379–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–05–06_SA 3275 J438 POI Add 25 Mvar Cap Bank Sub MPFCA to be effective 3/20/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5097.
Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19–1405–001.
Applicants: Precept Power LLC.
Description: Tariff Amendment: ADMENDMENT TO INITIAL TARIFF, WAIVERS AND BLANKET AUTHORITY to be effective 6/1/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5001.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1535–000.
Applicants: Lower Mount Bethel Energy, LLC.
Description: Supplement to April 8, 2019 Lower Mount Bethel Energy, LLC tariff filing.
Filed Date: 5/2/19.
Accession Number: 20190502–5152.
Comments Due: 5 p.m. ET 5/23/19.

Docket Numbers: ER19–1695–000.
Applicants: California Transmission Project Corp.
Description: Amended Request for One-Time Limited Waiver, et al. of California Transmission Project Corp.
Filed Date: 5/3/19.
Accession Number: 20190503–5174.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1781–000.
Applicants: MeterGenius, Inc.
Description: Baseline eTariff Filing: MeterGenius Market Base Rate Inital Tariff Filing to be effective 6/2/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5140.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1782–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Amendment to the IA for the Stockton Port District (TO SA 117) to be effective 7/3/2019.
Filed Date: 5/3/19.
Accession Number: 20190503–5142.
Comments Due: 5 p.m. ET 5/24/19.

Docket Numbers: ER19–1783–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE Recollation of WDAT Filing 7 of 9 to be effective 5/1/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5002.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1784–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo-BLDR–T–2018–1–FASA&EDA–522–0.0.0 to be effective 5/7/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5056.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1785–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Upgrade CSA, SA No. 5357; Queue No. NQ–J468 to be effective 4/4/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5060.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1786–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP-Revised Rate Schedule No. 180 (Haywood EMC) to be effective 11/1/2018.
Filed Date: 5/6/19.
Accession Number: 20190506–5087.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1787–000.
Applicants: Riverhead Solar Farm, LLC.
Description: Baseline eTariff Filing: Riverhead Shared Facilities Agreement to be effective 5/7/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5089.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1788–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP-Revised Rate Schedule No. 172 (Piedmont EMC) to be effective 11/1/2018.
Filed Date: 5/6/19.
Accession Number: 20190506–5090.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1789–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEC-Amended Rate Schedule Nos. 315, 316, 317, and 335) to be effective 1/1/2018.
Filed Date: 5/6/19.
Accession Number: 20190506–5094.
Comments Due: 5 p.m. ET 5/28/19.

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: May 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09713 Filed 5–10–19; 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: EC19–86–000.
Applicants: Kendall Green Energy LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Kendall Green Energy LLC.
Filed Date: 5/6/19.
Accession Number: 20190506–5149.
Comments Due: 5 p.m. ET 5/28/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2564–009; ER10–2600–009; ER10–2289–009; EL19–44–000.
Applicants: Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.
Description: Response to March 8, 2019 Order to Show Cause of Tucson Electric Power Company, UNS Electric, Inc., and UniSource Energy Development Company.
Filed Date: 5/6/19.
Accession Number: 20190506–5160.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1425–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–05–06_SA 3284 Hankinson Wahpeton 230 kV Line Sub MPFCA to be effective 3/26/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5117.
Comments Due: 5 p.m. ET 5/16/19.

Docket Numbers: ER19–1429–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–05–07_SA 3285 Big Stone Terminal Upgrade Sub MPFCA (J488 J493 J526) to be effective 3/26/2019.
Filed Date: 5/7/19.
Accession Number: 20190507–5065.
Comments Due: 5 p.m. ET 5/17/19.

Docket Numbers: ER19–1432–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–05–07_SA 3286 Blair Terminal Equip and Disconnects Sub MPFCA to be effective 3/26/2019.
Filed Date: 5/7/19.
Accession Number: 20190507–5082.
Comments Due: 5 p.m. ET 5/17/19.

Docket Numbers: ER19–1790–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 316, EPE LGIA with Great Divide Wind Farm to be effective 7/6/2019.
Filed Date: 5/6/19.
Accession Number: 20190506–5121.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1791–000.
Applicants: Riverhead Solar Farm, LLC.
Description: Compliance filing: Riverhead MBR Change in Status to be effective 8/29/2018.
Filed Date: 5/6/19.
Accession Number: 20190506–5122.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1792–000.
Applicants: Frontier Utilities Northeast LLC.
Description: Compliance filing: Frontier Utilities Northeast LLC Notification of Change in Status to be effective 5/7/2019.
Filed Date: 5/7/19.
Accession Number: 20190507–5000.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1793–000.
Applicants: Valcour Altona Windpark, LLC.
Description: § 205(d) Rate Filing: Notice of Succession & Clarification of Category Seller Status to be effective 5/8/2019.
Filed Date: 5/7/19.
Accession Number: 20190507–5092.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1794–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–05–07 EIM Implementation Agreement—Public Service Company of New Mexico to be effective 7/7/2019.
Filed Date: 5/7/19.
Accession Number: 20190507–5095.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1795–000.
Applicants: Valcour Bliss Windpark, LLC.
Description: § 205(d) Rate Filing: Notice of Succession & Clarification of Category Seller Status to be effective 5/8/2019.
Filed Date: 5/7/19.
Accession Number: 20190507–5101.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1796–000.
Applicants: Valcour Chateaugay Windpark, LLC.
Description: § 205(d) Rate Filing: Notice of Succession & Clarification of Category Seller Status to be effective 5/8/2019.
Filed Date: 5/7/19.
Accession Number: 20190507–5102.
Comments Due: 5 p.m. ET 5/28/19.

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: May 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–09773 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR19–23–000]

TransMontaigne Partners L.P., Metroplex Energy, Inc. v. Colonial Pipeline Company; Notice of Complaint

Take notice that on May 1, 2019, pursuant to sections 3, 6, 13(1), and 15(1) of the Interstate Commerce Act,[1] Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission),[2] and Rules 343.1(a) and 343.2(c) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings,[3] TransMontaigne Partners L.P. and Metroplex Energy, Inc. (collectively,

[1] 49 U.S.C. App. 3, 6, 13(1), and 15(1).
[2] 18 CFR 385.206 (2018).
[3] 18 CFR 343.1(a) and 343.2(c) (2018).

Complainants) filed a formal complaint against Colonial Pipeline Company (Colonial or Respondent) challenging the lawfulness of the rate structure and terms and conditions of service by Colonial for transportation of refined petroleum products, including those practices contained in Colonial's FERC Tariff No. 99.46.0; Colonial's FERC Tariff No. 98.37.0; and Colonial's Shipper Manual, as more fully explained in the complaint.

The Complainant certify that a copy of the complaint was served on the contacts for the Respondent as listed on the official service list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for 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.

Comment Date: 5:00 p.m. Eastern Time May 31, 2019.

Dated: May 3, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09709 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–69–000]

Alternative Transmission Inc.; Notice of Petition for Declaratory Order

Take notice that on May 2, 2019, pursuant to Rule 207 (a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2017), Alternative Transmission Inc., (Alternative Transmission Inc. or Petitioner) filed a petition for a declaratory order petition stating that (1) the facilities and services described in the petition provide transmission of electric energy in interstate commerce subject to the Commission's jurisdiction under Parts II and III of the Federal Power Act (FPA) and (2) Alternative Transmission Inc., as the owner or operator of the described facilities that provide transmission of electric energy in interstate commerce, will be a public utility under Parts II and III of the FPA, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 3, 2019.

Dated: May 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09716 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–220–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on April 24, 2019, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP19–220–000, a Prior Notice Request pursuant to sections 157.205, 157.208, 157.210, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and National Fuel's blanket certificate issued in Docket No. CP83–4–000, requesting authorization to abandon and replace 9.6 miles of 12-inch-diameter bare steel pipeline (Line FM100) and construct certain related natural gas facilities located in Jefferson and Elk Counties, Pennsylvania, as part of its Brockway Modernization Project. National Fuel states the proposed replacement is part of a multi-year modernization program to enhance the reliability and safety of its system, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this prior notice should be directed to Jeffrey B. Same, Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221–5887, by telephone at (716) 857–7507, or by email at *samej@natfuel.com.*

Specifically, National Fuel proposes that the replacement project will include: (i) The installation of approximately 9.7 miles of 12-inch-diameter coated steel pipeline; (ii) the

installation of approximately 0.4 miles of 6-inch-diameter pipeline lateral; (iii) the installation of a remote controlled mainline block valve; (iv) the installation of a new pig launcher/receiver; and (v) modifications to an existing metering station. National Fuel plans to begin construction commencing in summer 2019 and anticipates the facilities will be placed in-service by December 2019. National Fuel estimates the cost of the Brockway Modernization Project to be $24.2 million.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: May 6, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–09715 Filed 5–10–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2016–0580; FRL–9993–50–Region 9]

General Permit Under the Federal Indian Country Minor New Source Review Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit.

SUMMARY: The Environmental Protection Agency (EPA), Region IX is issuing a general permit for use in Indian country within California pursuant to the Clean Air Act (CAA) Federal Indian Country Minor New Source Review (NSR) program for new and modified minor sources. The general permit is for a single source category, gasoline dispensing facilities (GDFs), and will be available in certain areas of Indian country that are within the geographical boundaries of California. This includes areas located in an Indian reservation or in another area of Indian country over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction and where there is no EPA-approved minor NSR program in place. The EPA is finalizing this general permit as a streamlined option that owners or operators may elect to use for the CAA minor NSR preconstruction permitting of certain minor sources that construct or modify in Indian country and belong to the GDF source category.

DATES: This permit becomes effective, and available for sources to request coverage, June 12, 2019, unless a petition for review of the final permit is properly and timely filed with the EPA Environmental Appeals Board (EAB) per 40 CFR 49.159(d). In that case, the permit's effectiveness will be stayed and construction cannot be authorized under this permit until agency review procedures are exhausted under 40 CFR 49.159(d) and the Regional Administrator subsequently issues a final permit. The general permit becomes effective and applicable as to a particular stationary source upon issuance by the reviewing authority of an Approval of the Request for Coverage for that particular stationary source.

ADDRESSES: Documents relevant to the above-referenced permit are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. To arrange for viewing of these documents, call Lisa Beckham at (415) 972–3811. Due to building security procedures, at least 24 hours advance notice is required.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region IX, (415) 972–3811, *beckham.lisa@epa.gov.* Key portions of the administrative record for this decision, including the general permit, Technical Support Document, and Request for Coverage form, are available through a link at EPA Region IX's website at *https://www.epa.gov/caa-permitting/california-tribal-gasoline-permits.* The administrative record for this action is available through *www.regulations.gov* (Docket ID #EPA–R09–OAR–2016–0580).

SUPPLEMENTARY INFORMATION:

Final Decision

The EPA, Region IX is issuing a general permit for use in Indian country within California pursuant to the CAA Federal Indian Country Minor NSR program for new and modified minor sources at 40 CFR 49.151 through 49.161. The general permit is for a single source category, gasoline dispensing facilities (GDFs), and will be available in certain areas of Indian country that are within the geographical boundaries of California. This includes areas located in an Indian reservation or in another area of Indian country (as defined in 18 U.S.C. 1151) over which an Indian tribe, or the EPA, has demonstrated that the tribe has jurisdiction and where there is no EPA-approved minor NSR program in place. The EPA is issuing this general permit as a streamlined option that owners or operators may elect to use for CAA minor NSR preconstruction permitting of certain minor sources that construct or modify in Indian country and belong to the GDF source category.

A gasoline dispensing facility, or GDF, is any stationary source, such as a gas station, that dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle or nonroad engine. Types of GDFs that potentially may use this general permit include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment. New or modified GDF sources with the potential to emit regulated NSR pollutants over thresholds specified in the Federal Indian Country Minor NSR program regulations at 40 CFR 49.153, and located within the geographic boundaries of California and on an Indian reservation or in another area of Indian country over which an Indian tribe or the EPA has demonstrated that the tribe has jurisdiction, are currently subject to permitting requirements under this EPA minor NSR program.

The general permit that is the subject of this notice is intended to provide a streamlined permitting option for owners and operators of qualifying GDFs to use to meet the requirements of this EPA minor NSR program. However, owners and operators of such GDFs may choose to apply to the EPA for a traditional source-specific permit to meet the preconstruction requirements of this permitting program in lieu of requesting coverage under the general permit.

The primary pollutant of concern for GDFs that may use this general permit is volatile organic compounds (VOC), which are emitted from storage tanks and gasoline dispensing units at GDFs. Some GDFs may also have emergency engines, which emit VOC, nitrogen oxides, carbon monoxide, particulate matter (PM), PM less than or equal to 10 μm in diameter (PM_{10}), and PM less than or equal to 2.5 μm in diameter ($PM_{2.5}$). Except for VOC emissions, emissions of all other regulated NSR pollutants from new or modified GDF sources that may use the general permit are expected to be below the minor NSR permitting thresholds in 40 CFR 49.153.

This general permit regulates VOC emissions from GDFs and includes emission limitations that require each GDF to control emissions from storage tanks during unloading of the gasoline cargo from the tanker truck, using what are known as Stage I controls. In addition, the general permit requires GDFs in ozone nonattainment areas classified as serious, severe, or extreme to limit VOC emissions caused from vehicle refueling by using pump-based controls known as Stage II controls. There are also limits on the amount of gasoline each GDF can dispense in a 12-month period: 25,000,000 million gallons in ozone attainment/unclassifiable areas, marginal ozone nonattainment areas, and moderate ozone nonattainment areas; and 15,000,000 gallons in serious, severe, and extreme ozone nonattainment areas. The emission limitations in the general permit are expected to generally limit emissions of VOC from a new or modified GDF to less than 30 tons per year (tpy) in attainment areas and marginal or moderate ozone nonattainment areas and 9 tpy in serious, severe, and extreme ozone nonattainment areas. The detailed emission limitations are included in the general permit and discussed in detail in our Technical Support Document. These and other key documents related to this general permit are available online here: *https://www.epa.gov/caa-permitting/california-tribal-gasoline-permits.*

Public Comments

The public comment period started on September 30, 2016 and ended on January 31, 2017. A public hearing was held on November 30, 2016 at the *EPA Region IX offices in San Francisco, California.* The EPA considered all comments received during the public comment period in making its final permit decision. The submitted comments and the EPA's responses are available as part of the administrative record for this action.

Administrative Record

The final general permit and all other supporting information are available through *www.regulations.gov* under Docket ID No. EPA–R09–OAR–2016–0580.The administrative record for this action may also be viewed in person, Monday through Friday (excluding Federal holidays) from 9:00 a.m. to 4:00 p.m., at the EPA Region IX address above. Due to building security procedures, please call Lisa Beckham at (415) 972–3811 at least 24 hours in advance to arrange a visit. Lisa Beckham can also be reached through EPA Region IX's toll-free general information line at (866) 372–9378.

Permit Appeal

In accordance with 40 CFR 49.159, within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the EAB to review any condition of the permit decision. Any person who failed to file comments or to participate in the public hearing may petition for administrative review only to the extent that the changes from the draft to the final permit or other new grounds were not reasonably ascertainable during the public comment period. The 30-day period within which a person may request review under this section begins with service of notice of the final permit decision. A petition to the EAB is a prerequisite to seeking judicial review of the final agency action under Section 307(b) of the CAA. For purposes of judicial review, final agency action occurs when we deny or issue a final permit and agency review procedures are exhausted. Following an appeal to the EAB, the EPA will issue a final permit decision as specified in 40 CFR 49.159(d)(8).

Additional Information

If you have questions, or if you wish to obtain further information, please contact Lisa Beckham at (415) 972–3811, toll-free at (866) 372–9378, via email at *R9airpermits@epa.gov,* or at the mailing address above. If you would like to be added to our mailing list to receive future information about this general permit or other permit decisions issued by EPA Region IX, please contact Lisa Beckham, or visit the EPA Region IX website at *http://www2.epa.gov/caa-permitting/tribal-nsr-permits-region-9.*

Please bring the foregoing notice to the attention of all persons who would be interested in this matter.

Dated: May 1, 2019.

Elizabeth J. Adams,

Director, Air Division, Region IX.

[FR Doc. 2019–09831 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0041; FRL–9993–35–OAR]

Proposed Information Collection Request; Comment Request; RadNet (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''RadNet'' (EPA ICR No. 0877.14, OMB Control No. 2060–0015) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is

soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2020. 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.

DATES: Comments must be submitted on or before July 12, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0041, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: John Griggs, OAR/ORIA/NAREL, Environmental Protection Agency, National Analytical Radiation Environmental Laboratory, 540 South Morris Ave., Montgomery, AL 36115; telephone number: (334) 270–3400; fax number: (334) 270–3450; email address: *griggs.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: RadNet is a national network of stations collecting environmental media that include air, precipitation, and drinking water. Samples are sent to EPA's National Analytical Radiation Environmental Lab (NAREL) in Montgomery, Alabama, where they are analyzed for radioactivity. RadNet provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All stations operators participate in RadNet voluntarily. Station operators complete information forms that accompany the samples. The forms request information pertaining to sample type, sample location, start and stop date and times for sampling, length of sampling period, and volume represented. Data from RadNet are made available regularly on the Agency websites—Envirofacts and the EPA website *www.epa.gov/radnet.*

Form Numbers: RadNet Air Particulate Sample (EPA Form 5900–24); RadNet Precipitation Report Form (EPA Form 5900–27); RadNet Drinking Water Report Form (EPA Form 5900–29); and RadNet Supply Request Form (EPA Form 5900–23).

Respondents/affected entities: Primarily State and Local Officials.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 237.

Frequency of response: Varies depending upon sample media type. Responses vary from twice weekly to quarterly.

Total estimated burden: 3721 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,510,235 (per year), includes annualized capital costs, operational costs, and maintenance costs.

Changes in estimates: There is a decrease of five hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is minimal and shows the program is in maturity and is expected to operate with minimal change.

Dated: April 30, 2019.

Jonathan D. Edwards,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2019–09833 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9993–46–Region 1]

2019 Spring Joint Meeting of the Ozone Transport Commission and the Mid-Atlantic Northeast Visibility Union

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; meeting.

SUMMARY: The United States Environmental Protection Agency (EPA) is announcing the joint 2019 Spring Meeting of the Ozone Transport Commission (OTC) and the Mid-Atlantic Northeast Visibility Union (MANE–VU). The meeting agenda will include topics regarding reducing ground-level ozone precursors and matters relative to Regional Haze and visibility improvement in Federal Class I areas in a multi-pollutant context.

DATES: The meeting will be held on June 11, 2019 starting at 9:30 a.m. and ending at 4:00 p.m.

Location: Hotel DuPont, 42 West 11th Street, Wilmington, DE 21202, 302–594–3100.

FOR FURTHER INFORMATION CONTACT: *For documents and press inquiries contact:* Ozone Transport Commission, 800 Maine Avenue SW, Suite 200, Washington, DC 20024; (202) 318–0190; email: *ozone@otcair.org;* website: *http://www.otcair.org.*

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to address ground-level ozone formation, transport, and control within the OTR.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) was formed at in 2001, in response to EPA's issuance of the Regional Haze rule. MANE–VU's members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New

Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the Penobscot Indian Nation, the St. Regis Mohawk Tribe along with EPA and Federal Land Managers.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 318–0190; by email: *ozone@otcair.org* or via the OTC website at *http://www.otcair.org.*

Dated: May 6, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019–09774 Filed 5–10–19; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2019–0204; FRL–9992–91–OECA]

Enforcement and Compliance: Enhancing EPA-State Planning and Communication

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment on its policy of *Enhancing Planning and Communication Between the EPA and States in Civil Enforcement and Compliance Assurance Work.* The draft Policy is available for review at *https://www.epa.gov/sites/production/files/2019-04/documents/guidance-enhancingregionalstatecommunicationoncompliance-190422.pdf.*

DATES: Comments must be received on or before June 12, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OECA–2019–0204; to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the notice process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kathleen H. Johnson, Senior Policy Advisor, Mail Code: 2261A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–5401; fax number: (202) 501–3842; email address: *Johnson.Kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: In January 2018, the Office of Enforcement and Compliance Assurance issued an Interim Guidance document to help move the Agency toward a more collaborative partnership between EPA and states, with the expectation that the guidance would be later updated. The interim document may be viewed at *https://www.epa.gov/sites/production/files/2018-01/documents/guidance-enhancingregionalstatecommunicationoncompliance.pdf.*

The EPA is seeking comments on a policy that would replace that Interim Guidance and would set out expectations and procedures for enhancing planning and communication on civil enforcement work between the EPA and States that are implementing Federal environmental programs. While this policy is focused on the EPA's work with States that are approved to implement Federal programs, the EPA also is seeking comments on applying these planning and communication practices when working with federally-recognized Indian tribes, territories, and local governments that have received approval to implement Federal programs. This is an Agency planning document and would not impose any legally binding requirements on EPA or any outside parties.

Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2019–0204; at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The EPA will consider all timely-submitted public comments in determining whether and how to finalize this policy statement.

Dated: April 25, 2019.

Susan Parker Bodine,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 2019–09764 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–9993–14]

Product Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1, Table 1A and Table 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a March 5, 2019 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel and amend to terminate uses of these product registrations. In the March 5, 2019 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received two comments on the notice, to remove their registrations from the cancellation order notice. The registrants for 4959–16, 4959–36 and 33753–31, requested via letter to withdraw their registrations from this notice. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective May 13, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management

Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 341–0367; email address: *green.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

II. What action is the Agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a).

These registrations are listed in sequence by registration number in Tables 1, 1A and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
279–9532	279	Appeal EC Herbicide	Fluthiacet-methyl.
279–9559	279	F9878-1 Termite Bait	Lufenuron.
352–596	352	DuPont Canopy SP Herbicide	Metribuzin & Chlorimuron.
352–843	352	DuPont Leadoff (MP) Herbicide	Thifensulfuron & Rimsulfuron.
432–1415	432	Allectus SC Insecticide	Bifenthrin & Imidacloprid.
432–1578	432	Lineage Clearstand	Metsulfuron & Imazapyr.
875–185	875	Pro-Kleen	Phosphoric acid & Dodecylbenzenesulfonic acid.
1258–1276	1258	Endure	Boron sodium oxide (B4Na2O7), pentahydrate.
1769–287	1769	Everbrite Germicidal Cleaner	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12) & Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14).
3525–90	3525	Coastal Cal Jet Algaecide Tablets	Dodecylbenzyl trimethyl ammonium chloride.
3525–92	3525	Coastal Pinetex Disinfectant Coef. 5	Alkyl* dimethyl benzyl ammonium chloride *(58%C14, 28%C16, 14%C12).
3862–186	3862	805 Sanitizer Cleaner for Soft Ice Cream Freezers.	Sodium hypochlorite.
5185–299	5185	Bio-Chlor LB-1000	Sodium hypochlorite.
9428–6	9428	Sun-Pine 8.7% Pine Oil Disinfectant Cleaner.	Pine oil.
10324–16	10324	Maquat MQ 2525-80%	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12) & Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C12, 30%C14, 17%C16, 3%C18).
10324–182	10324	Maquat MQ2525M-50 DWP	Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14) & Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12).
33981–10	33981	Sodium Hypochlorite Solution 16% EP	Sodium hypochlorite.
33981–11	33981	Sodium Hypochlorite MP16%	Sodium hypochlorite.
33981–20001	33981	Sodium Hypochlorite Solution	Sodium hypochlorite.
33981–20002	33981	Sodium Hypochlorite Solution 10%	Sodium hypochlorite.
33981–20003	33981	Sodium Hypochlorite Solution 9.2%	Sodium hypochlorite.
33981–20004	33981	Sodium Hypochlorite Solution 5.25%	Sodium hypochlorite.
45309–3	45309	Aqua Clear Liqui-Clear	Sodium hypochlorite.
45309–95	45309	Aqua Clear Cal-Chlor	Calcium hypochlorite.
47371–106	47371	Jaq Swimming Pool Algaecide	Alkyl* dimethyl benzyl ammonium chloride *(95%C14, 3%C12, 2%C16).
65331–7	65331	Certifect for Dogs	Amitraz; S-Methoprene & Fipronil.
67262–6	67262	Aqua Chem Balanced for Clean Pools Liquid Chlorinizor.	Sodium hypochlorite.
70506–239	70506	Bonfire Herbicide	Paraquat dichloride.
70529–3	70529	Aqua Chlor Sodium Hypochlorite 12.5%	Sodium hypochlorite.
75341–14	75341	MP400-EXT (Alternate), ORD-X240 (Active).	Borax (B4Na2O7.10H2O); Bifenthrin; Tebuconazole & Copper, bis(8-quinolinolato-N1,O8)-,
FL–180003	100	A13617V Turf Herbicide	Pinoxaden.
OR–070018	66222	Diazinon AG500	Diazinon.
OR–170013	80286	Splat LBAM HD-O	(E)-11-Tetradecen-1-ol acetate & (E,E)-9,11-Tetradecadien-1-ol acetate.
WI–130011	50534	Bravo ZN	Chlorothalonil.
WI–130013	50534	Bravo 720	Chlorothalonil.

TABLE 1A—PRODUCT CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
58185–34	58185	Revoke Pre-Emergent Herbicide	Pendimethalin & Oxadiazon.

The registrant of the request in Table 1A, requests to cancel the registration at the Federal level by December 31, 2019.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredients	Uses to be terminated
1381–255	1381	Saddle Up	2,4-D & Dicamba	Forest management use pattern.
45385–99	45385	Cenol 0.5% Multipurpose Insecticide.	Permethrin	Food animals (livestock).

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1, 1A and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
352	E.I. Du Pont De Nemours & Company, Attn: Manager, US Registration, DuPont Crop Protection, Chestnut Run Plaza (CRP 720/2E5), 974 Centre Rd., Wilmington, DE 19805.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 5000 CentreGreen Way, Suite 400, Cary, NC 27513.
875	Diversey, Inc., P.O. Box 19747, Charlotte, NC 28219–0747.
1258	Arch Chemicals, Inc., 1200 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
1769	NCH Corp, 2727 Chemsearch Blvd., Irving, TX 75062.
3525	Qualco, Inc., 225 Passaic St., Passaic, NJ 07055.
3862	ABC Compounding Co., Inc., P.O. Box 80729, Conyers, GA 30013.
5185	Bio-Lab, Inc., P.O. Box 300002, Lawrenceville, GA 30049–1002.
9428	Sun-Pine Corporation, P.O. Box 287, Brandon, MS 39043.
10324	Mason Chemical Company, 2744 E. Kemper Rd., Cincinnati, OH 45241.
33981	K.A. Steel Chemicals, Inc., Agent Name: Delta Analytical Corporation, 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904.
45309	Aqua Clear Industries, LLC, P.O. Box 2456, Suwanee, GA 30024–0980.
45385	CTX-Cenol, Inc., 1393 East Highland Rd., Twinsburg, OH 44087.
47371	H&S Chemicals Division of Lonza, Inc., 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
50534	GB Biosciences, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
58185	Everris NA, Inc., P.O. Box 3310, Dublin, OH 43016.
65331	Merial, Inc., 3239 Satellite Blvd., Bldg. 600, Office 6558–B, Duluth, GA 30096.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
67262	Recreational Water Products, Inc., D/B/A Recreational Water Products, P.O. Box 1449, Buford, GA 30515–1449.
70506	UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
70529	Chemical Formulators, Inc., Attn: Jim Palmer, 3901 NW 115 Avenue, Miami, FL 33178.
75341	Osmose Utilities Services, Inc., 635 Hwy., 74 S., Peachtree City, GA 30269.
80286	ISCA Technologies, Inc., 1230 W. Spring Street, Riverside, CA 92507.

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received two comments on the notice, to remove their registrations from the cancellation order notice. West Agro, Inc., registrant of 4959–16 and 4959–36 and BASF Corporation, registrant of 33753–31, requested via letter to remove their registrations from this cancellation order because the requests were published in error and request that the registrations not be cancelled. For this reason, the Agency will not cancel these three registrations and the registrations have been removed from this notice.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of the registrations identified in Tables 1, 1A and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1, 1A and 2 of Unit II are canceled and amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is May 13, 2019. Any distribution, sale, or use of existing stocks of the products identified in Tables 1, 1A and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing

stocks set forth in Unit VI, will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of March 05, 2019 (84 FR 7896) (FRL–9988–66). The comment period closed on April 04, 2019.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

A. For Product: 432–1415

The registrant has requested to the Agency via letter to sell existing stocks for an 18-month period from the date of their letter dated, September 20, 2018, until March 20, 2020, for product 432–1415.

B. For Product: 432–1578

The registrant has requested to the Agency via letter dated, November 14, 2017, to sell existing stocks for an 18-month period, until June 1, 2019, for product 432–1578.

C. For Products: 10324–16 and 10324–182

The registrant has requested to the Agency via letter, to sell existing stocks for an 18-month period for products 10324–16 and 10324–182.

For all other voluntary cancellations, the registrants may continue to sell and distribute existing stocks of products listed in Table 1 and Table 1A until May 13, 2020, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 and Table 1A of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II, under the previously approved labeling until November 12, 2020, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 6, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–09778 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0720; FRL–9993–04]

Registration Review; Draft Human Health and/or Ecological Risk Assessments for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft human health and/or ecological risk assessments for the registration review of 2,4-DP-p, clopyralid, flumioxazin, and thiabendazole.

DATES: Comments must be received on or before July 12, 2019.

ADDRESSES: Submit your comments, to the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV, 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:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 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, are available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For pesticide specific information contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general questions on the registration review program, contact: Dana Friedman, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–8827; email address: *friedman.dana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager identified in the Table in Unit IV.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting 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.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft human health and/or ecological risk assessments for all pesticides listed in the Table in Unit IV. After reviewing comments received during the public comment period, EPA may issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments and may request public input on risk mitigation before completing a proposed registration review decision for the pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's human health and/or ecological risk assessments for the pesticides shown in the following table and opens a 60-day public comment period on the risk assessments.

TABLE—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
2,4-DP-p, Case 0294	EPA–HQ–OPP–2013–0726	Lauren Bailey, *bailey.lauren@epa.gov,* (703) 347–0374.
Clopyralid, Case 7212	EPA–HQ–OPP–2014–0167	Veronica Dutch, *dutch.veronica@epa.gov,* (703) 308–8585.
Flumioxazin, Case 7244	EPA–HQ–OPP–2011–0176	Susan Bartow, *bartow.susan@epa.gov,* (703) 603–0065.
Thiabendazole and Salts, Case 2670	EPA–HQ–OPP–2014–0175	Margaret Hathaway, *hathaway.margaret@epa.gov,* (703) 305–5076.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft human health and/or ecological risk assessments for the pesticides listed in the Table in Unit IV. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to a draft human health and/or ecological risk assessment. EPA may then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments.

Information submission requirements. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 30, 2019.

Charles Smith,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–09777 Filed 5–10–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 2019.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Chambers Bancshares, Inc., Danville, Arkansas;* to merge with Bank of Dardanelle Bankshares, Inc., Dardanelle, Arkansas, and thereby indirectly acquire River Town Bank, Dardanelle, Arkansas.

Board of Governors of the Federal Reserve System, May 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–09791 Filed 5–10–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''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 May 30, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Second James L. Moss Revocable Trust, James L. Moss Trustee, and Second Joyce A. Moss Revocable Trust, Joyce A. Moss Trustee, all of Lansing, Iowa, as a group acting in concert;* to retain voting shares of FNB BanShares, Inc. and thereby indirectly retain shares of Bank 1st, both of West Union, Iowa.

Board of Governors of the Federal Reserve System, May 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–09793 Filed 5–10–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott- Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED APRIL 1, 2019 THRU APRIL 30, 2019

04/02/2019

20190942	G	AIF IX (PMC Equity AIV), L.P.; Brian W. Brady; AIF IX (PMC Equity AIV), L.P.
20190974	G	Starboard Value and Opportunity Fund Ltd.; Zayo Group Holdings, Inc.; Starboard Value and Opportunity Fund Ltd.
20191000	G	General Electric Company; GE Aero Power LLC; General Electric Company.
20191001	G	Baker Hughes, a GE company; GE Aero Power LLC; Baker Hughes, a GE company.
20191002	G	Topco; Pure Power Technologies, LLC; Topco.
20191011	G	LeBaronBrown Industries LLC; Aceto Corporation; LeBaronBrown Industries LLC.
20191020	G	Levine Leichtman Capital Partners VI, L.P.; Northlane Capital Partners I, LP; Levine Leichtman Capital Partners VI, L.P.
20191023	G	Performance Food Group Company; Thomas G. Wake; Performance Food Group Company.
20191024	G	Performance Food Group Company; Richard W. Wake; Performance Food Group Company.
20191027	G	Nippon Telegraph and Telephone Corporation; WhiteHat Security, Inc.; Nippon Telegraph and Telephone Corporation.
20191032	G	Peak Rock Capital Fund II LP; The Kroger Co.; Peak Rock Capital Fund II LP.
20191033	G	Envestnet, Inc.; Robert D. Curtis & Karla B. Curtis; Envestnet, Inc.
20191034	G	Robert D. Curtis & Karla B. Curtis; Envestnet, Inc.; Robert D. Curtis & Karla B. Curtis.
20191035	G	RCP Vega Co-Invest, L.P.; Providence Equity Partners VI L.P.; RCP Vega Co-Invest, L.P.

EARLY TERMINATIONS GRANTED APRIL 1, 2019 THRU APRIL 30, 2019—Continued

20191036	G	Biohaven Pharmaceutical Holding Co. Ltd.; GW Pharmaceuticals plc; Biohaven Pharmaceutical Holding Co. Ltd.
20191037	G	TPG VIII DE AIV II, L.P.; Goodnight Water Solutions, LLC; TPG VIII DE AIV II, L.P.
20191043	G	Equitrans Midstream Corporation; North Haven Infrastructure Partners II AIV–I L.P.; Equitrans Midstream Corporation.
20191044	G	William G. Davis; SED Holdings, LLC; William G. Davis.
20191045	G	Atlas Capital Resources III LP; International Wire Group Holdings, Inc.; Atlas Capital Resources III LP.
20191049	G	TCV IX, L.P.; Peloton Interactive, Inc.; TCV IX, L.P.
20191051	G	Hiroshi Mikitani; Rakuten Medical, Inc.; Hiroshi Mikitani.
20191055	G	Educational Media Foundation; Cumulus Media Inc.; Educational Media Foundation.
04/04/2019		
20191007	G	BB&T Corporation; SunTrust Banks, Inc.; BB&T Corporation
04/08/2019		
20191059	G	CJP TC Holdings, L.P.; Mr. Naoyuki Soga; CJP TC Holdings, L.P.
20191060	G	Green Equity Investors Side VII, L.P.; Wrench Ultimate Holdings, Inc.; Green Equity Investors Side VII, L.P.
20191061	G	One Equity Partners VII, L.P.; Melrose Industries PLC; One Equity Partners VII, L.P.
20191062	G	Thomas Milton Duff; Bridgestone Corporation; Thomas Milton Duff.
20191063	G	James Ernest Duff and Sherry G. Duff; Bridgestone Corporation; James Ernest Duff and Sherry G. Duff.
20191064	G	YS Topco Limited; Jim Kim; YS Topco Limited.
20191068	G	NFP Ultimate Holdings, LLC; Sir Evelyn de Rothschild; NFP Ultimate Holdings, LLC.
20191069	G	NFP Ultimate Holdings, LLC; Matthew Bronfman; NFP Ultimate Holdings, LLC.
20191070	G	Madison Dearborn Capital Partners VI–A, L.P.; BioScrip, Inc.; Madison Dearborn Capital Partners VI–A, L.P.
20191072	G	Murray Energy Holdings Co.; Mission Coal Company, LLC; Murray Energy Holdings Co.
20191076	G	One Rock Capital Partners II, LP; Newell Brands Inc.; One Rock Capital Partners II, LP.
20191077	G	DP World PLC; Hyperloop Technologies, Inc.; DP World PLC.
20191078	G	BlackRock, Inc.; Bridgepoint Europe IV 2 FCPR; BlackRock, Inc.
20191079	G	TCV X L.P.; K3 Private Investors, L.P.; TCV X L.P.
20191086	G	Lear Corporation; Xevo Inc.; Lear Corporation.
04/10/2019		
20190989	G	MasterCard Incorporated; Trans-Fast Remittance LLC; MasterCard Incorporated.
20191031	G	Roper Technologies, Inc.; The Foundry Topco No. 2 Limited; Roper Technologies, Inc.
20191084	G	Genstar Capital Partners VI, L.P.; Joseph M. Brodner; Genstar Capital Partners VI, L.P.
20191085	G	Genstar Capital Partners VI, L.P.; John R. Brodner and Leslie C. Brodner; Genstar Capital Partners VI, L.P.
04/11/2019		
20190998	G	MasterCard Incorporated; Ethoca Solutions Inc.; MasterCard Incorporated.
04/15/2019		
20191053	G	OpCapita Consumer Opportunities Fund II, L.P.; Ascena Retail Group, Inc.; OpCapita Consumer Opportunities Fund II, L.P.
20191094	G	Church & Dwight Co., Inc.; Anand Khubani; Church & Dwight Co., Inc.
20191096	G	TCV X L.P.; Toast, Inc.; TCV X L.P.
20191099	G	Madison Dearborn Capital Partners VII–A, L.P.; InMoment, Inc.; Madison Dearborn Capital Partners VII–A, L.P.
20191100	G	The E.W. Scripps Company; Nexstar Media Group, Inc.; The E.W. Scripps Company.
20191104	G	Koninklijke Philips N.V.; Onex Partners II LP; Koninklijke Philips N.V.
20191106	G	Berwind Holding Corp.; Harbour Group Investments VI, L.P.; Berwind Holding Corp.
20191107	G	Great Hill Equity Partners VI, L.P.; Customink, LLC; Great Hill Equity Partners VI, L.P.
20191108	G	The IDEAL Industries, Inc. Voting Trust; Cree, Inc.; The IDEAL Industries, Inc. Voting Trust.
20191109	G	SJW Group; Connecticut Water Service, Inc.; SJW Group.
20191110	G	Progress Software Corporation; Roger Greene; Progress Software Corporation.
20191111	G	Wingtech Technology Co., Ltd.; Hefei Yuxin Holding Co. Ltd.; Wingtech Technology Co., Ltd.
20191113	G	Thunder Bridge Acquisition LLC; Corsair IV Payment Holdings Investors L.P.; Thunder Bridge Acquisition LLC.
20191118	G	Gridiron Capital Fund III, L.P.; LaMi Holdings, LLC; Gridiron Capital Fund III, L.P.
20191119	G	Bain Capital Europe Fund V, SCSp; Maesa Expansion SAS; Bain Capital Europe Fund V, SCSp.
20191121	G	Accenture plc; David Droga; Accenture plc.
20191126	G	Jones Lang LaSalle Incorporated; HFF, Inc.; Jones Lang LaSalle Incorporated.
20191128	G	Pamlico Capital IV, L.P.; BNI Holdings, LLC; Pamlico Capital IV, L.P.
04/16/2019		
20191129	G	TPG VIII DE AIV II, L.P.; GEP Administrative Services, Inc. ESO Trust; TPG VIII DE AIV II, L.P.
20191132	G	Stichting Administratiekantoor Westend; Meow Wolf, Inc.; Stichting Administratiekantoor Westend.
04/17/2019		
20191047	G	BG LLH, LLC; Fenway Partners Capital Fund III, L.P.; BG LLH, LLC.
20191048	G	Blucora, Inc.; Stephen A. Batman; Blucora, Inc.

EARLY TERMINATIONS GRANTED APRIL 1, 2019 THRU APRIL 30, 2019—Continued

04/19/2019		
20191039	G	Barrick Gold Corporation; JV Company; Barrick Gold Corporation.
20191091	G	Rockwell Automation, Inc.; Sensia U.S.; Rockwell Automation, Inc.
20191112	G	Joyvio Agricultural Development Co., Ltd.; Isidoro Ernesto Quiroga Moreno; Joyvio Agricultural Development Co., Ltd.
20191114	G	Knighthead Offshore Fund, Ltd.; PG&E Corporation; Knighthead Offshore Fund, Ltd.
20191120	G	Stonepeak Infrastucture Fund III (AIV I) LP; Oryx Midstream Services LLC; Stonepeak Infrastucture Fund III (AIV I) LP.
20191122	G	Stonepeak Infrastucture Fund III (AIV I) LP; Oryx Midstream Services II, LLC; Stonepeak Infrastucture Fund III (AIV I) LP.
20191127	G	Christopher Hutter; Hannibal Industries, Inc.; Christopher Hutter.
20191130	G	Thomas Flohr; Clearlake Capital Partners IV, L.P.; Thomas Flohr.
20191131	G	Madison Dearborn Capital Partners VII–B, L.P.; Robert E. McCarthy and Judith T. McCarthy; Madison Dearborn Capital Partners VII–B, L.P.
20191133	G	Naspers Limited; Udemy, Inc.; Naspers Limited.
20191135	G	Paul Douglass; Hannibal Industries, Inc.; Paul Douglass.
20191138	G	AEA Investors Fund VI AIV LP; JFL Equity Investors IV, L.P.; AEA Investors Fund VI AIV LP.
20191139	G	Stanley C. Middleman; The J.G. Wentworth Company; Stanley C. Middleman.
20191141	G	Francisco Partners V, L.P.; Warburg Pincus Private Equity XI, L.P.; Francisco Partners V, L.P.
20191142	G	The Baring Asia Private Equity Fund VII, L.P.; NIIT Technologies Limited; The Baring Asia Private Equity Fund VII, L.P.
20191144	G	Lighthouse Holdings, Inc.; Spire Capital Partners III, L.P.; Lighthouse Holdings, Inc.
20191145	G	Encompass Health Corporation; Alacare Home Health Services, Inc.; Encompass Health Corporation.
20191146	G	Nordic Capital VIII Beta, L.P.; Timothy Jenison; Nordic Capital VIII Beta, L.P.
20191148	G	KKR Special Situations (EEA) Fund II, L.P.; Gibson Brands, Inc.; KKR Special Situations (EEA) Fund II, L.P.
20191149	G	Cove Hill Partners Fund I, L.P.; Bessemer Venture Partners VIII Institutional L.P.; Cove Hill Partners Fund I, L.P.
20191152	G	American Family Insurance Mutual Holding Company; Ameriprise Financial, Inc.; American Family Insurance Mutual Holding Company.
20191159	G	MTY Food Group Inc.; Papa Murphy's Holdings, Inc.; MTY Food Group Inc.
04/22/2019		
20191134	G	FUJIFILM Holdings Corporation; Biogen Inc.; FUJIFILM Holdings Corporation.
20191136	G	ON Semiconductor Corporation; Quantenna Communications, Inc.; ON Semiconductor Corporation.
20191158	G	Clearlake Capital Partners V, L.P.; Alert Holding Company, Inc.; Clearlake Capital Partners V, L.P.
04/23/2019		
20191095	G	National Grid plc; Geronimo Energy Holdings, LLC; National Grid plc.
20191098	G	National Grid plc; Emerald Energy Venture, LLC; National Grid plc.
04/24/2019		
20191097	G	Pilot Corporation; RBJ & Associates, L.P.; Pilot Corporation.
20191153	G	Giovanni Ferrero; Kellogg Company; Giovanni Ferrero.
20191157	G	Omni Investor Holdings, LLC; Michael & Kathleen Entzminger; Omni Investor Holdings, LLC.
04/26/2019		
20191071	G	Fidelity National Information Services, Inc.; Worldpay, Inc.; Fidelity National Information Services, Inc.
20191161	G	CrossAmerica Partners LP; Alimentation Couche-Tard Inc.; CrossAmerica Partners LP.
20191168	G	Connect Topco Limited; Inmarsat plc; Connect Topco Limited.
20191169	G	Duffle Series, L.P.; C–III Capital Partners LLC; Duffle Series, L.P.
04/29/2019		
20191101	G	Thermo Fisher Scientific Inc.; Ampersand 2014 Limited Partnership; Thermo Fisher Scientific Inc.
20191181	G	Arbor Investments IV, L.P.; Block Note, Inc.; Arbor Investments IV, L.P.
20191182	G	CCP III AIV VI, L.P.; International Business Machines Corporation; CCP III AIV VI, L.P.
20191184	G	Olympus Growth Fund VII, L.P.; 3D Holdings, Inc.; Olympus Growth Fund VII, L.P.
20191186	G	Willis Towers Watson plc; Clayton, Dubilier & Rice Fund IX, L.P.; Willis Towers Watson plc.
20191188	G	Clayton Dubilier & Rice Fund IX, L.P.; Willis Towers Watson plc; Clayton Dubilier & Rice Fund IX, L.P.
20191190	G	Capitol Investment Corp. IV; NESCO Holdings, LP; Capitol Investment Corp. IV.
20191191	G	Qorvo, Inc.; Active-Semi International Inc.; Qorvo, Inc.
20191194	G	Lyndon Lea; AP VIII CEC Holdings, L.P.; Lyndon Lea.
20191195	G	Robert Darwent; AP VIII CEC Holdings, L.P.; Robert Darwent.
20191196	G	SoftBank Vision Fund (AIV M2) L.P.; Doordash, Inc.; SoftBank Vision Fund (AIV M2) L.P.
04/30/2019		
20191192	G	LEP Realization Feeder, L.P.; Captive Resources Holding Company, LLC; LEP Realization Feeder, L.P.
20191202	G	Genstar Capital Partners VII, L.P.; Mr. and Mrs. Joseph Schneerson; Genstar Capital Partners VII, L.P.

FOR FURTHER INFORMATION CONTACT: Theresa Kingsberry, Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC–5301, Washington, DC 20024, (202) 326–3100.

By direction of the Commission.

April Tabor,

Acting Secretary.

[FR Doc. 2019–09815 Filed 5–10–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From the AABB Center for Patient Safety

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from the AABB Center for Patient Safety, PSO number P0032, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on April 30, 2019.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety events.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from AABB Center for Patient Safety, a component entity of the American Association of Blood Banks (AABB), to voluntarily relinquish its status as a PSO. Accordingly, AABB Center for Patient Safety, P0032, was delisted effective at 12:00 Midnight ET (2400) on April 30, 2019.

AABB Center for Patient Safety has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Gopal Khanna,

Director.

[FR Doc. 2019–09788 Filed 5–10–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10105 and CMS–10407]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 12, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10105 National Implementation of the In-Center Hemodialysis CAHPS Survey

CMS–10407 Summary of Benefits and Coverage and Uniform Glossary

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* National Implementation of the In-Center Hemodialysis CAHPS Survey; *Use:* The Centers for Medicare & Medicaid Services (CMS) is requesting clearance from the Office of Management and Budget (OMB) to continue the In-center Hemodialysis CAHPS (ICH CAHPS) Survey to measure patients' experience of care with in-center hemodialysis (ICH) facilities. Data collected in the national implementation of the ICH CAHPS Survey are used for the following purposes: To provide a source of information from which selected measures can be publicly reported to beneficiaries as a decision aid for dialysis facility selection; to aid facilities with their internal quality improvement efforts and external benchmarking with other facilities; to provide CMS with information for monitoring and public reporting purposes; and to support the ESRD value-based purchasing program. *Form Number:* CMS–10105 (OMB control number: 0938–0926); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 108,800; *Total Annual Responses:* 108,800; *Total Annual Hours:* 58,753. (For policy questions regarding this collection contact Julia Zucco at 410–786–6677.)

2. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Summary of Benefits and Coverage and Uniform Glossary; *Use:* This information collection will ensure that consumers shopping for or enrolled in private, individually purchased, or non-federal governmental group health plan coverage receive the consumer protections of the Affordable Care Act. Employers, employees, and individuals will use this information to compare coverage options prior to selecting coverage and to understand the terms of, and extent of medical benefits offered by, their coverage (or exceptions to such coverage or benefits) once they have coverage. CMS recently received OMB approval for a non-substantive change to the SBC calculator. Specifically, CMS requested that issuers begin using an updated 2020 SBC calculator starting on or after January 1, 2020. However, at this time, CMS is alerting issuers to immediately discontinue use of the 2020 calculator. Until further notice from CMS, issuers should revert back to using the 2017 SBC Calculator and all associated materials (including the 2017 SBC Calculator Excel file, the Guides and Narratives for the coverage examples, and the calculator instructions) to calculate coverage example costs for the SBC. *Form Number:* CMS–10407 (OMB control number: 0938–1146); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 128,511; *Total Annual Responses:* 24,433,233; *Total Annual Hours:* 41,551. (For policy questions regarding this collection contact Jessica Weinberg at 301–492–4404.)

Dated: May 8, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–09781 Filed 5–10–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Procedural Justice-Informed Alternatives to Contempt Demonstration Project Data Collection (OMB #0970–0505)

AGENCY: Office of Child Support Enforcement; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data as part of the rigorous evaluation of the *Procedural Justice-Informed Alternatives to Contempt* (PJAC) demonstration.

DATES: Comments due by July 12, 2019. In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Office of Child Support Enforcement (OCSE) within the Administration for Children and Families (ACF) is proposing a data collection activity as part of the Procedural Justice-Informed Alternatives to Contempt (PJAC)

Demonstration. In September 2016, OCSE issued grants to five state child support agencies to provide alternative approaches to the contempt process with the goal of increasing noncustodial parents' compliance with child support orders by building trust and confidence in the child support agency and its processes. OCSE also awarded a grant to support a rigorous evaluation of PJAC. The PJAC Demonstration is a five-year project that allows grantees and OCSE to learn whether incorporating principles of procedural justice into child support business practices increases reliable child support payments, reduces arrears, minimizes the need for continued enforcement actions and sanctions, and reduces the use of contempt proceedings.

The PJAC demonstration will yield information about the efficacy of applying procedural justice principles via a set of alternative services to the current use of a civil contempt process to address nonpayment of child support. It will generate knowledge regarding how the PJAC intervention operates, the effects the alternative services have, and whether the benefits of this approach exceed the costs. The information gathered will help inform future policy decisions related to the contempt process within the field of child support enforcement.

PJAC demonstration will include three interconnected evaluation components:

1. Implementation Study. The implementation study will provide a detailed description of the PJAC intervention—how it is implemented, whether it was implemented as intended, participant characteristics, the contexts in which it is operated, how treatment differed from the status quo, and the implications of PJAC practices. The study will identify the intervention features and conditions necessary for effective replication or improvement of the intervention. Key elements of the implementation study include: A Management Information System (MIS) for random assignment and data collection on participant engagement in PJAC activities; semi-structured interviews with staff from child support agencies and selected partner organizations; separate semi-structured interviews with study participants and the custodial parents connected to their child support case to learn about their experiences with and perceptions of the child support program; and a staff questionnaire to gather quantitative information on the implementation of PJAC services and staff experiences.

2. Impact Study. The impact study will provide rigorous estimates of the effectiveness of the PJAC intervention using an experimental research design. Noncustodial parents whose cases are being referred to the contempt process will be randomly assigned to either a program group that is offered PJAC services or to a control group that is offered business-as-usual services. Random assignment will require child support program staff to complete a brief data entry protocol. The impact study will rely on administrative data from state and county child support programs, court records, criminal justice records, and data from the National Directory of New Hires. Administrative records data will be used to estimate impacts on child support payments, enforcement actions, contempt proceedings, and jail stays.

3. Benefit-Cost Study. The benefit-cost study will estimate the costs and benefits associated with the implementation and impact of the PJAC interventions. The study will examine the costs and benefits from the perspective of the government, noncustodial parents, custodial parents, and society. Pertinent benefits and costs will be added together to determine the net value of the program for each perspective. Key outcomes to be assessed include the cost of PJAC interventions, costs for contempt actions, child support payments from noncustodial parents (program and control), court costs, and jail time, among others. The benefit-cost study will rely on the results of the impact study, analysis of participation data from the MIS, and results of a staff time study to quantify various PJAC-related costs and benefits.

This notice is specific to the following data collection activities: The noncustodial parent participant interviews (these interview topic guides were approved under a previous submission and require content modification which also significantly lowers the collective public burden hours); the staff survey; the staff time study; and the custodial parent interviews. Data collection activities that were previously approved by OMB, following public comment, are the staff data entry on participant baseline information, study MIS to track receipt of services, staff and community partner interview topic guide, the participant interview topic guide, and the participant survey tracking letter. A participant survey has been eliminated from the data collections plans, so the OMB-approved participant survey tracking letter will no longer be used.

Respondents: Respondents include study participants, child support program staff at the six PJAC demonstration sites, custodial parents associated with study participants, and the federal Office of Child Support Enforcement.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Noncustodial parent participant interview	60	1	1	60
Staff Survey	20	1	.5	10
Staff time study	30	1	1.5	45
Custodial parent interview	60	1	1	60

Estimated Total Annual Burden Hours: 175

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 1315.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–09756 Filed 5–10–19; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1875]

Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments.'' The purpose of the public meeting is to meet performance commitments included in the Prescription Drug User Fee Act (PDUFA) VI, Biosimilar User Fee Act (BsUFA) II, and Generic Drug User Fee Amendments (GDUFA) II. The public meeting will include presentations from FDA on the 5-year plans for the PDUFA VI, BsUFA II, and GDUFA II; the Agency's progress in implementing resource capacity planning and modernized time reporting; and the results of the fiscal year (FY) 2018 evaluation of PDUFA, BsUFA, and GDUFA resource management. The Agency will also address the impact of the modernized fee structure changes on the PDUFA and BsUFA programs and report on the contribution of the BsUFA spending trigger to the BsUFA program.

DATES: The public meeting will be held on June 7, 2019, from 9 a.m. to 12 p.m. Submit either electronic or written comments on this public meeting by July 8, 2019. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

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 July 8, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 8, 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–2019–N–1875 for ''Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments; Public Meeting; Request for Comments.'' 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: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 51, Rm. 1146, Silver Spring, MD 20993–0002, 301–796–5003, Fax: 301–847–8443, *Graham.Thompson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This public meeting is intended to satisfy FDA's commitment to host an annual public meeting in the third quarter of each fiscal year beginning in FY 2019 (II.B.3 of PDUFA VI (p. 38), IV.B.3 of BsUFA II (p. 28), and VI.B.4 of GDUFA II (p.22)). These user fee programs were reauthorized as part of the Food and Drug Administration Reauthorization Act of 2017, signed by the President on August 18, 2017. The complete set of performance goals for each program are available at:

- *PDUFA VI program: https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM511438.pdf*
- *BsUFA II program: https://www.fda.gov/downloads/forindustry/userfees/biosimilaruserfeeactbsufa/ucm521121.pdf*
- *GDUFA II program: https://www.fda.gov/downloads/forindustry/userfees/genericdruguserfees/ucm525234.pdf*

Each of these user fee programs included a set of commitments related to financial management. These included commitments to publish a 5-year financial plan that should be updated annually, develop resource capacity planning capability and modernize time reporting practices, and have a third-party evaluation of resource management practices for these user fee programs. In addition, each user fee program includes a commitment to host a public meeting in the third quarter of each fiscal year, beginning in FY 2019, to discuss specific topics.

II. Topics for Discussion at the Public Meeting

This public meeting will provide FDA the opportunity to update interested public stakeholders on topics related to the financial management of PDUFA VI, BsUFA II, and GDUFA II. FDA will present the 5-year financial plans for each of these programs and discuss the vision for the resource capacity planning capability, as well as update participants on the progress towards implementing resource capacity planning and modernizing its time reporting approach. FDA will also address the impact of the fee structure changes on PDUFA VI and BsUFA II, as well as the contribution of the BsUFA spending trigger to the BsUFA program. Finally, the meeting will include a presentation from representatives of the MITRE Corporation or Grant Thornton on their evaluation of PDUFA, BsUFA, and GDUFA resource management during FY 2018 and FDA's response to this evaluation.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://fdafinancemeeting.eventbrite.com.* If you are unable to attend the meeting in person, you can register to view a live webcast of the meeting. You will be asked to indicate in your registration if you plan to attend in person or via webcast. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public meeting must register by June 3, 2019, at 11:59 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation once they have been accepted. If time and space permit, onsite registration on the day of the public meeting will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public meeting.

If you need special accommodations due to a disability, please contact Graham Thompson no later than June 3, 2019, 11:59 p.m. Eastern Time.

Streaming Webcast of the Public Meeting: This public meeting will also be webcast. Please register for the webcast by visiting *https://fdafinancemeeting.eventbrite.com.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register,** but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**).

Dated: May 7, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–09803 Filed 5–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–E–6549]

Determination of Regulatory Review Period for Purposes of Patent Extension; GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for the GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by July 12, 2019. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 12, 2019. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 July 12, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 12, 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–2017–E–6549 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS.'' 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS. GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS is indicated for the treatment of de novo or restenotic lesions found in iliac arteries with reference vessel diameters ranging from 5 millimeters (mm) to 13 mm and lesion lengths up to 110 mm, including lesions at the aortic bifurcation. Subsequent to this approval, the USPTO received a patent term restoration application for the GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS (U.S. Patent No. 6,461,665) from W.L. Gore & Associates, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 6, 2018, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of the GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for the GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS is 1,136 days. Of this time, 931 days occurred during the testing phase of the regulatory review period, while 205 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* December 20, 2013. FDA has verified the applicant's claim that the date the investigational device exemption required under section 520(g) of the FD&C Act for human tests

to begin became effective was December 20, 2013.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* July 7, 2016. FDA has verified the applicant's claim that the premarket approval application (PMA) for the GORE VIABAHN VBX BALLOON EXPANDABLE ENDOPROSTHESIS (PMA P160021) was initially submitted July 7, 2016.

3. *The date the application was approved:* January 27, 2017. FDA has verified the applicant's claim that PMA P160021 was approved on January 27, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 669 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 7, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–09817 Filed 5–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–E–6509]

Determination of Regulatory Review Period for Purposes of Patent Extension; AUSTEDO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for AUSTEDO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by July 12, 2019. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 12, 2019. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 July 12, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 12, 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–2017–E–6509 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; AUSTEDO.'' 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, AUSTEDO (deutetrabenazine) indicated for treatment of chorea associated with Huntington's disease. Subsequent to this approval, the USPTO received a patent term restoration application for AUSTEDO (U.S. Patent No. 8,524,733) from Auspex Pharmaceuticals, Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated February 2, 2018, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of AUSTEDO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AUSTEDO is 1,736 days. Of this time, 1,060 days occurred during the testing phase of the regulatory review period, while 676 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 3, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was July 3, 2012.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* May 29, 2015. FDA has verified the applicant's claim that the new drug application (NDA) for AUSTEDO (NDA 208082) was initially submitted on May 29, 2015.

3. *The date the application was approved:* April 3, 2017. FDA has verified the applicant's claim that NDA 208082 was approved on April 3, 2017.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 8 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 7, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–09805 Filed 5–10–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Testing Services and Scores for Foreign Health Care Workers To Demonstrate English Language Proficiency

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for comments; notice of public meeting.

SUMMARY: HRSA announces a request for comments and notice of a public meeting to receive feedback on proposed updates to the list of testing services and scores for foreign health care workers to demonstrate English language proficiency pursuant to section 343 of the Illegal Immigration Reform

and Immigrant Responsibility Act of 1996 (IIRIRA).

DATES:

- The public meeting will be held on May 28, 2019, 1:00 p.m.–4:00 p.m. ET.
- Comments should be submitted by June 11, 2019, 11:59 p.m. ET.

ADDRESSES: The public may attend the public meeting via teleconference and in-person. The conference call-in number is (888) 455–4758; Participant Passcode is 3016308. The address for the public meeting is 5600 Fishers Lane, Room 5N54, Rockville, Maryland 20857.

Comments should be sent to *HRSAComments@hrsa.gov* with the subject line: ''Testing Services and Scores for Foreign Health Care Workers''.

FOR FURTHER INFORMATION CONTACT: LCDR Charlie Darr, Office of Global Health, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; via email: *OGHpublicmeeting@hrsa.gov;* or phone: (301) 443–2741.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this request for comments and notice of public meeting is to elicit stakeholder feedback to HRSA regarding its proposed updates to the list of approved testing services and passing scores pursuant to section 343 of the IIRIRA and implementing regulations promulgated by the Department of Homeland Security (DHS). Specifically, HRSA is seeking comments regarding the current and proposed list of approved standardized tests and passing scores, required for certification of foreign health care workers seeking to demonstrate English language proficiency under section 343 of the IIRIRA and implementing regulations.

Under the authority of section 343 of IIRIRA, Public Law 104–208 (8 U.S.C. 1182(a)(5)(C)), as implemented by the Department of Homeland Security (DHS) at 8 CFR 212.15(g), standards for these English language requirements, as shown by an appropriate minimum score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write, are set by the Secretary of HHS. Demonstration of English language proficiency is an element of the certification requirements for foreign health care workers seeking admission to the United States for the primary purpose of performing labor in a covered health care occupation. DHS implementing regulations authorize HHS to notify DHS of additions and deletions to the approved list of testing services and scores.

HRSA, under authority delegated by HHS, reviews and evaluates studies and other supporting materials presented to evaluate English language proficiency tests and language scoring level for the health occupations described in 8 CFR 212.15. Accordingly, HRSA is seeking public comment on proposed additions and deletions to the list of testing services and passing scores, including comments that address studies, methodologies, and analysis of such tests and passing scores.

Below is a Description of the HRSA-Proposed Updates to the Tests Listed in the Regulation at 8 CFR 212.15

HRSA is not proposing changes to the current standardized tests and scores for the following tests listed in the DHS regulation:

- Paper-delivered version of the Electronic Testing Service (ETS), Test of English as a Foreign Language (TOEFL-Paper-delivered Test);
- Test of English in International Communication (TOEIC); and
- International English Language Testing System

HRSA is proposing to add the following standardized tests (with indicated passing scores) to the tests currently listed in the DHS regulation:

- Internet-based version of the ETS TOEFL Test

The ETS TOEFL test, delivered via the internet, measures the test-taker's ability to use and understand English by evaluating combined reading, listening, speaking, and writing skills. Each section of the test (Reading, Listening, Speaking, and Writing) has a maximum score of 30 points, with a maximum total score of 120 points. The proposed overall passing score for occupational therapists and physical therapists is 89, including an aggregate minimum score of 63 on the Reading, Listening, and Writing sections, and a minimum score of 26 on the Speaking section. The proposed overall passing score for registered nurses and other foreign-educated health care workers whose occupations require attainment of a baccalaureate degree is 81, including an aggregate minimum score of 57 on the Reading, Listening, and Writing sections, and a minimum score of 24 on the Speaking section. The proposed overall passing score for occupations requiring less than a baccalaureate degree is 77, including an aggregate minimum score of 53 on the Reading, Listening, and Writing sections, and a minimum score of 24 on the Speaking section.

- TOEIC Speaking and Writing Tests

ETS has eliminated the Test of Spoken English and the Test of Written English from its currently available offerings and added the TOEIC Speaking Test and Writing Tests. Both the TOEIC Speaking and Writing tests are scored on a scale of 0–200. HRSA proposes a passing score of 160 on the TOEIC Speaking Test and 150 on the TOEIC Writing Test for registered nurses and other health care occupations requiring attainment of a baccalaureate degree, in addition to passing scores on the TOEIC test measuring Listening and Reading comprehension (passing score of 725 remains unchanged from current IIRIRA regulations). For health care occupations requiring less than a baccalaureate degree, HRSA proposes a passing score of 160 on the TOEIC Speaking Test and 150 on the TOEIC Writing Test; in addition to passing scores on the TOEIC test measuring Listening and Reading comprehension (passing score of 700 remains unchanged from current IIRIRA regulations).

- Pearson Test of English Academic (PTE Academic)

PTE Academic is a computer-based, internationally recognized, commercially available, standardized assessment of written and spoken English that measures the reading, writing, listening, and speaking abilities of test takers. The test includes an overall score (the Global Scale of English) that ranges from 10–90 and shows the overall English academic language ability of a test taker. Each test assesses an individual's communicative and enabling skills in sections (listening, reading, speaking, writing, grammar oral fluency, pronunciation, spelling, vocabulary, and written discourse) from a range of 10–90. HRSA proposes to add PTE Academic to the list of approved tests for registered nurses and other health care occupations requiring attainment of a baccalaureate degree, and for health care occupations requiring less than a baccalaureate degree. HRSA proposes a passing score of 55 with no individual communicative or enabling skills score below 50.

HRSA is proposing to delete the following standardized tests (which are no longer in use) from the tests currently listed in the DHS regulation:

- *ETS:* Test of Spoken English and Test of Written English—Eliminated from the current available offerings by ETS.
- TOEFL Computer-based Test—Discontinued by ETS.

II. Format

Request for Comment: Comments should be submitted to HRSA by June 11, 2019, 11:59 p.m. ET. Email comments to *HRSAComments@hrsa.gov* with the subject line: ''Testing Services and Scores for Foreign Health Care Workers''.

Public Meeting: This meeting is open to the public. Attendance can be by teleconference or in person. To register for either the teleconference or in person attendance, please provide complete contact information for each attendee, including name, title, affiliation, address, email, telephone number, and indicate teleconference or in person attendance to *OGHpublic meeting@hrsa.gov* by 11:59 p.m. on Tuesday, May 14, 2019. Registration is free. Registrants will receive a registration confirmation once accepted via email.

Requests for Oral Presentations: During registration, you may request to present at the public meeting, and specify which topic(s) you wish to address. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. All requests to make oral presentations are due by the close of registration on Tuesday, May 14, 2019.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify LCDR Charlie Darr (see the **FOR FURTHER INFORMATION CONTACT** section) at least 10 business days prior to the meeting. Since this meeting occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Dated: May 7, 2019.

George Sigounas,

Administrator.

[FR Doc. 2019–09730 Filed 5–10–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Behavior and Social Science of Aging Review Committee, June 05, 2019, 11:00 a.m. to June 06, 2019, 11:00 a.m., Hotel Kabuki, 1625 Post Street, San Francisco, CA 94155 which was published in the **Federal Register** on February 27, 2019, 84 FR 6405.

The meeting notice is amended to change the two-day meetings' starting and ending times on June 5, 2019 to 9:00 a.m.–5:00 p.m. and on June 6, 2019 to 8:30 a.m.–3:00 p.m. The meetings are closed to the public.

Dated: May 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09738 Filed 5–10–19; 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 Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 4–6, 2019.

Time: 5:30 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: John F. Connaughton, Ph.D., Chief, Scientific Review Branch, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.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 Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 19–20, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara A. Woynarowska, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: June 19–21, 2019.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@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: May 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09740 Filed 5–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Promoting Research on Music and Health.

Date: June 19, 2019.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Salon H, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Pamela Eugenia Jeter, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892—547, 301–435–2591, *pamela.jeter@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 7, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09739 Filed 5–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Council of Councils, May 17, 2019, 08:15 a.m. to May 17, 2019, 04:00 p.m., National Institutes of Health, The Cloisters Building, 1 Cloisters Court, Bethesda, MD 20892 which was published in the **Federal Register** on February 08, 2019, 84 FR 2889.

The meeting notice is amended to change the open and closed session meeting times as follows: The morning open session end time will change from 12:00 p.m. to 11:30 a.m.; the closed session will change from 12:00 p.m.–1:30 p.m. to 11:45 a.m.–12:15 p.m.; and the afternoon open session start time will change from 1:30 p.m. to 1:15 p.m.

Dated: May 7, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09734 Filed 5–10–19; 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; NCI R38 Review.

Date: June 21, 2019.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Sanita Bharti, Ph.D. Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W122 Bethesda, MD 20892–9750 240–276–5909 *sanita.bharti@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Validation of Cancer Markers (UH2/UH3).

Date: June 26, 2019.

Time: 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: John P. Cairns, Ph.D. Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W244 Bethesda, MD 20892–9750 240–276–5415 *paul.cairns@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–7: NCI Clinical and Translational R21 and Omnibus R03.

Date: June 28, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D. Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W640 Bethesda, MD 20892–9750 240–276–5179 *saejeong.kim@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; UE4/U24 Review.

Date: July 9, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Robert E. Bird, Ph.D. Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W110 Bethesda, MD 20892–9750 240–276–6344 *birdr@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Advancing Cancer Immunotherapy by Mitigating-Immune related adverse events.

Date: July 17, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike Rockville, MD 20852.

Contact Person: Shari W. Campbell, DPM, MSHS Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W612 Bethesda, MD 20892–9750 240–276–7381 *shari.campbell@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: May 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09736 Filed 5–10–19; 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, NIDDK Biostatistics Research Centers.

Date: May 29, 2019.

Time: 9:00 a.m. to 11:45 a.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: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.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, Fellowships in Digestive Diseases and Nutrition.

Date: June 6–7, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK DDK–D Member COI SEP.

Date: June 7, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK KUH Fellowship Review.

Date: June 7, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, DDK–C Member Conflicts.

Date: June 7, 2019.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@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: May 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09733 Filed 5–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Initial Review; Group Health, Behavior, and Context Subcommittee.

Date: June 10, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn Downtown, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Kimberly L. Houston, MD, Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6701B Rockledge Drive, Room 2127B, Bethesda, MD 20892, 301–827–4902, *kimberly.houston@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review; Pediatrics Subcommittee.

Date: June 14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn Downtown, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6701B Rockledge Drive, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn Downtown, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6701B Rockledge Drive, Bethesda, MD 20892, 301–435–6902, *PETER.ZELAZOWSKI@NIH.GOV.*

Name of Committee: National Institute of Child Health and Human Development Initial Review; Reproduction, Andrology and Gynecology (RAG) Subcommittee.

Date: June 28, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Helen Huang, Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6701B Rockledge Drive, Bethesda, MD 20892, 301–435–8207, *helen.huang@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; HEAL Initiative: Antenatal Opioid Exposure Longitudinal Study Consortium (PL1 Clinical Trial Not Allowed).

Date: June 18, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Eunice Kennedy Shriver National Institute of Children Health and Human Development, 6701B Rockledge Drive, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 7, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09735 Filed 5–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2019–0263]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0077

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0077, Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements, without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 12, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2019–0263] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr; Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2019–0263], and must be received by July 12, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements.

OMB Control Number: 1625–0077.

Summary: This information collection is associated with the maritime security requirements mandated by the Maritime Transportation Security Act (MTSA) of 2002. Security assessments, security plans and other security-related requirements are in Title 33 CFR Pars 101 through 106.

Need: This information is needed to determine if vessels and facilities are in compliance with certain security standards.

Forms: CG–6025, Facility Vulnerability and Security Measures Summary, and CG–6025A, Vulnerability and Security Measures Addendum.

Respondents: Vessel and Facility owners and operators.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 1,127,500 hours to 1,198,530 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: May 7, 2019.

James D. Roppel,

U.S. Coast Guard, Chief, Office of Information Management.

[FR Doc. 2019–09754 Filed 5–10–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Texas City, TX) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Texas City, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Texas City, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 26, 2018.

DATES: AmSpec LLC (Texas City, TX) was approved and accredited as a commercial gauger and laboratory as of September 26, 2018. The next triennial inspection date will be scheduled for September 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 3208 5th Avenue South, Texas City, TX 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Texas City, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurement.

AmSpec LLC (Texas City, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: May 3, 2019.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–09832 Filed 5–10–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Savannah, GA) as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of AmSpec LLC (Savannah, GA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Savannah, GA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 6, 2018.

DATES: AmSpec LLC (Savannah, GA) was approved and accredited as a commercial gauger and laboratory as of September 6, 2018. The next triennial inspection date will be scheduled for September 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12

and 19 CFR 151.13, that AmSpec LLC, 4117 Montgomery St., Savannah, GA 31405, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Savannah, GA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Maritime Measurement.

AmSpec LLC (Savannah, GA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: May 3, 2019.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–09835 Filed 5–10–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Freeboard International (Linden, NJ), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Freeboard International (Linden, NJ), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Freeboard International (Linden, NJ), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of August 7, 2018.

DATES: Freeboard International (Linden, NJ) was approved, as a commercial gauger as of August 7, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Freeboard International, 2500 Brunswick Ave., Linden, NJ 07036 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Freeboard International (Linden, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://*

www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: May 3, 2019.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2019–09834 Filed 5–10–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6166–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning January 1, 2019, is 3⅛ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2019, is 3⅜ percent.

FOR FURTHER INFORMATION CONTACT: Elizabeth Olazabal, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5146, Washington, DC 20410–8000; telephone (202) 402–4608 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 2019, is 3⅜ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 3⅜ percent for the 6-month period beginning January 1, 2019. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2019.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.
2¾	Jan. 1, 2017	July 1, 2017.
2⅞	July 1, 2017	Jan. 1, 2018.
2¾	Jan. 1, 2018	July 1, 2018.
3⅛	July 1, 2018	Jan. 1, 2019.
3⅜	Jan. 1, 2019	July 1, 2019.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended Section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under Section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found

in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning January 1, 2019, is 3⅛ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: May 6, 2019.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–09828 Filed 5–10–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–0047; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Scrub-Jay and Eastern Indigo Snake, Volusia County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Duke Energy Florida, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed scrub-jay and eastern indigo snake incidental to construction in Volusia County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for review.

DATES: We must receive your written comments on or before June 12, 2019.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2019–0047 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2019–0047.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2019–0047, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at (904) 731–3121 or via email at *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Duke Energy Florida, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed scrub-jay (*Aphelocoma coerulescens*) and eastern indigo snake (*Drymarchon couperi*) incidental to the construction of a solar power plant (project) in Volusia County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 10-year ITP to take the scrub-jay and eastern indigo snake incidental to the conversion of approximately 13.45 acres of occupied scrub-jay and 307.1 acres of occupied snake foraging and sheltering habitat for the construction of a solar power plant located on a 916.2-acre parcel, Parcel ID numbers 802900000050, 802800000020, 802000000030, 802000000070, 802000000050, 802000000060, 802100000010, 802100000080, 802100000012, 802000000020, 802000000010, and 801600000032, in Sections 16, 17, 20, 21, 28, 29, 32, and 33, Township 18 South, Range 30 East, Volusia County, Florida. The applicant proposes to mitigate for take of the scrub-jay through the contribution of $412,296.30 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy and to mitigate for take of the eastern indigo snake through a contribution of $50,000.00 to the Wildlife Foundation of Florida's Eastern Indigo Snake Conservation Fund.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation and minimization measures, would individually and cumulatively have a minor or negligible effect on the scrub-jay, the eastern indigo snake, and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46. 210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects,

would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 21556D–0 to Duke Energy Florida, LLC.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay B. Herrington,

Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2019–09710 Filed 5–10–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2019–0028; FXES11130400000EA–123–FF04EF1000]

Endangered and Threatened Wildlife; Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Lake County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from the City of Groveland, Florida (applicant), to amend an incidental take permit under the Endangered Species Act. The 10-year ITP authorizes take of the federally listed sand skink incidental to the construction of a fire station and parking lot in Lake County, Florida. We request public comment on the application and on our preliminary determination that the proposed amendment of the habitat conservation plan (HCP) qualifies as ''low-effect'' under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: We must receive your written comments by June 12, 2019.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2019–0028 at *http://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2019–0028.
- *U.S. mail or hand-delivery:* Public Comments Processing; Attn: Docket No. FWS–R4–ES–2019–0028; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at 904–731–3121, via the Federal Relay Service at 800–877–8339, or via email at *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), have received an application from the City of Groveland, Florida (applicant), to amend an incidental take permit no. TE69161C–0 (ITP) under the Endangered Species Act of 1973, as amended, (ESA; 16 U.S.C. 1531 *et seq.*). The 10-year ITP authorizes take of the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a fire station and parking lot in Lake County, Florida. We request public comment on the application, which includes the proposed habitat conservation plan (HCP), and on our preliminary determination that the proposed amendment of the HCP qualifies as ''low-effect'' under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

We issued ITP TE69161C–0 to the applicant authorizing take of the sand skink incidental to the conversion of approximately 1.57 acres of occupied foraging and sheltering habitat for the construction of a fire station and parking lot. The station will be constructed within a 4.61-acre project site located on parcel Number 19–22–25–000100005200 in Section 19, Township 22 South, Range 25 East, Lake County, Florida.

The applicant is requesting that the Service amend its ITP to authorize additional take of the sand skink through the conversion of another 0.41 acre (totaling approximately 1.98 acres) of occupied foraging and sheltering habitat incidental to the project. The project includes clearing, infrastructure building, and landscaping associated with construction. To mitigate for take under the ITP, the applicant agreed to purchase 3.14 mitigation credits in the Backbone Conservation Bank or another Service-approved sand skink bank. The applicant proposes to purchase an additional .82 credit (totaling 3.96 credits) in the conservation bank to mitigate for additional take of the species.

Public Availability of Comments

All comments, whether received electronically or via hard copy, will be posted on *http://regulations.gov* and become part of the decision record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you can request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the sand skinks and the environment. Therefore, we have preliminarily determined that amendment of the ITP would be ''low effect'' and qualify for categorical exclusion under NEPA. A low-effect HCP is one involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

The Service will evaluate the application to amend the ITP and consider all comments received to determine whether to amend the ITP application. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA. After considering the above findings, we will determine whether the requirements of section 10(a)(1)(B) of the ESA and 50 CFR 13.23 have been met. If met, the Service will issue an amended ITP no. TE69161C–1 to the applicant for incidental take of the sand skink.

Authority

The Service provides this notice under section 10 of the ESA (16 U.S.C.

1539) and NEPA regulation 40 CFR 1506.6.

Jay B. Herrington,

Field Supervisor, Jacksonville, FL Field Office, Southeast Region.

[FR Doc. 2019–09711 Filed 5–10–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–0046; FXES11130400000EA–123–FF04EF1000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Orange County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Orange County Utilities (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink incidental to construction in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments on or before June 12, 2019.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2019–0046 at *http://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2019–0046.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2019–0046, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, by telephone at (904) 731–3121 or via email at *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from Orange County Utilities (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) incidental to the construction of a water reclamation facility (project) in Orange County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP) and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act (NEPA; 42 U.S.C. 4231 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

Project

Orange County Utilities requests a 20-year ITP to take sand skinks incidental to the conversion of approximately 8.84 acres of occupied skink foraging and sheltering habitat for the construction of a water reclamation facility located on a 49.18-acre parcel in Sections 16 and 17, Township 23 South, Range 27 East, Orange County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing 17.68 credits in the Lake Wales Ridge Conservation Bank and/or another Service-approved sand skink bank. The Service would require the applicant to purchase the credits prior to engaging in activities associated with the project on the parcel.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, infrastructure building, landscaping, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and, (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE 21560D–0 to Orange County Utilities.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Jay B. Herrington,

Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2019–09712 Filed 5–10–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on April 22, 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 American Society of Mechanical Engineers (''ASME'') 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, since September 4, 2018, ASME has published two new standards, added one consensus committee charter, and initiated five new standards activities within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME 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 October 13, 2004 (69 FR 60895).

The last notification with the Attorney General was filed on January 28, 2019. A notice was filed in the **Federal Register** on February 12, 2019 (84 FR 3492).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–09702 Filed 5–10–19; 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—DirectTrust Standards

Notice is hereby given that, on April 22, 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''), DirectTrust Standards (''DirectTrust'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: DirectTrust Standards, Washington, DC. The nature and scope of DirectTrust's standards development activities are: To develop and maintain standards that enable and promote healthcare interoperability using Direct exchange and trust frameworks. DirectTrust received ANSI Accreditation as to develop American National Standards in compliance with the DirectTrust Standards Operating Procedures.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–09698 Filed 5–10–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0004]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Revision of a Currently Approved Collection; Number of Full-Time Law Enforcement Employees as of October 31

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 12, 2019.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Ms. Amy Blasher, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Number of Full-time Law Enforcement Employees as of October 31.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: 1–711. Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal, and tribal law enforcement agencies. Abstract: Under Title 28, U.S. Code, Section 534, Acquisition, Preservation, and Exchange of Identification Records; and Appointment of Officials, 1930, this collection requests the number of full and part-time law enforcement employees by race/ethnicity for both officers and civilians, from city, county, state, tribal, and federal law enforcement agencies in order for the FBI UCR Program to serve as the national clearinghouse for the collection and dissemination of police employee data and to publish these statistics in Crime in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 18,482 law enforcement agency respondents that submit once a year for a total of 18,482 responses with an estimated response time of 8 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: There are an estimated 2,464 hours, annual burden, associated with this information collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: May 8, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–09769 Filed 5–10–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Fourth Amended Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 7, 2019, the Department of Justice lodged a proposed Fourth Amended Consent Decree with the United States District Court for the Western District of Washington in the lawsuit entitled *United States* v. *Point Ruston, LLC,* Case No. 91–CV–05528–RJB.

This amended Consent Decree extends various remedial action deadlines and forgives certain payments due under the Third Amended Consent Decree in exchange for the disposition of contaminated soil from an adjacent parcel. Under the terms of this amendment: (1) Point Ruston will temporarily manage and dispose of the contaminated soil from the Metropolitan Parks Waterfront Phase I parcel pursuant to a Soil Management Plan; (2) Point Ruston's obligation to pay the remaining amount due under Paragraph 69 of the Third Amended Consent Decree is extinguished; (3) certain remedial action deadlines set forth in the Construction Management Plans are extended for six months; and (4) a legal citation in the ''Access and Institutional Controls'' section of the Third Amended Consent Decree is updated to reflect a change in Washington state law.

The publication of this notice opens a period for public comment on the Fourth Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Point Ruston, LLC,* Case No. 91–CV–05528–RJB, D.J. Ref. No. 90–11–2–698/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Fourth Amended Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Fourth Amended Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–09771 Filed 5–10–19; 8:45 am]

BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

DATE AND TIME: The Legal Services Corporation's Board of Directors will meet telephonically on Tuesday, May 21, 2019. The meeting will commence at 3:00 p.m., EDT, and will continue until the conclusion of the Board's agenda.

PLACE: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW, Washington, DC 20007.

Public Observation: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

Call-In Directions for Open Sessions:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Board of Directors

1. Approval of agenda
2. Consider and act on the Board of Directors' transmittal to accompany the Inspector General's Semiannual Report to Congress for the period of October 1, 2018 through March 31, 2019
3. Public comment
4. Consider and act on other business
5. Consider and act on adjournment of meeting

CONTACT PERSON FOR MORE INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: May 9, 2019.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2019–09918 Filed 5–9–19; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19–029)]

National Environmental Policy Act; Wallops Flight Facility; Site-Wide

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of the Final Site-wide Programmatic Environmental Impact Statement (PEIS) for improvement of infrastructure and

services at Wallops Flight Facility (WFF), Accomack County, Virginia.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), as amended, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and NASA's NEPA policy and procedures, NASA has prepared a Final PEIS for the improvement of infrastructure and services at WFF. The Federal Aviation Administration's Air Traffic Organization and the Office of Commercial Space Transportation; the Federal Highway Administration; the National Oceanic and Atmospheric Administration's (NOAA) National Environmental Satellite, Data, and Information Service; the U.S. Army Corps of Engineers; the U.S. Coast Guard; the U.S. Fish and Wildlife Service; the U.S. Navy, Naval Sea Systems Command; the U.S. Navy, Naval Air Systems Command; U.S. Navy, U.S. Fleet Forces Command; the U.S. Environmental Protection Agency (EPA); the U.S. Air Force Space Command/Space and Missile Systems Center; and Virginia Commercial Space Flight Authority have served as Cooperating Agencies in preparing the Final PEIS as they either have permanent facilities or missions at WFF or possess regulatory authority or specialized expertise pertaining to the Proposed Action.

The purpose of this notice is to apprise interested agencies, organizations, tribal governments, and individuals of the availability of the Final PEIS.

DATES: NASA will issue a Record of Decision (ROD) based on the Final PEIS no sooner than 30 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's Notice of Availability of the Final PEIS.

ADDRESSES: The Final PEIS may be viewed at the following locations:

(a) Chincoteague Island Library, Chincoteague, Virginia, 23336 (757) 336–3460

(b) NASA Wallops Visitor Center, Wallops Island, Virginia, 23337 (757) 824–1344

(c) Eastern Shore Public Library, Accomac, Virginia, 23301 (757) 787–3400

(d) Northampton Free Library, Nassawadox, Virginia, 23413 (757) 414–0010

A limited number of hard copies of the Final PEIS are available, on a first request basis, by contacting the NASA point of contact listed under **FOR FURTHER INFORMATION CONTACT**. The Final PEIS is available on the internet in Adobe® portable document format at *https://code200-external.gsfc.nasa.gov/250-wff/site-wide_eis*. NASA's ROD will be made available, once issued, on the same website as above and by request to the contact provided above.

FOR FURTHER INFORMATION CONTACT: Shari Miller, Site-wide PEIS, NASA Goddard Space Flight Center's Wallops Flight Facility, Mailstop: 250.W, Wallops Island, Virginia 23337; telephone (757) 824–2327; email: *Shari.A.Miller@nasa.gov*. A toll-free telephone number, (800) 521–3415, is also available for persons outside the local calling area. When using the toll-free number, please follow the menu options and enter the ''pound sign (#)'' followed by extension number ''2327.'' Additional information about NASA's WFF may be found on the internet at *http://www.nasa.gov/centers/wallops/home/index.html*. Information regarding the NEPA process for this proposal and supporting documents (as available) are located at *https://code200-external.gsfc.nasa.gov/250-wff/site-wide_eis*.

SUPPLEMENTARY INFORMATION: WFF is a NASA Goddard Space Flight Center field installation located in northern Accomack County on the Eastern Shore of Virginia. The facility consists of three distinct landmasses—the Main Base, Wallops Mainland, and Wallops Island. WFF operates the oldest active launch range in the continental U.S. and the only range completely under NASA management. For over 70 years, WFF has flown thousands of research vehicles in the quest for information on the characteristics of airplanes, rockets, and spacecraft, and to increase the knowledge of the Earth's upper atmosphere and the near space environment. The flight programs and projects conducted by WFF range from small sounding and suborbital rockets, unmanned scientific balloons, unmanned aerial systems, manned aircraft, and orbital spacecraft to next-generation launch vehicles and small- and medium-classed launch vehicles.

In keeping with the principles, goals, and guidelines of the 2010 U.S. National Space Policy, as updated by the 2013 U.S. National Space Transportation Policy and the 2017 Presidential Memorandum on Reinvigorating America's Human Space Exploration Program, NASA is proposing to improve its service capability at WFF to support a growing mission base in the areas of civil, defense, and academic aerospace. One guiding principle of the National Space Policy is for Federal agencies to facilitate the commercial space industry. The Mid-Atlantic Regional Spaceport, a commercial launch site on Wallops Island, is a real-world example of WFF's commitment to making commercial access to space a reality. Accordingly, it is expected that a commercial presence at WFF will continue to expand in the coming years.

The National Space Policy also instructs Federal agencies to improve their partnerships through cooperation, collaboration, information sharing, and/or alignment of common pursuits with each other. WFF supports aeronautical research, and science, technology, engineering, and math (STEM) education programs by providing other NASA centers and other U.S. government agencies access to resources such as special use (*i.e.,* controlled/restricted) airspace, runways, and launch pads. WFF regularly facilitates a wide array of U.S. Department of Defense (DoD) research, development, testing, and evaluation; training missions, including target and missile launches; and aircraft pilot training. Similar to its forecasted commercial growth at WFF, NASA also expects an increase in DoD presence at WFF in the foreseeable future.

Finally, the National Space Policy directs NASA to fulfill various key civil space roles regarding space science, exploration, and discovery; a number of which have been priorities at WFF for decades. NASA's need to ensure continued growth while preserving the ability to safely conduct its historical baseline of services is a key component of facilitating future projects and new missions at WFF.

Related Environmental Documents

In January 2005, NASA issued a Final Site-Wide Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for its operations and institutional support at WFF. Since then, substantial growth has occurred and NASA, and its Cooperating Agencies, have prepared multiple supplemental NEPA documents including the 2008 EA/FONSI for the Wallops Research Park; the 2009 EA/FONSI for the Expansion of the Wallops Flight Facility Launch Range; the 2010 PEIS/Record of Decision for the Shoreline Restoration and Infrastructure Protection Program; the 2011 EA/FONSI for the Alternative Energy Project; the 2011 EA/FONSI for the Main Entrance Reconfiguration; the 2011 NOAA EA/FONSI for Electrical and Operational Upgrade, Space Addition, and Geostationary Operational Environmental Satellite Installation; the 2012 EA/FONSI for the North Wallops Island Unmanned Aerial Systems Airstrip Project; the U.S. Fleet Force

Command's 2013 EA/FONSI for E–2/C–2 Field Carrier Landing Practice at WFF; the Navy's 2014 EA/FONSI for the Testing of Hypervelocity Projectiles and an Electromagnetic Railgun; the 2015 Supplemental EA/FONSI for Antares 200 Configuration Expendable Launch Vehicle at WFF; the 2016 EA/FONSI for Establishment of Restricted Area Airspace R–6604 C/D/E; the Navy's 2017 EA/FONSI for and the Installation and Operation of Air and Missile Defense Radar AN/SPY–6; the 2017 U.S. Air Force's EA/FONSI for the Instrumentation Tower on Wallops Island; and the Navy's 2018 EIS/Overseas EIS/ROD for Atlantic Fleet Training and Testing.

Need for Preparing a PEIS

Since the 2005 WFF Site-wide EA, NASA, NOAA, and the Navy have updated their Master Plans for Wallops Island; which propose new facilities and numerous infrastructure improvements to enable a growing mission base. Additionally, during reviews of the post-2005 Site-wide EA NEPA documents, resource agencies have expressed concerns regarding cumulative environmental effects and a desire for NASA to consider all reasonably foreseeable future projects at WFF in a consolidated NEPA document. NASA determined that preparing a single Site-wide PEIS not only would assist in its decision-making process for future mission growth at WFF but also address concerns regarding cumulative environmental effects. Therefore, the Site-wide PEIS considers all reasonably foreseeable future actions at WFF; those proposed by NASA along with those proposed by its tenants and partners.

Cooperating Agency Actions

The Site-wide PEIS will serve as a decision-making tool not only for NASA but also for its Cooperating Agencies. Given the potential for their undertaking actions related to NASA's actions, each of these agencies has been involved closely in NASA's NEPA process.

Alternatives

The PEIS evaluates the environmental consequences of a range of reasonable alternatives that meet NASA's need to ensure continued growth at WFF while also preserving the ability to safely conduct its historical baseline of services. The planning horizon for actions in the PEIS is 20 years.

The PEIS considers a Proposed Action and a No Action alternative. The Proposed Action, NASA's preferred alternative, would support a number of facility projects ranging from new construction, demolition, and renovation; the replacement of the Wallops causeway bridge; maintenance dredging between the boat docks at the Main Base and Wallops Island; development of a deep-water port and operations area on North Wallops Island; construction and operation of an additional medium to heavy class launch site; the introduction of new NASA and DoD programs at WFF; the expansion of the launch vehicle services with liquid-fueled intermediate class and solid fueled heavy class launch vehicles; and the consideration of commercial human spaceflight missions and the return of launch vehicles to the launch site. Under the No Action Alternative, WFF and its partners would continue the existing operations and programs previously discussed in the 2005 Site-Wide EA and the subsequent NEPA documents identified under *Related Environmental Documents*.

Review of the Draft PEIS

NASA sought public comments on the analysis and findings presented in the Draft Site-wide PEIS during the 45-day public comment period which ran from May 4 through June 18, 2018. An NOA was placed in the **Federal Register** on May 4, 2018, and public notices were published in the *Eastern Shore News, Chincoteague Beacon, Eastern Shore Post,* and *The Daily Times*.

A public meeting was held at the NASA Wallops Flight Facility Visitor Center on May 23, 2018, from 6:00 to 8:00 p.m. A total of nine comment letters were received. Appendix I of the Final PEIS provides the public notices, meeting materials, and comment letters received during the public review period.

In accordance with 15 CFR 930.2, the Virginia Department of Environmental Quality (VDEQ) invited the public to participate in the review of the Federal Consistency Determination submitted for NASA's proposed action. A public notice was published in the VDEQ's Office of Environmental Impact Review Program Newsletter and on the VDEQ website from May 11 through June 21, 2018. No public comments were received in response to the notice. In accordance with 40 CFR 1506.9, EPA published an NOA of the Draft PEIS in the **Federal Register** on May 4, 2018. No public comments were received in response to the notice.

In summary, notice of the availability of the Final PEIS is hereby given.

Cheryl E. Parker,

Federal Liaison Officer.

[FR Doc. 2019–09763 Filed 5–10–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding this information collection are best assured of having their full effect if received by June 12, 2019.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Antarctic emergency response plan and environmental protection information.

OMB Approval Number: 3145–0180.

Abstract: The NSF, pursuant to the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) (''ACA'') regulates certain non-governmental activities in Antarctica. The ACA was amended in 1996 by the Antarctic Science, Tourism, and Conservation Act. On September 7, 2001, NSF published a final rule in the **Federal Register** (66 FR 46739) implementing certain of these statutory amendments. The rule requires non-governmental Antarctic expeditions using non-U.S. flagged vessels to ensure that the vessel owner has an emergency response plan. The rule also requires persons organizing a non-governmental expedition to provide expedition members with information on their environmental protection obligations under the Antarctic Conservation Act.

Expected Respondents: Respondents may include non-profit organizations and small and large businesses. The majority of respondents are anticipated to be U.S. tour operators, currently estimated to number fifteen.

Burden on the Public: The Foundation estimates that a one-time paperwork and recordkeeping burden of 40 hours or less, at a cost of $500 to $1,400 per respondent, will result from the emergency response plan requirement contained in the rule. Presently, all respondents have been providing expedition members with a copy of the Guidance for Visitors to the Antarctic (prepared and adopted at the Eighteenth Antarctic Treaty Consultative Meeting as Recommendation XVIII–1). Because this Antarctic Treaty System document satisfies the environmental protection information requirements of the rule, no additional burden shall result from the environmental information requirements in the proposed rule.

Dated: May 7, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–09741 Filed 5–10–19; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2018–242; CP2019–148]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 15, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–242; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 444, Filed Under Seal; *Filing Acceptance Date:* May 7, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 15, 2019.

2. *Docket No(s).:* CP2019–148; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* May 7, 2019; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 15, 2019.

This Notice will be published in the **Federal Register**.

Stacy L Ruble,

Secretary.

[FR Doc. 2019–09816 Filed 5–10–19; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., May 22, 2019.

PLACE: 8th Floor Board Conference Room, 844 North Rush Street, Chicago, Illinois, 60611.

STATUS: Parts of this meeting will be open to the public. The rest of this the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

PORTIONS OPEN TO THE PUBLIC:

(1) Follow up on Board meetings of May 14–15 in Washington DC.

(2) Status update from appropriate staff on information gathering activities relating to the SCOTUS Wisconsin Central decision.

PORTIONS CLOSED TO THE PUBLIC:

(1) Status update on internal personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Dated: May 9, 2019.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2019–09950 Filed 5–9–19; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 12d1–3, SEC File No. 270–116, OMB Control No. 3235–0109

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Exchange Act Rule 12d1–3 (17 CFR 240.12d1–3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(d)) to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes approximately one-half hour per response to provide the information required under Rule 12d1–3 and that the information is filed by approximately 688 respondents for a total annual reporting burden of 344 hours (0.5 hours per response × 688 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09799 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33468; 812–14894]

ALPS Variable Investment Trust, et al.

May 7, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: ALPS Variable Investment Trust, ALPS ETF Trust, and Financial Investors Trust (each a ''Trust'' and collectively, the ''Trusts''), each a Delaware statutory trust registered under the Act as an open-end management investment company that offers or will offer one or more series (each a ''Series,'' and collectively, the ''Series''), and ALPS Advisors, Inc. (the ''Advisor''), a Colorado corporation registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on April 9, 2018 and amended on October 2, 2018, and January 9, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 31, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants, 1290 Broadway, Suite 1100, Denver, CO 80203.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Advisor serves or will serve as the investment adviser to each Sub-Advised Series pursuant to an investment advisory agreement with each Trust (the ''Investment Management Agreement'' and together, the ''Investment Management

Agreements'').[1] Under the terms of each Investment Management Agreement, the Advisor, subject to the supervision of the board of trustees of each Trust (''Board''), provides continuous investment management of the assets of each Sub-Advised Series. Consistent with the terms of each Investment Management Agreement, the Advisor may, subject to the approval of the applicable Board, delegate portfolio management responsibilities of all or a portion of the assets of a Sub-Advised Series to one or more Sub-Advisors.[2] The Advisor will continue to have overall responsibility for the management and investment of the assets of each Sub-Advised Series. The Advisor will evaluate, select, and recommend Sub-Advisors to manage the assets of a Sub-Advised Series and will oversee, monitor and review the Sub-Advisors and their performance and recommend the removal or replacement of Sub-Advisors.

2. Applicants request an order to permit the Advisor, subject to Board approval, to enter into investment sub-advisory agreements with the Sub-Advisors (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Sub-Advised Series to disclose (as both a dollar amount and a percentage of the Sub-Advised Series' net assets): (a) the aggregate fees paid to the Advisor and any Wholly-Owned Sub-Advisor; (b) the aggregate fees paid to Non-Affiliated Sub-Advisors; and (c) the fee paid to each Affiliated Sub-Advisor (collectively, Aggregate Fee Disclosure'').[4]

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Sub-Advised Series' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Sub-Advised Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisors is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Sub-Advised Series.

Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Advisor's ability to negotiate fees paid to the Sub-Advisors that are more advantageous for the Sub-Advised Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09721 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

[1] Applicants request relief with respect to the Series, as well as to any future series of the Trusts and any other existing or future registered open-end management investment company or series thereof that, in each case, is advised by the Advisor, its successors, or any entity controlling, controlled by, or under common control with, the Advisor or its successors (each, also an ''Advisor''), uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a ''Sub-Advised Series''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Sub-Advised Series may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain Series (each, a ''Feeder Fund'') may invest substantially all of their assets in a Sub-Advised Series (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

[2] As used herein, a ''Sub-Advisor'' for a Sub-Advised Series is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Advisor for that Sub-Advised Series, or (2) a sister company of the Advisor for that Sub-Advised Series that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Advisor (each of (1) and (2) a ''Wholly-Owned Sub-Advisor'' and collectively, the ''Wholly-Owned Sub-Advisors''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Sub-Advised Series, any Feeder Fund invested in a Master Fund, the Trusts, or the Advisor, except to the extent that an affiliation arises solely because the Sub-Advisor serves as a sub-adviser to a Sub-Advised Series (''Non-Affiliated Sub-Advisors'').

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Advisor, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Sub-Advised Series, of any Feeder Fund, or of the Advisor, other than by reason of serving as a sub-adviser to one or more of the Sub-Advised Series (''Affiliated Sub-Advisor'').

[4] For any Sub-Advised Series that is a Master Fund, the relief would also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85800; File No. SR–CboeEDGX–2019–026]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend Rule 11.11 and Rule 11.16, as Well as Its Fee Schedule, To Delete References to the SWPB Routing Option

May 7, 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 April 25, 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 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 11.11 and Rule 11.16, as well as its Fee Schedule, to delete references to the SWPB routing option. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.11(g) (Routing Options) to delete the SWPB routing option under subparagraph (g)(10), as well as references to the SWPB routing option under Rule 11.16(e) (Limit Up-Limit Down Mechanism). The Exchange also proposes to amend its fee schedule to delete references to the SWPB routing options under fee code SW and under footnote 8. The Exchange intends to implement the proposed rule changes on May 1, 2019.

Currently, Rule 11.11(g) provides for a variety of routing away options under which the System [5] will consider the quotations only of accessible Trading Centers. The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.[6] Rule 11.13(g)(10) currently provides for SWPB as one of such routing options. SWPB is a routing option under which an order checks the System for available shares and then is sent to only Protected Quotations and only for displayed size. To the extent that any portion of the routed order is unexecuted, the remainder is posted to the EDGX Book at the order's limit price, unless otherwise instructed by the User.[7] Also, if at the time of entry, there is an insufficient share quantity in the SWPB order to fulfill the displayed size of all Protected Quotations, then the entire SWPB order will be cancelled back to the User immediately. Currently, Rule 11.16 provides for the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan'') during a pilot period. Specifically, Rule 11.16(e)(5)(D)(2) provides a description of how the two current SWP routing strategies, SWPA and SPWB, are handled in accordance with the Plan when an order to buy utilizing an SWP routing strategy has a limit price that is greater than the Upper Price Band or if a sell order utilizing an SWP routing strategy has a limit price that is less than the Lower Price Band. Additionally, current fee code SW is yielded on orders routed using SWPA or SWPB routing strategies, except for removal of liquidity from the New York Stock Exchange (''NYSE'').[8] Current footnote 8 provides that fee code D will be yielded on orders routed using SWPA or SWPB if such strategy removes liquidity from NYSE.

The Exchange has determined that because few Users elect the SWPB routing option, which often experiences no usage for extended periods of time, the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support these products. Therefore, the Exchange now proposes to delete SWPB as a routing option under Rule 11.11(g)(10) and references to the SWPB routing option under Rule 11.16(e)(5)(D)(2). The Exchange proposes to amend Rule 11.11(g) formatting accordingly, changing the numbering of current subparagraphs (g)(11) through (g)(14) to subparagraphs (g)(10) through (g)(13). The Exchange also proposes to amend its fee schedule to delete references to the SWPB routing option under fee code SW, as well as under footnote 8. The Exchange notes that Users seeking to route only to Protected Quotations for displayed size may use the other SWP routing option, SWPA.[9]

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] 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) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the SWPB routing options will no longer be available to all Users. Also, the Exchange believes the proposed rule change to remove references to SWPB will remove impediments to the mechanism of a free and open market, thereby protecting investors and the public interest. As stated, the Exchange noted that few Users elect the SWPB routing option and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support these products. Therefore, the Exchange is discontinuing this routing option. The Exchange notes that routing through the Exchange is voluntary and Users are free to designate the alternative SWP routing option, SWPA, currently offered by the Exchange.[13] In addition, the SWPB routing option is not a core product offering by the Exchange, nor is the Exchange required by the Act to offer such a product. By removing references to a routing option that will no longer be offered by the Exchange, the Exchange believes the proposed rule change will remove impediments to the mechanism of a free and open market and protect investors by providing investors with increased transparency regarding rules that reflect routing options currently available on the Exchange.

[5] The ''System'' is the Exchange's electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Exchange Rule 1.5(cc).

[6] The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *See* Exchange Rule 11.11(g).

[7] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[8] Orders that yield fee code SW receive a discounted fee of $0.0031 per share at or above $1.00 and 0.30% of Dollar Value per share below $1.00.

[9] *See* Exchange Rule 11.11(g)(9).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] *See supra* note 9.

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. The proposed rule change to remove SWPB is not designed to address any competitive issues but rather to increase transparency by eliminating the SWPB routing option that is to be discontinued by the Exchange.

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 [14] and Rule 19b–4(f)(6) [15] thereunder. Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. In support of its waiver request, the Exchange stated its belief that waiving the operative delay would allow the Exchange to modify its rules in a timely manner by eliminating rules that account for a service the Exchange intends to discontinue on May 1, 2019. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest, and accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–026 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–*2019–026.* 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–CboeEDGX–2019–026 and should be submitted on or before June 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09726 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85799; File No. SR–CboeEDGA–2019–008)

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 11.11 and Rule 11.16, as Well as Its Fee Schedule, To Delete References to the SWPB Routing Option

May 7, 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 April 25, 2019, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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

[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).

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 EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend Rule 11.11 and Rule 11.16, as well as its Fee Schedule, to delete references to the SWPB routing option. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), 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 11.11(g) (Routing Options) to delete the SWPB routing option under subparagraph (g)(10), as well as references to the SWPB routing option under Rule 11.16(e) (Limit Up-Limit Down Mechanism). The Exchange also proposes to amend its fee schedule to delete references to the SWPB routing options under fee code SW and under footnote 3. The Exchange intends to implement the proposed rule changes on May 1, 2019.

Currently, Rule 11.11(g) provides for a variety of routing away options under which the System [5] will consider the quotations only of accessible Trading Centers. The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.[6] Rule 11.13(g)(10) currently provides for SWPB as one of such routing options. SWPB is a routing option under which an order checks the System for available shares and then is sent to only Protected Quotations and only for displayed size. To the extent that any portion of the routed order is unexecuted, the remainder is posted to the EDGA Book at the order's limit price, unless otherwise instructed by the User.[7] Also, if at the time of entry, there is an insufficient share quantity in the SWPB order to fulfill the displayed size of all Protected Quotations, then the entire SWPB order will be cancelled back to the User immediately. Currently, Rule 11.16 provides for the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Plan'') during a pilot period. Specifically, Rule 11.16(e)(5)(D)(ii) provides a description of how the two current SWP routing strategies, SWPA and SPWB, are handled in accordance with the Plan when an order to buy utilizing an SWP routing strategy has a limit price that is greater than the Upper Price Band or if a sell order utilizing an SWP routing strategy has a limit price that is less than the Lower Price Band. Additionally, current fee code SW is yielded on orders routed using SWPA or SWPB routing strategies, except for removal of liquidity from the New York Stock Exchange (''NYSE'').[8] Current footnote 3 provides that fee code D will be yielded on orders routed using SWPA or SWPB if such strategy removes liquidity from NYSE.

The Exchange has determined that because few Users elect the SWPB routing option, which often experiences no usage for extended periods of time, the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support these products. Therefore, the Exchange now proposes to delete SWPB as a routing option under Rule 11.11(g)(10) and references to the SWPB routing option under Rule 11.16(e)(5)(D)(ii). The Exchange proposes to amend Rule 11.11(g) formatting accordingly, changing the numbering of current subparagraphs (g)(11) through (g)(16) to subparagraphs (g)(10) through (g)(15). The Exchange also proposes to amend its fee schedule to delete references to the SWPB routing option under fee code SW, as well as under footnote 3. The Exchange notes that Users seeking to route only to Protected Quotations for displayed size may use the other SWP routing option, SWPA.[9]

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] 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) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the SWPB routing options will no longer be available to all Users. Also, the Exchange believes the proposed rule change to remove references to SWPB will remove impediments to the mechanism of a free and open market, thereby protecting investors and the public interest. As stated, the Exchange noted that few Users elect the SWPB routing option and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support these products. Therefore, the Exchange is discontinuing this routing option. The Exchange notes that routing through the Exchange is voluntary and

[5] The ''System'' is the Exchange's electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Exchange Rule 1.5(cc).

[6] The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *See* Exchange Rule 11.11(g).

[7] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[8] Orders that yield fee code SW receive a discounted fee of $0.0031 per share at or above $1.00 and 0.30% of Dollar Value per share below $1.00.

[9] *See* Exchange Rule 11.11(g)(9).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

Users are free to designate the alternative SWP routing option, SWPA, currently offered by the Exchange.[13] In addition, the SWPB routing option is not a core product offering by the Exchange, nor is the Exchange required by the Act to offer such a product. By removing references to a routing option that will no longer be offered by the Exchange, the Exchange believes the proposed rule change will remove impediments to the mechanism of a free and open market and protect investors by providing investors with increased transparency regarding rules that reflect routing options currently available on the Exchange.

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. The proposed rule change to remove SWPB is not designed to address any competitive issues but rather to increase transparency by eliminating the SWPB routing option that is to be discontinued by the Exchange.

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[14] and Rule 19b–4(f)(6)[15] thereunder. Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6)[17] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. In support of its waiver request, the Exchange stated its belief that waiving the operative delay would allow the Exchange to modify its rules in a timely manner by eliminating rules that account for a service the Exchange intends to discontinue on May 1, 2019. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest, and accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2019–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2019–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2019–008 and should be submitted on or before June 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09725 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

[13] *See supra* note 9.

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–02736

Extension:

Form 18–K, SEC File No. 270–108, OMB Control No. 3235–0120

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 18–K (17 CFR 249.318) is an annual report form used by foreign governments or political subdivisions of foreign governments that have securities listed on a United States exchange. The information to be collected is intended to ensure the adequacy and public availability of information available to investors. We estimate that Form 18–K takes approximately 8 hours to prepare and is filed by approximately 36 respondents for a total annual reporting burden of 288 hours (8 hours per response × 36 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09801 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85797; File No. SR–CboeEDGX–2019–027]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Opening Process and Add a Global Trading Hours Session for XSP Options

May 7, 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 April 26, 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 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 Options'') proposes to amend the Exchange's opening process, add a global trading hours session (''Global Trading Hours'' or ''GTH'') for options on the Mini-SPX Index (''XSP options'') and make corresponding changes, modify trading hours for certain equity and index options, update its Rules regarding order cancellation, clarify the manner in which the Exchange announces determinations it makes under the Rules, and make other conforming and nonsubstantive changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (''Cboe Global''), which is also the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2''), acquired the Exchange, Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BZX Exchange, Inc. (''BZX or BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with C2, Cboe Options, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its technology to the same trading platform used by the Exchange, C2, and BZX Options in the fourth quarter of 2019. The proposal set forth below is intended to add certain functionality to the Exchange's System that is more similar to functionality offered by Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

Global Trading Hours

The proposed rule change adds a GTH trading session to the Rules. Currently, transactions in equity options, which includes options on individual stocks, exchange-traded funds (''Fund Shares''[5]), exchange-traded notes

[5] *See* Rule 19.3(i).

(''Index-Linked Securities'' [6]), and other securities) may occur from 9:30 a.m. to 4:00 p.m.[7], except for options on Fund Shares, Index-Linked Securities, and broad-based indexes, which will close at 4:15 p.m.[8] As proposed, these hours are referred to as ''Regular Trading Hours.'' [9] Regular Trading Hours are consistent with the regular trading hours of the most other U.S. options exchanges. Cboe Options has a global trading hours session during which trading in certain option classes, which trading session occurs from 3:00 a.m. to 9:15 a.m.[10] Additionally, many U.S. stock and futures exchanges, which allow for trading in some of their listed products for various periods of time outside of Regular Trading Hours.[11]

As noted above, many U.S. stock exchanges allow for trading in stocks before and after the regular trading hours of 9:30 a.m. to 4:00 p.m., including stocks that comprise the Dow Jones Industrial Average. It is common for investors to engage in hedging and other investment strategies that involve index options and some of the stocks that comprise the underlying index. Currently, this investment activity on the Exchange would be limited to Regular Trading Hours. Additionally, securities trading is a global industry, and investors located outside of the United States generally operate during hours outside of Regular Trading Hours. The Exchange believes there may be global demand from investors for options on XSP, which may be exclusively listed [12] on Cboe Affiliated Exchanges and which the Exchange plans to list during the proposed Global Trading Hours (as defined below), as alternatives for hedging and other investment purposes. Given that XSP options are currently only eligible to trade during Regular Trading Hours, it is difficult for non-U.S. investors to obtain the benefits of trading in this option. It is also difficult for U.S. investors that trade in non-U.S. markets to use these products as part of their global investment strategies. To meet this demand, and to keep pace with the continuing internationalization of securities markets, the Exchange proposes to offer trading in XSP options from 8:30 a.m. to 9:15 a.m. Monday through Friday (''Global Trading Hours'' or ''GTH'').

Proposed Rule 21.2(c) states except under unusual conditions as may be determined by the Exchange, Global Trading Hours are from 8:30 a.m. to 9:15 a.m. on Monday through Friday.[13] While this trading session will be shorter than the global trading hours session on Cboe Options and various stock exchanges, the Exchange believes this proposed trading session will increase the time during which Options Members may implement these investment strategies. This GTH trading session will allow market participants to engage in trading these options in conjunction with extended trading hours on U.S. stock exchanges for securities that comprise the index underlying XSP options and in conjunction with part of regular European trading hours. The proposed rule change also adds to Rule 16.1 a definition of trading session, which means the hours during which the Exchange is open for trading for Regular Trading Hours or Global Trading Hours (each of which may be referred to as a trading session), each as defined in proposed Rule 21.2. Unless otherwise specified in the Rules or the context indicates otherwise, all Rules apply in the same manner during each trading session.[14] As discussed below, the Exchange may not permit certain order types to be applied to orders during Global Trading Hours that it does permit during Regular Trading Hours.

Proposed Rule 21.2(c)(1) provides the Exchange with authority to designate as eligible for trading during Global Trading Hours any exclusively listed index option designated for trading under Chapter XXIX.[15] If the Exchange so designates a class, then transactions in options in that class may be made on the Exchange during Global Trading Hours.[16] As indicated above, the Exchange has approved XSP options for trading on the Exchange during Global Trading Hours. The Exchange may list for trading during Global Trading Hours any series in eligible classes that it may list pursuant to Rule 19.6.[17] Any series in eligible classes that are expected to be open for trading during Regular Trading Hours will be open for trading during Global Trading Hours on the same trading day (subject to Rule 21.7 (as proposed to be amended, as discussed below), which sets forth procedures for the opening of trading).[18]

The proposed rule change defines a ''business day'' or ''trading day'' as a day on which the Exchange is open for trading during Regular Trading Hours (this is consistent with the current concept of trading day used but not defined in the Rules).[19] A business day

[6] *See* Rule 19.3(l).

[7] All times are Eastern time unless otherwise noted.

[8] *See* current Rule 21.2(a). The proposed rule change moves the rule provision in current Rule 21.2(b) into proposed Rule 21.2(b)(1), so that all rule provisions regarding Regular Trading Hours of equity options are included in the same place.

[9] *See also* proposed Rule 16.1, definition of Regular Trading Hours or RTH (the trading session consisting of the regular hours during which transactions in options may be effected on the Exchange, as set forth in Rule 21.2); and Cboe Options Rule 1.1 (definition of Regular Trading Hours). The proposed rule change makes nonsubstantive changes to Rule 16.1 to alphabetize the definitions in that rule, delete the paragraph heading ''(a)'' since that is the only paragraph in the rule and delete subparagraph numbering, and add headings for each defined term.

[10] *See* Cboe Options Rule 6.1.

[11] *See, e.g.,* BZX Rule 1.5(c), (r), (w), and (ee) (regular trading hours from 9:30 a.m. until 4:00 p.m. Eastern time, two early trading sessions (Early Trading Session and Pre-Opening Session) from 7:00 a.m. until 9:30 a.m. and an After Hours Trading Session from 4:00 p.m. to 8:00 p.m. Eastern time); NASDAQ Stock Market LLC Rule 4617 (regular trading hours from 9:30 a.m. until 4:00 p.m. Eastern time and extended trading hours from 4:00 a.m. until 9:30 a.m. and 4:00 p.m. to 8:00 p.m. Eastern time); and New York Stock Exchange LLC Series 900 (providing for an off-hours trading facility to operate outside of the regular 9:30 a.m. to 4:00 p.m. Eastern time trading session); *see also, e.g.,* Chicago Board of Trade Extended Trading Hours for Grain, Oilseeds and Ethanol—Frequently Asked Questions (indicating that certain agricultural commodity products are available for electronic trading 21 hours a day on the CME Globex trading platform); and Intercontinental Exchange, Inc. Regular Trading & Support Hours (indicating that many of its listed products are available for trading for periods of time outside of Regular Trading Hours, including overnight sessions).

[12] An ''exclusively listed option'' is an option that trades exclusively on an exchange (or exchange group) because the exchange has an exclusive license to list and trade the option or has the proprietary rights in the interest underlying the option. An exclusively listed option is different than a ''singly listed option,'' which is an option that is not an ''exclusively listed option'' but that is listed by one exchange and not by any other national securities.

[13] *See also* proposed Rule 16.1, definition of Global Trading Hours or GTH (the trading session consisting of the hours outside of Regular Trading Hours during which transactions in options may be effected on the Exchange and are set forth in Rule 6.1); and Cboe Options Rule 1.1 (definition of Global Trading Hours).

[14] This includes business conduct rules in Chapter XVIII and rules related to doing business with the public in Chapter XXVI. Additionally a broker-dealer's due diligence and best execution obligations apply during Global Trading Hours. *See also* Cboe Options Rule 6.1A(a).

[15] A class that the Exchange lists for trading during RTH only will be referred to as an ''RTH class,'' and a class the Exchange lists for trading during both GTH and RTH will be referred to as an ''All Sessions class.'' *See* Rule 16.1, proposed definitions of ''All Sessions classes'' and ''RTH classes.''

[16] The Exchange believes it is appropriate to retain flexibility to determine whether to operate during Global Trading Hours so that it can complete all system work on other preparations prior to implementing Global Trading Hours in a class, and so that the Exchange can evaluate trading activity during Global Trading Hours once implemented and determine whether to continue or modify the trading session (subject to applicable rule filings).

[17] *See also* Cboe Options Rule 6.1A(c).

[18] *See also* Cboe Options Rule 6.1A(c).

[19] The proposed rule change makes corresponding changes to the definitions of market open and market close in Rule 16.1 to provide that

Continued

or trading day will include both trading sessions on that day. In other words, if the Exchange is not open for Regular Trading Hours on a day (for example, because it is an Exchange holiday), then it will not be open for Global Trading Hours on that day. Cboe Options has the same definition of business day and trading day.[20]

Global Trading Hours will be a separate trading session from Regular Trading Hours. However, GTH will use the same Exchange servers and hardware as those used during RTH.[21] All Options Members may participate in Global Trading Hours. Options Members do not need to apply or take any additional steps to participate in Global Trading Hours. Additionally, because the Exchange will use the same servers and hardware during Global Trading Hours as it uses for Regular Trading Hours, Options Members may use the same ports and connections to the Exchange for all trading sessions.[22] The Book used during Regular Trading Hours will be the same Book used during Global Trading Hours.[23]

As further discussed below, the Exchange expects there to be reduced liquidity, higher volatility, and wider markets during Global Trading Hours, and investors may not want their orders or quotes to execute during Global Trading Hours given those trading conditions. To provide investors with flexibility to have their orders and quotes execute only during RTH, or both RTH and GTH, the proposed rule change adds an All Sessions order and an RTH Only order. An ''All Sessions'' order is an order a User designates as eligible to trade during both GTH and RTH. An unexecuted All Sessions order on the GTH Book at the end of a GTH trading session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on the same trading day, subject to a User's instructions (for example, a User may cancel the order).[24] An ''RTH Only'' order is an order a User designates as eligible to trade only during RTH or not designated as All Sessions. An unexecuted RTH Only order with a Time-in-Force of GTC or GTD on the RTH Book at the end of an RTH trading session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on the following trading day (but not during the GTH trading session on the following trading day), subject to a User's instructions.[25]

Because trading sessions are completely separate on Cboe Options, there are not distinct order types corresponding to the proposed RTH Only and All Sessions order instructions. An order or quote submitted to GTH on Cboe Options may only execute during GTH, and an order or quote submitted to RTH on Cboe Options may only execute during RTH. The proposed RTH Only order is equivalent to any order submitted to RTH on Cboe Options. While the Exchange is not proposing an equivalent to an order submitted to GTH on Cboe Options, and instead is proposing an All Sessions order, Users may still submit an equivalent to a ''GTH only'' order by submitting an All Sessions order with a good-til-date Time-in-Force, with a time to cancel before the RTH market open. Therefore, Users can submit orders to participate in either trading session, or both, and thus the proposed rule change provides Users with additional flexibility and control regarding in which trading sessions their orders and quotes may be eligible to trade.

Generally, trading during the GTH trading session will occur in the same manner as it occurs during the RTH trading session. However, because the GTH market may have different characteristics than the RTH market (such as lower trading levels, reduced liquidity, and fewer participants), the Exchange may deem it appropriate to make different determinations for trading rules for each trading session. Proposed Rule 16.3(b) states to the extent the Rules allow the Exchange to make a determination, including on a class-by-class or series-by-series basis, the Exchange may make a determination for GTH that differs from the determination it makes for RTH. The Exchange maintains flexibility with respect to certain rules so that it may apply different settings and parameters to address the specific characteristics of that class and its market. For example, Rule 21.8(d) allows the Exchange to apply priority overlays to the pro-rata allocation method on a class-by-class basis; and Rule 21.20(b) allows the Exchange to determine when complex order types are available.[26] Proposed rule 21.1(a) and (d) allow the Exchange to make certain order types and Times-in-Force, respectively, not available for all Exchange systems or classes (and unless stated in the Rules or the context indicates otherwise, as proposed).[27] This proposed rule change will provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and investor base of each class. Because trading characteristics during RTH may be different than those during GTH (such as lower trading levels, reduced liquidity, and fewer participants), the Exchange believes it is appropriate to extend this flexibility to each trading session. The Exchange represents that it will have appropriate personnel available during GTH to make any determinations that Rules provide the Exchange or Exchange personnel will make (such as trading halts, opening series, and obvious errors).

The proposed rule change amends Rules 22.2 and 22.3 to provide that a Designated Primary Market Maker's and Market Maker's, respectively, selected class appointment applies to classes during all trading sessions. In order words, if a Market Maker selects an appointment in XSP options, that appointment would apply during both GTH and RTH (and thus, the Market-Maker would have an appointment to make markets in XSP during both GTH and RTH). As a result, a Market-Maker continuous quoting obligations set forth in Rule 22.6(d) would apply to the class for an entire trading day (including both trading sessions), which is comprised of 7.5 hours.[28] Pursuant to Rule 22.6(d), a

each term specifies the start or end, respectively, of a trading session.

[20] *See* Cboe Options Rule 1.1.

[21] This is different than the trading sessions on Cboe Options, which uses different servers and hardware for each trading session.

[22] Only Options Members will be able to access the System during any trading session. Cboe Options Trading Permit Holders must obtain a separate permit and use different connections to participate in global trading hours. *See* Cboe Options Rules 3.1 and 6.1A(d).

[23] *See* proposed Rule 16.1, which amends the definition of EDGX Options Book to mean the electronic book of simple orders and quotes maintained by the System on which orders and quotes may execute during the applicable trading session. The Book during GTH may be referred to as the ''GTH Book,'' and the Book during RTH may be referred to as the ''RTH Book.'' The additional language regarding the execution of orders and quotes is intended to distinguish the Book from the Queuing Book, on which orders and quotes may not execute, as discussed below. With respect to complex orders, the same complex order book (''COB'') will be used for all trading sessions. *See* proposed Rule 21.20(a) (definition of COB). This is different than Cboe Options, which uses separate books for each trading session, which are not connected.

[24] *See* proposed Rule 21.1(d)(13).

[25] *See* proposed Rule 21.1(d)(14). The RTH Only and All Sessions order instructions will also be available for complex orders. *See* proposed Rule 21.20(b)(7) and (8).

[26] Therefore, the priority overlays that applies to a class during RTH may differ from the allocation algorithm that apply to that class during GTH.

[27] The proposed rule change amends these rules to explicitly state that the Exchange may make these determinations on a trading session basis. The proposed rule change also clarifies in the Rules that Rule 21.20 sets forth the order types the Exchange may make available for complex orders.

[28] *See* proposed Rule 22.6(d). This is different from Cboe Options, which applies Market-Maker

Market-Maker must enter continuous bids and offers in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Market-Maker's appointed classes are open for trading, excluding any adjusted series, any intra-day add-on series on the day during which such series are added for trading, any Quarterly Option Series, and any series with an expiration of greater than 270 days. The Exchange calculates this requirement by taking the total number of seconds the Market-Maker disseminates quotes in each appointed class (excluding the series noted above), and dividing that time by the eligible total number of seconds each appointed class is open for trading that day.[29] As proposed, the 45 minutes that comprise Global Trading Hours during which the Exchange will list series of XSP options [30] will be included in the denominator of this calculation. The Exchange expects to list 4,302 series of XSP options, 312 of which with expirations of greater than 270 days and 660 with quarterly expirations. Therefore, 3,330 series will be counted for purposes of determining a Market Maker's continuous quoting obligation for the number of minutes the series are open during Global Trading Hours.

For example, suppose a Market Maker has appointments in ten classes. Assume there are 2,000 series (excluding series with quarterly expirations and expirations of greater than 270 days) in each class, for a total of 20,000 series, and all series in each of those ten classes are open for trading from 9:30:30 to 4:00:00. That would create an eligible total number of seconds for each series of 23,370 seconds (and thus, a total of 467,400,000 seconds for all appointed classes in the aggregate) each trading day. To satisfy its continuous quoting obligation, the Market Maker would need to be quoting for 60% of that time in any combination of series across those classes (or a total of at least 280,440,000 seconds). Suppose when the Exchange begins listing XSP options on the Exchange for both GTH and RTH, the Market-Maker selects an XSP appointment, and the Exchange lists 3,330 series of XSP options that do not have quarterly expirations or expirations of greater than 270 days. Assume all series in XSP are open for trading from 8:30:30 to 9:15:00 and 9:30:30 to 4:15:00. That would create an eligible total number of seconds of 8,891,100 seconds during GTH and 80,819,100 seconds during RTH, for a total of 89,710,200 seconds, for XSP during the trading day). If XSP were only listed during RTH, the total eligible quoting time would be 548,219,100 seconds across the eleven classes, and a Market Maker would be required to quote 328,931,460 seconds in series across those classes. If XSP were listed in both RTH and GTH, the total eligible quoting time would be 557,110,200 seconds during a trading day across all eleven classes, and the Market Maker would be required to quote 334,266,120 seconds across series in the eleven classes. Therefore, extending the XSP continuous quoting obligation for a Market Maker with appointments in a total of eleven classes, including XSP, would increase a Market Maker's required quoting time by 5,334,660 seconds, or 1.62%. The Market Maker could determine to satisfy this increase during RTH or GTH in any of its appointed classes. For example, if a Market Maker selects an XSP appointment but does not want to participate during GTH, the Market Maker could add this quoting time during RTH (*e.g.,* given the total of 23,330 series across its 11 appointed classes, the Market Maker could quote an additional 485 seconds (just over 8 minutes) in each of 11,000 of those series (fewer than half of its appointed series) on a trading day, it could satisfy its continuous quoting obligation without quoting in any XSP series during any portion of GTH.

As the above example demonstrates, while the proposed rule change will increase the total time during which a Market Maker with an XSP appointment must quote, this increase is de minimis given that a Market Maker's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate. Selecting an appointment in XSP options will be optional and within the discretion of a Market Maker. Additionally, the Exchange is providing Market Makers with the opportunity to quote during GTH (and receive the benefits of acting as a Market Maker with respect to transactions it effects during that time) without creating additional connections to the Exchange or undertaking separate membership requirements (as is required on Cboe Options). Given this ease of access to the GTH trading session, the Exchange believes Market Makers may be encouraged to quote during that trading session. The Exchange believes Market Makers will have an incentive to quote in XSP options during Global Trading Hours given the significance of the S&P 500 Index within the financial markets, the expected demand, and given that the stocks underlying the index are also trading during those hours (which may permit execution of certain hedging strategies). Extending a Market Maker's appointment to Global Trading Hours will enhance liquidity during that trading session, which benefits all investors during those hours. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit, and continues to maintain a balance of Market Maker benefits and obligations.

The proposed rule change amends the definitions of all-or-none orders, market orders, stop orders, and stop-limit orders to state that those order types may not be applied to orders designated as All Sessions order (*i.e.,* all-or-none, market, stop, and stop-limit orders will not be eligible for trading during GTH).[31] The Exchange expects reduced liquidity, higher volatility, and wider spreads during GTH. Therefore, the Exchange believes it is appropriate to not allow these orders to participate in GTH trading in order to protect customers should wide price fluctuations occur due to the potential illiquid and volatile nature of the market or other factors that could impact market activity.[32]

Proposed Rule 21.1(c)(3) provides that no current index value underlying an index option trading during Global Trading Hours will be disseminated during or at the close of that trading session. The value of the underlying index will not be recalculated during or at the close of Global Trading Hours. The closing value of the index from the previous trading day will be available for Options Members that trade during Global Trading Hours. However, the Exchange does not believe it would be useful or efficient to disseminate to Options Members the same value repeatedly at frequent intervals, as it does during Regular Trading Hours

appointments separately to each trading session. *See* Cboe Options Rules 6.1A(e) and 8.7(d).

[29] The proposed rule change clarifies that the time the Exchange is open for trading on a trading day (including all trading sessions) will be considered when determining a Market Maker's satisfaction of this obligation.

[30] This is the number of XSP series currently listed on Cboe Options.

[31] The proposed rule change also amends the introductory language to Rule 6.10(c) to provide that certain restrictions on the use of order types may be set forth in the Rules (such as the proposed restrictions on the use of market orders, stop orders, and stop-limit orders during GTH).

[32] Cboe Options Rule 6.1A(f) also prohibits these orders from participating in GTH trading. Cboe Options Rule 6.1A(f) also prohibits good-til-cancelled orders from participating during GTH. However, because the Exchange will use the same Book for all trading sessions, and thus any GTC orders that do not trade during GTH may become eligible for trading during RTH, the Exchange does not believe it is necessary to restrict use of this time-in-force.

(when that index value is being updated).[33]

Proposed Rule 17.5 requires Options Members to make certain disclosures to customers regarding material trading risks that exist during Global Trading Hours. The Exchange expects overall lower levels of trading during Global Trading Hours compared to Regular Trading Hours. While trading processes during Global Trading Hours will be substantially similar to trading processes during Regular Trading Hours (as noted above), the Exchange believes it is important for investors, particularly public customers, to be aware of any differences and risks that may result from lower trading levels and thus requires these disclosures. Proposed Rule 17.5 provides that no Options Member may accept an order from a customer for execution during Global Trading Hours without disclosing to that customer that trading during Global Trading Hours involves material trading risks, including the possibility of lower liquidity (including fewer Market-Makers quoting), higher volatility, changing prices, an exaggerated effect from news announcements, wider spreads, the absence of an updated underlying index or portfolio value or intraday indicative value and lack of regular trading in the securities underlying the index or portfolio and any other relevant risk. The proposed rule provides an example of these disclosures. The Exchange believes that requirement Options Members to disclose these risks to non-TPH customers will facilitate informed participation in Global Trading Hours.

The Exchange also intends to distribute to Options Members and make available on its website a Regulatory Circular regarding Global Trading Hours that discloses, among other things, that (1) the current underlying index value may not be updated during Global Trading Hours, (2) that lower liquidity during Global Trading Hours may impact pricing, (3) that higher volatility during Global Trading Hours may occur, (4) that wider spreads may occur during Global Trading Hours, (5) the circumstances that may trigger trading halts during Global Trading Hours, (6) required customer disclosures (as described above), and (7) suitability requirements. The Exchange believes that, with this disclosure, Global Trading Hours are appropriate and beneficial notwithstanding the absence of a disseminated updated index value during those hours.

As set forth above, the differences in the Rules between the trading process during RTH and during GTH is that certain order types and instructions will not be available during GTH, no values for indexes underlying index options will be disseminated during GTH, and Options Members that accept orders from customers during GTH will be required to make certain disclosures to those customers. As noted above, other rules will apply in the same manner, but the Exchange may make different determinations between RTH and GTH. The Exchange believes these differences are consistent with the differences between the characteristics of each trading session. The Exchange also notes the following:

- All Options Members may, but will not be required to, participate during Global Trading Hours. As noted above, while a Market-Maker's appointment to an All Sessions class will apply to that class whether it quotes in series in that class or not during GTH, the Exchange believes any additional burden related to the application of a Market-Maker's quoting obligation to the additional 45 minutes will be de minimis. The Exchange believes even if a Market-Maker elects to not quote during GTH, its ability to satisfy its continuous quoting obligation will not be substantially obligated given the short length of GTH and the few series that will be listed for trading during GTH.
- The Exchange expects Options Members that want to trading during GTH to have minimal preparation. The Exchange will use the same connection lines, message formats, and feeds during RTH and GTH.[34] Options Members may use the same ports and EFIDs for each trading session.[35]
- The same opening process (as amended below) will be used to open each trading session.
- Order processing will operate in the same manner during Global Trading Hours as it does during Regular Trading Hours. There will be no changes to the ranking, display, or allocation algorithms rules (as noted above, the Exchange will have authority to apply a different allocation algorithm to a class during Global Trading Hours than it applies to that class during Regular Trading Hours).
- There will be no changes to the processes for clearing, settlement, exercise, and expiration.[36]
- The Exchange will report the Exchange best bid and offer and executed trades to the Options Price Reporting Authority (''OPRA'') during Global Trading Hours in the same manner they are reported during Regular Trading Hours. Exchange proprietary data feeds will also be disseminated during Global Trading Hours using the same formats and delivery mechanisms with which the Exchange disseminates them during Regular Trading Hours. Use of these proprietary data wills during Global Trading Hours will be optional (as they are during Regular Trading Hours).[37]
- The same Options Members that are required to maintain connectivity to a backup trading facility during Regular Trading Hours will be required to do so during Global Trading Hours.[38] Because the same connections and serves will be used for both trading sessions, a Options Member will not be required to take any additional action to comply with this requirement, regardless of whether the Options Member chooses to trade during Global Trading Hours.
- The Exchange will process all clearly erroneous trade breaks during Global Trading Hours in the same manner it does during Regular Trading Hours and will have Exchange officials

[33] Rules 29.3(b)(11), 29.6(b)(10), and 29.6(d)(8) provide that underlying index values will be disseminated at least once every 15 seconds. Proposed Rule 21.2(c)(3) supersedes those provisions with respect to Global Trading Hours. Cboe Options Rule 24.3 also states that dissemination of the current index value will occur after the close of Regular Trading Hours (and, thus, not after the close of Global Trading Hours, as no new index value will have been calculated during that trading session) and from time-to-time on days on which transactions are made on the Exchange.

[34] The same telecommunications lines used by Options Members during Regular Trading Hours may be used during Global Trading Hours, and these lines will be connected to the same application serve at the Exchange during both trading sessions. This is different from Cboe Options, which connects its telecommunications lines to a separate application serve during each trading session.

[35] An Options Member may elect to have separate ports or EFID for each trading session, but the Exchange will not require that. This is different from Cboe Options, which requires Options Members to use separate log-ins and acronyms (the equivalent of ports and EFIDs) for each trading session.

[36] The Exchange has held discussions with the Options Clearing Corporation, which is responsible for clearance and settlement of all listed options transactions and has informed the Exchange that it will be able to clear and settle all transactions that occur on the Exchange and handle exercises of options during Extended Trading Hours.

[37] Any fees related to receipt of the OPRA data feed during Global Trading Hours will be included on the OPRA fee schedule. Any fees related to receipt of the Exchange's proprietary data feeds during Global Trading Hours will be included on the Exchange's fee schedule (and will be included in a separate rule filing) or the Exchange's market data website, as applicable.

[38] Currently, Options Members with accounts for 5% or more of the executed volume, measured on a quarterly basis, the Exchange must connect to the Exchange's backup facilities and participate in testing. The same test will be used for all trading sessions. *See* EDGX Options Regulatory Circular 18–011 (July 3, 2018); and Rule 2.4.

available to do so (the same officials that do so during Regular Trading Hours).

• The Exchange will perform all necessary surveillance coverage during Global Trading Hours.

• The Exchange may halt trading during Global Trading Hours in the interests of a fair and orderly market in the same manner it may during Regular Trading Hours pursuant to Rule 29.10 (as proposed to be amended, as described below). The proposed rule change amends current Rule 29.10(e) (proposed Rule 29.10(d)) to provide that during Global Trading Hours, Rule 29.10(a)(1) through (3), (b), and (c) (as proposed) do not apply. As discussed above, Global Trading Hours will not coincide with the hours of trading of the underlying primary securities market. Generally, the Exchange considers halting trading only in response to unusual conditions or circumstances, as it wants to interrupt trading as infrequently as possible and only if necessary to maintain a fair and orderly market. During Regular Trading Hours, it would be unusual, for example, for stocks or options underlying an index to not be trading or the current calculation of the index to not be available. However, as discussed above, there will be no calculation of underlying indexes during Global Trading Hours, and Global Trading Hours do not coincide with the regular trading hours of the underlying stock or options (there may be some overlap with trading of certain underlying stocks, as mentioned above [39]). Thus, the factors described in proposed Rule 29.10(a) are not unusual for Global Trading Hours, and thus the Exchange does not believe it is necessary to consider these as reasons for halting trading during that trading session. Exclusion of Global Trading Hours from those provisions will allow trading during that trading session to occur despite the existence of those conditions (if the Exchange considered the existence of those conditions during Global Trading Hours, trading during Global Trading Hours could be halted every day). It is appropriate for the Exchange to consider any unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market during Global Trading Hours, which may, for example, include whether the underlying primary securities market was halted at the close of the previous trading day (in which case the Exchange will evaluate whether the condition that led to the halt has been resolved or would not impact trading during Global Trading Hours) or significant events that occur during Global Trading Hours.[40]

Pursuant to Rule 20.5(c), the Exchange will halt trading in all options when a market-wide trading halt known as a circuit breaker is initiated on the New York Stock Exchange in response to extraordinary market conditions. Pursuant to the proposed rule change, Rule 20.5(c) will not apply during Global Trading Hours. The Exchange believes that, even if stock trading was halted at the close of the previous trading day, the length of time between that time and the beginning of Global Trading Hours is significant (over 16 hours), and the condition that led to the halt is likely to have been resolved. The proposed rule change allows the Exchange to consider unusual conditions or circumstances when determining whether to halt trading during Global Trading Hours. To the extent a circuit breaker caused a stock market to be closed at the end of the prior trading day, the Exchange could consider, for example, whether it received notice from stock exchanges that trading was expected to resume (or not) the next trading day in determining whether to halt trading during Global Trading Hours. Because the stock markets would not begin trading until after Global Trading Hours opens, the Exchange believes it should be able to open Global Trading Hours rather than waiting to see whether stock markets open to allow investors to participate in Global Trading Hours if the Exchange believes such trading can occur in a fair and orderly manner based on then-existing circumstances, not circumstances that existed numerous hours earlier. Additionally, Cboe Options has the same rule provision.[41]

Certain rules currently include general phrases related to a day or trading, such as market close. The proposed rule change makes technical changes to Rules 21.1(f)(3) (definition of ''Day''), 21.6(b),[42] 21.9, and 21.20(c)(2)(A) to incorporate the terminology included in this proposed rule change to specify the appropriate trading session(s) being referenced in those rules.

The Exchange will disseminate last sale and quotation information during Global Trading Hours through OPRA pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan''), as it does during Regular Trading Hours.[43] The Exchange will also disseminate an opening quote and trade price through OPRA for Global Trading Hours (as it does for Regular Trading Hours). Therefore, all Options Members that trade during Global Trading Hours will have access to quote and last sale information during that trading session.

The Exchange understands that systems and other issues may arise and is committed to resolving those issues as quickly as possible, including during Global Trading Hours. Thus, the Exchange will have appropriate staff on-site and otherwise available as necessary during Global Trading Hours to handle any technical and support issues that may arise during those hours. Additionally, the Exchange will have personnel available to address any trading issues that may arise during Global Trading Hours.[44] The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Global Trading Hours, and will have appropriately trained, qualified regulatory staff in place during Global Trading Hours to the extent it deems necessary to satisfy those obligations. The Exchange's surveillance procedures will be revised as necessary to incorporate transactions that occur and orders and quotations that are submitted during Global Trading Hours. The Exchange believes its surveillance procedures are adequate to properly

[39] *See supra* note 11.

[40] The proposed rule change adds reasons to proposed Rule 29.10(e) (current paragraph (f)) why pricing will be determined by OCC. Currently, settlement values are determined by OCC when pricing is not available in these circumstances. The proposed rule change makes corresponding changes to the headings for Rule 29.10(d) and (e).

[41] *See* Cboe Options Rule 24.7(d).

[42] The proposed rule change modifies the name of Rule 21.6 to account for the fact that it applies to the cancellation, as well as the entry, of orders.

[43] The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are trading on the participant exchanges. The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The full text of the OPRA Plan is available at *http:www.opradata.com.* All operating U.S. options exchanges participate in the OPRA Plan. The operator of OPRA informed the Exchange that it intends to add a modifier to the information disseminated during Global Trading Hours (as it does for Cboe Options).

[44] The Exchange notes that, to conduct trading during Global Trading Hours, persons that are not Options Members, such as employees of affiliates of Options Members located outside of the United States, may be transmitting orders and quotes during Global Trading Hours (such non-Options Members would not have direct access to the Exchange, and thus those orders and quotes would be submitted to the Exchange through Options Members' systems subject to applicable laws, rules, and regulations). Options Members may authorize (in a form and manner determined by the Exchange) individuals at these non-Options Member entities to contact the Exchange during Global Trading Hours to address any issues.

monitor trading of XSP options during Global Trading Hours.

Opening Process

Rule 21.7 sets forth the opening process the Exchange uses to open series on the Exchange at the market open each trading day (and after trading halts). Pursuant to the current opening process, the System determines and opening price for a series based on the NBBO[45] and crosses any interest on the book that is marketable at that price. The proposed rule change adopts an opening auction process, substantially similar to the Cboe Options opening auction process.[46] The Exchange believes an opening auction process will enhance the openings of series on the Exchange by providing an opportunity for price discovery based on then-current market conditions. Pursuant to the proposed opening auction process, the Exchange will have a Queuing Period, during which the System will accept orders and quotes and disseminates expected opening information; will initiate an opening rotation upon the occurrence of certain triggers; will conduct an opening rotation during which the System matches and executes orders and quotes against each other in order to establish an opening Exchange best bid and offer and trade price, if any, for each series, subject to certain price protections; and will open series for trading.[47]

Proposed Rule 21.7(a) sets forth the definitions of the following terms for purposes of the opening auction process in proposed Rule 21.7:[48]

- *Composite Market:* The term ''Composite Market'' means the market for a series comprised of (1) the higher of the then-current best appointed Market Maker bulk message bid on the Queuing Book and the away best bid (''ABB'') (if there is an ABB) and (2) the lower of the then-current best appointed Market Maker bulk message offer on the Queuing Book and the away best offer (''ABO'') (if there is an ABO). The term ''Composite Bid (Offer)'' means the bid (offer) used to determine the Composite Market.[49]
- *Composite Width:* The term ''Composite Width'' means the width of the Composite Market (*i.e.,* the width between the Composite Bid and the Composite Offer) of a series.
- *Maximum Composite Width:* The term ''Maximum Composite Width'' means the amount that the Composite Width of a series may generally not be greater than for the series to open (subject to certain exceptions, as described below). The Exchange determines this amount on a class and Composite Bid basis, which amount the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates).[50]
- *Opening Auction Updates:* The term ''opening auction updates'' means Exchange-disseminated messages that contain information regarding the expected opening of a series based on orders and quotes in the Queuing Book for the applicable trading session and, if applicable, the GTH Book,[51] including the expected opening price, the then-current cumulative size on each side at or more aggressive than the expected opening price, and whether the series would open (and any reason why a series would not open).
- *Opening Collar:* The term ''Opening Collar'' means the price range that establishes limits at or inside of which the System determines the Opening Trade Price for a series. The Exchange determines the width of this price range on a class and Composite Bid basis, which range the Exchange may modify during the opening auction process (which modifications the Exchange disseminates to all subscribers to the Exchange's data feeds that deliver opening auction updates.[52]
- *Opening Trade Price:* The term ''Opening Trade Price'' means the price at which the System executes opening trades in a series during the opening rotation.[53]
- *Queuing Book:* The term ''Queuing Book'' means the book into which Users may submit orders and quotes (and onto which GTC and GTD orders remaining on the Book from the previous trading session or trading day, as applicable, are entered) during the Queuing Period for participation in the application opening rotation.[54] Orders and quotes on the Queuing Book may not execute until the opening rotation. The Queuing Book for the GTH opening auction process may be referred to as the ''GTH Queuing Book,'' and the Queuing Book for the RTH opening auction process may be referred to as the ''RTH Queuing Book.''
- *Queuing Period:* The term ''Queueing Period'' means the time period prior to the initiation of an opening rotation during which the System accepts orders and quotes for participation in the opening rotation for the applicable trading session.[55]

Proposed paragraph (b) describes the Queuing Period. The Queuing Period begins at 7:30 a.m. for all class.[56] This is the same time at which the System begins accepting orders and quotes today. Therefore, Users will have the same amount of time to submit orders and quotes prior to the RTH opening.

[45] The opening price (if not outside the NBBO and no more than a specified minimum amount away from the NBBO) is either the midpoint of the NBBO, the last disseminated transaction price after 9:30 a.m., or the last transaction price from the previous trading day. *See* current 21.7(b).

[46] *See* Cboe Options Rule 6.2.

[47] The order of events that comprise this proposed opening auction process corresponds to the opening auction process on Cboe Options. *See* Cboe Options Rule 6.2.

[48] A term defined elsewhere in the Rules has the same meaning with respect to Rule 21.7, unless otherwise defined in Rule 21.7.

[49] Cboe Options similarly considers the Exchange's best quote bid and best quote offer when determining whether the Exchange's market is too wide. On Cboe Options, the term ''quote'' corresponds to the term ''bulk message'' on the Exchange. Cboe Options also considers quotes from any away markets, if it has activated Hybrid Agency Liaison (''HAL'') at the open. The Exchange has a Step-Up Mechanism (''SUM'') that corresponds to HAL, but does not have it activated at the open as Cboe Options does. However, the Exchange believes considering any quotes from away markets in addition to quotes on its own market when determining whether to open a series will enhance the opening auction price by considering all available pricing information.

[50] The Maximum Composite Width corresponds to the opening exchange prescribed width range (''OEPW'') on Cboe Options. *See* Cboe Options Rule 6.2(d)(i)(A). The Exchange will determine the Maximum Composite Width in a slightly different manner than Cboe Options determines the OEPW; however, both are based on appointed Market-Maker quotes and are intended to create a reasonable range to ensure the market does not open at extreme prices. Additionally, as proposed, the Maximum Composite Width will factor in away prices in addition to quotes on the Exchange (unlike Cboe Options which considers only quotes on the Exchange).

[51] In other words, for the RTH opening auction in an All Sessions class, the expected opening information to be disseminated in opening auction updates prior to the conclusion of the GTH trading session will be based on orders and quotes in the RTH Queuing Book (*i.e.,* RTH Only orders) and in the GTH Book (*i.e.,* All Sessions orders).

[52] Cboe Options uses the OEPW as the range within which the opening price must be. *See* Cboe Options Rule 6.2(d)(i)(C). The Exchange will determine the Opening Collar in a slightly different manner than Cboe Options determines the OEPW; however, both are based on appointed Market-Maker quotes and are intended to create a reasonable range to ensure the market does not open at extreme prices. Additionally, as proposed, the Opening Collar will factor in away prices in addition to quotes on the Exchange (unlike Cboe Options which considers only quotes on the Exchange).

[53] *See* current Rule 21.7(c).

[54] In other words, at 7:30 a.m., All Sessions orders will rest on the GTH Queuing Book and be eligible to participate in the GTH opening auction process, and RTH Only orders will rest on the RTH Queuing Book and be eligible to participate in the RTH opening auction process.

[55] *See* current Rule 21.7(a)(1) (the current rule does not use the term ''Queuing Period''; however, it does provide for an order entry period prior to the opening of a series during which the System accepts orders and quotes). The proposed rule change moves the rule provisions regarding the opening process following a halt to proposed paragraph (g), with no substantive changes.

[56] *See* proposed Rule 21.7(b)(1).

Additionally, Users will have one hour to submit orders and quotes in GTH classes prior to the GTH opening. The Exchange believes this is sufficient given that the Exchange will list fewer classes (one class, as proposed) during GTH.[57]

Proposed subparagraph (b)(2) clarifies that orders and quotes on the Queuing Book are not eligible for execution until the opening rotation pursuant to proposed paragraph (e), as described below. This is consistent with current order entry period, pursuant to which orders and quotes entered for inclusion in the opening process do not execute until the opening trade pursuant to current paragraph (d). The System accepts all orders and quotes that are available for a class and trading session pursuant to Rule 21.1 during the Queuing Period, which are eligible for execution during the opening rotation, except as follows:

- the System rejects IOC and FOK orders during the Queuing Period;[58]
- The System accepts orders and quotes with MTP Modifiers during the Queuing Period, but does not enforce them during the opening rotation;[59]
- the System accepts all-or-none, stop, and stop-limit orders[60] during the Queuing Period, but they do not participate during the opening rotation. The System enters any of these orders it receives during the Queuing Period into the Book following completion of the opening rotation (in time priority);[61]
- the System converts all ISOs received prior to the completion of the opening rotation into non-ISOs;[62] and
- complex orders do not participate in the opening auction described in Rule 21.7 and instead may participate in the COB Opening Process pursuant to Rule 21.20(c)(2)(A).[63]

Proposed paragraph (c) describes the opening auction updates the Exchange will disseminate as part of the opening auction process. As noted above, opening auction updates contain information regarding the expected opening of a series. These messages provide market participants with information that may contribute to enhanced liquidity and price discovery during the opening auction process. Beginning at a time (determined by the Exchange) no earlier than one hour prior to the expected initiation of the opening rotation for a trading session and until the conclusion of the opening rotation for a series, the Exchange disseminates opening auction updates for the series.[64] The Exchange disseminates opening auction updates at regular intervals of time (the length of which the Exchange determines for each trading session), or less frequently if there are no updates to the opening information since the previously disseminated update, to all subscribers to the Exchange's data feeds that deliver these messages until a series opens.[65] If there have been no changes since the previous update, the Exchange does not believe it is necessary to disseminate duplicate updates to market participants at the next interval of time.

Proposed paragraph (d) describes the events that will trigger the opening rotation for a class. Pursuant to current paragraph (b), the System will automatically open a related equity option series after the first transaction on the primary listing market after 9:30 a.m. in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan (with respect to equity options). Pursuant to current paragraph (c), the System automatically opens a related index option series after an away options exchange(s) disseminates a quote in an index option series (with respect to index options). As proposed for Regular Trading Hours, after a time period (which the Exchange determines for all classes) following the System's observation after 9:30 a.m. of the first disseminated (1) transaction price for the security underlying an equity option or (2) index value for the index underlying an index option, the System will initiate the opening rotation for the series in that class, and the Exchange disseminates message to market participants indicating the initiation of the opening rotation.[66] For Global Trading Hours, the System will initiate the opening rotation at 8:30 a.m.[67]

Proposed paragraph (e) describes the opening rotation process, during which the System will determine whether the Composite Market for a series is not wider than a maximum width, will determine the opening price, and open series.[68] The Maximum Composite Width Check and Opening Collar are intended to ensure that series open in a fair and orderly manner and at prices consistent with the current market

[57] Pursuant to Cboe Options Rule 6.2(a), the pre-opening period (equivalent to the proposed Queuing Period) begins no earlier than 2:00 a.m. Central time for regular trading hours and no later than 4:00 p.m. on the previous day for global trading hours (as global trading hours on Cboe Options begins at 2:00 a.m. Central time). The Exchange does not propose to have flexibility as Cboe Options has, and believes the proposed time period for the Queuing Period is sufficient.

[58] *See* current paragraph (a) and proposed subparagraph (a)(2)(A); *see also* Cboe Options Rule 6.2(a)(i).

[59] *See* proposed subparagraph (a)(2)(B). This is consistent with current functionality, and the detail is being added to the Rules. *See also* C2 Rule 6.11(a)(1). Cboe Options has Market-Maker trade prevention orders, which it does not accept prior to the opening. *See* Cboe Options Rule 6.2(a)(i).

[60] Pursuant to Rule 21.1(d)(11) and (12), stop and stop-limit orders are triggered based on the consolidated last sale price. Not participating in the opening process is consistent with this requirement, as the Exchange needs to be open (and thus have an opening trade occur) in order for there to be a consolidated last sale price that can trigger these orders. Current Rule 21.7(a) provides that all-or-none orders do not participate in the opening process.

[61] This is consistent with current functionality, and the proposed rule change is adding this detail to the Rules. *See also* Cboe Options Rule 6.2(c)(i)(B) (which states that order with a stop contingency do not participate in the opening rotation).

[62] *See* current paragraph (a) and proposed subparagraph (a)(2)(D); *see also* Cboe Options Rule 6.2(a)(i) (which does not permit ISOs to be entered during the Cboe Options pre-opening period).

[63] *See* Rule 21.20(c)(2)(A) and proposed subparagraph (a)(2)(E); *see also* Cboe Options Rule 6.2(c)(i)(B).

[64] The Exchange only begins disseminating updates for series with locked or crossed interest or if the series needs Market Maker bulk messages. There can only be an expected opening price to disseminate if these conditions have been met, and thus no updates will be disseminated if these conditions do not exist. *See also* Cboe Options Rule 6.2(a)(ii) (which provides that Cboe Options may begin disseminated expected opening information (''EOIs'') messages (which correspond to opening auction updates)). Cboe Options currently begins disseminating EOIs at 7:30 a.m. or 8:00 a.m. Central time (depending on the class), which is consistent with the proposed rule change to begin dissemination of opening auction messages no earlier than one hour prior to the expected initiation of the opening rotation for a series. The Exchange believes market participants generally want to receive this information closer to the opening of trading.

[65] *See also* Cboe Options Rule 6.2(a)(ii) (Cboe Options will similarly disseminate EOIs at regular intervals or less frequently if there are no updates, and will not disseminate EOIs in certain circumstances, including if there is no locked or crossed interest (because there would be no expected opening price or size)).

[66] Pursuant to current paragraphs (b) and (c), the opening is currently triggered upon the occurrence of similar events. While not specified in the current Rules, pursuant to current functionality, the System waits for a certain time period following the occurrence of such an event to open a series. *See also* C2 Rule 6.11(a)(1).

[67] *See also* Cboe Options Rule 6.2(b). Unlike Cboe Options, the opening rotation will be triggered in all equity classes by observation of the first transaction in the underlying security (rather than some classes being triggered by a timer), and the opening rotation will be triggered in all index classes by observation of the first index value (rather than some classes being triggered by a timer). The Exchange does not believe it needs this flexibility.

[68] *See also* Cboe Options Rule 6.2(d) (pursuant to which Cboe Options will generally not open a series if the width is wider than an acceptable price range or if the opening trade price is outside of an acceptable price range). The Exchange will similarly have a maximum quote width and acceptable opening price range, however, they may be calculated differently. Cboe Options has additional opening conditions that the Exchange does not propose to adopt.

conditions for the series and not at extreme prices, while taking into consideration prices disseminated from other options exchanges that may be better than the Exchange's at the open.

Proposed subparagraph (e)(1) describes the Maximum Composite Width Check.

- If the Composite Width of a series is less than or equal to the Maximum Composite Width, the series is eligible to open (and the System determines the Opening Price as described below).
- If the Composite Width of a series is greater than the Maximum Composite Width, but there are no non-M Capacity [69] market orders or buy (sell) limit orders with prices higher (lower) than the Composite Bid (Offer) and there are no locked or crossed orders or quotes, the series is eligible to open (and the System determines the Opening Price as described below).
- If neither of the conditions above are satisfied for a series, the series is ineligible to open. The Queuing Period for the series continues (including the dissemination of opening auction updates) until one of the above conditions for the series is satisfied.[70]

The Exchange will use the Maximum Composite Width Check as a price protection measure to prevent orders from executing at extreme prices at the open. If the width of the Composite Market (which represents the best market, as it is comprised of the better of Market Maker bulk messages on the Exchange or any away market quotes) is no greater than the Maximum Composite Width, the Exchange believes it is appropriate to open a series under these circumstances and provide marketable orders with an opportunity to execute at a reasonable opening price (as discussed below), because there is minimal risk of execution at an extreme price. However, if the Composite Width is greater than the Maximum Composite Width but there are no non-M Capacity orders [71] that lock or cross the opposite-side widest point of the Composite Market (and thus not marketable at a price at which the Exchange would open, as described below), there is similarly no risk of an order executing at an extreme price on the open. Because the risk that the Maximum Composite Width Check is intended to address is not present in this situation, the Exchange believes it is appropriate to open a series in either of these conditions. However, if neither of these conditions is satisfied, the Exchange believes there may be risk that orders would execute at an extreme price if the series open, and therefore the Exchange will not open a series.

Proposed subparagraph (e)(2) describes how the System determines the Opening Trade Price for a series after it satisfies the Maximum Composite Width Check described above.

- The Opening Trade Price is the price that is not outside the Opening Collar and:
  - ○ The price at which the largest number of contracts can execute (*i.e.,* the volume-maximizing price);
  - ○ if there are multiple volume-maximizing prices, the price at which the fewest number of contracts remain unexecuted (*i.e.,* the imbalance-minimizing price); or
  - ○ if there are multiple volume-maximizing, imbalance-minimizing prices, (1) the highest (lowest) price, if there is a buy (sell) imbalance, or (2) the price at or nearest to the midpoint of the Opening Collar, if there is no imbalance.
- There is no Opening Trade Price if there are no locked or crossed orders or quotes at a price not outside the Opening Collar.[72]

The Exchange believes the proposed volume-maximizing, imbalance-minimizing procedure is reasonable, as it will provide for the largest number of contracts in the Queuing Book that can execute, leaving as few as possible bids and offers in the Book that cannot execute.[73] The Exchange will use the Opening Collar as a price protection measure to prevent orders from executing at extreme prices at the open. If the Opening Trade Price is not outside the Opening Collar (which will be based on the best then-current market), the Exchange believes it is appropriate to open a series at that price, because there is minimal risk of execution at an extreme price. However, if the Opening Trade Price would be outside of the Opening Collar, the Exchange believes there may be risk that orders would execute at an extreme price if the series open, and therefore the Exchange will not open a series.

The following examples show the application of the Maximum Composite Width Check:

Example #1

Suppose the Maximum Composite Width for a class is 0.50, and the Composite Market is 1.00 × 2.00, comprised of an appointed Market Maker bulk message bid of 2.00 and an appointed Market Maker bulk message offer of 1.00. There is no other interest in the Queuing Book. The series is not eligible to open, because the width of the Composite Market is greater than the Maximum Composite Width but there are locked orders or quotes in the series. The Queuing Period for the series will continue until the series satisfies the Maximum Composite Width Check.

Example #2

Suppose the Maximum Composite Width for a class is 0.50, and the Composite Market is 1.00 × 2.00, comprised of an appointed Market Maker bulk message bid of 1.00 and an appointed Market Maker bulk message offer of 2.00. There is no other interest in the Queuing Book. The series is eligible to open, because the width of the Composite Market is greater than the Maximum Composite Width and there are no locked orders or quotes in the series or non-M Capacity orders. The System will then determine the Opening Trade Price.

Example #3

Suppose the Maximum Composite Width for a class is 0.50, and the

[69] Capacity M is used for orders for the account of a Market Maker (with an appointment in the class). *See* U.S. Options Binary Order Entry Specifications, at 28 (definition of Capacity), available at *http://cdn.cboe.com/resources/membership/US_Options_BOE_Specification.pdf.*

[70] *See* Cboe Options Rule 6.2(c)(iii) (pursuant to which the opening rotation period on Cboe Options continues, including dissemination of EOIs, until the opening conditions are satisfied). The Exchange may also open a series pursuant to current paragraph (f) (proposed paragraph (h)), which permits the Exchange to deviate from the standard manner of the opening auction process, including adjusting the timing of the opening rotation in any class, modifying any time periods described in Rule 6.11, and delaying or compelling the opening of a series if the opening width is wider than Maximum Width, when it believes it is necessary in the interests of a fair and orderly market. The proposed rule change specifies additional ways in which the Exchange may deviate from the standard of opening (which it has the authority to do under the current rule). *See also* Cboe Options Rule 6.2(e) (pursuant to which Cboe Options may deviate from the standard manner of the opening auction process for the same reasons). Pursuant to the proposed rule change, the Exchange will make and maintain records to document all determinations to deviate from the standard manner of the opening auction process, and periodically reviews these determinations for consistency with the interests of a fair and orderly market (which, while not specified in the current Rules, the Exchange does today).

[71] Market Maker bulk messages are considered when determining the Composite Market. The Exchange believes it is appropriate to consider Market-Maker bulk messages when determining an opening quote to ensure there will be liquidity in a series when it opens. Additionally, while it is possible for Market Makers to submit M orders, the Exchange believes there is less risk of a Market Maker inputting an order at an extreme price given that Market Makers are generally responsible for pricing the market.

[72] *See* current Rule 21.7(e).

[73] *See also* Cboe Options Rule 6.2(c)(i)(A) (pursuant to which Cboe Options will open at the market-clearing price, and if there are multiple prices at which the same number of contracts would clear, Cboe Options will use similar tie-breakers).

Composite Market is 1.00 × 2.00, comprised of an appointed Market Maker bulk message bid of 1.00 and an appointed Market-Maker bulk message offer of 2.00. There is a non-M Capacity limit order to buy for $1.99 in Queuing Book. The series is not eligible to open, because the width of the Composite Market is greater than the Maximum Composite Width, and there is a non-M Capacity order at a price inside of the Composite Market. The Queuing Period for the series will continue until the series satisfies the Maximum Composite Width Check.

Pursuant to proposed subparagraph (e)(3), if the System establishes an Opening Trade Price, the System will execute orders and quotes in the Queuing Book at the Opening Trade Price. The System will prioritize orders and quotes in the following order: Market orders, limit orders and quotes with prices better than the Opening Trade Price, and orders and quotes at the Opening Trade Price.[74] The System allocates orders and quotes at the same price pursuant to the allocation algorithm that applies to a class intraday (in accordance with Rule 21.8), unless the Exchange determines to apply a different allocation algorithm from Rule 21.8 to a class during the opening rotation.[75] If there is no Opening Trade Price, the System opens a series without a trade.

Pursuant to proposed subparagraph (f), as is the case today, following the conclusion of the opening rotation, the System enters any unexecuted orders and quotes (or remaining portions) from the Queuing Book into the EDGX Options Book in time sequence (subject to a User's instructions—for example, a User may cancel an order), where they may be processed in accordance with Rule 21.8.[76] Consistent with the OPG contingency (and current functionality), the System cancels any unexecuted OPG orders (or remaining portions) following the conclusion of the opening rotation.

The proposed rule change adds paragraph (i), which provides if the underlying security for a class is in a limit up-limit down state when the opening rotation begins for that class, then the System cancels or rejects all market orders. In addition, if the opening rotation has already begun for a class when a limit up-limit down state initiates for the underlying security of that class, market and limit orders will continue through the end of the opening rotation.[77]

Currently, if an order enters the Book following the Opening Process (which would include any GTC or GTD orders that reenter the Book from the prior trading day) and becomes subject to the drill-through protection pursuant to Rule 21.17(d), the NBO (NBB) that existed at the time it enters (or reenters) the Book would be used when determining the drill-through price. Proposed Rule 21.17(d)(1) provides that if an order that enters the EDGX Options Book following the Opening Auction Process and becomes subject to the drill-through protection, the bid (offer) limit of the Opening Collar plus (minus) the buffer amount will be the drill-through price.[78] As discussed above, the Opening Collar is a price protection, and the Exchange would execute orders at the open at prices at or within the Opening Collar (as it would execute orders at or within the NBBO). Therefore, the Exchange believes the Opening Collar limit price points are reasonable to use when determining the drill-through price for orders that are unable to execute during the opening rotation.

Other Changes

Proposed Rule 16.3 states the Exchange announces to Trading Permit Holders all determinations it makes pursuant to the Rules via (a) specifications, Notices, or Regulatory Circulars with appropriate advanced notice, which will be posted on the Exchange's website, or as otherwise provided in the Rules, (b) electronic message, or (c) other communication method as provided in the Rules. Current Rules state the Exchange will generally announce determinations by Regulatory Circular, and the proposed rule expands the different type of documents that may be used to announce determinations, consistent with EDGX. Proposed Rule 16.3 makes clear this information will be available on the Exchange's website in an easily accessible manner, regardless of the manner in which the Exchange announces it. Additionally, certain determinations are made more real-time pursuant to electronic message received by Options Members. This single rule simplifies the Rules by eliminating the need to repeatedly state in the rules how the Exchange will announce determinations.[79]

The proposed rule change adds Rule 21.2(a), which states the System accepts orders and quotes at the times set forth in Rule 21.6. This is consistent with the provisions in current Rule 21.6, and will help consolidate all rules regarding hours into a single rule.

Current Rule 21.2(c) states the Exchange will not be open for business on any holiday observed by the Exchange. Proposed Rule 21.2(d) lists all of the holidays on which the Exchange will not be open for business, and describes on which day the Exchange will not be open if a holiday observed falls on a Saturday or Sunday.[80]

The proposed rule change permits the Exchange to designate certain index options to end trading at 4:00 p.m.[81] The Exchange believes this flexibility is appropriate, for example, if it were to list for trading an index option for which it expected investors to use the prices of underlying stocks rather than corresponding index futures to price the index options, and those stocks end trading at 4:00 p.m. The proposed rule change moves rule provisions from current Rules 29.10(a)[82] and 29.11(j)(4) regarding index option trading hours into proposed Rule 21.2(b)(2) so that all rule provisions regarding trading hours are included in the same rule.[83]

The Exchange also proposes to clarify that only options on Fund Shares and Index-Linked Securities designated by the Exchange would remain open beyond 4:00 p.m. but no later than 4:15 p.m.[84] Because Fund Shares and Index-Linked Securities are often based on the same indexes on which the Exchange lists options, and the rules permit index

[74] *See* current Rule 21.7(d) (which states the System matches (in accordance with Rule 21.8) orders and quotes in the System priced equal to or more aggressively than the Opening Price); *see also* Cboe Options Rule 6.2(c)(i)(C). The Exchange believes it is appropriate to prioritize orders with the most aggressive prices, as it provides market participants with incentive to submit their best-priced orders.

[75] *See* Cboe Options Rule 6.2, Interpretation and Policy .04. While the allocation algorithm used during the opening rotation for a class will default to and generally be the same as the one used for that class intraday, the Exchange believes the flexibility is appropriate so that it can facilitate a robust opening with sufficient liquidity in all classes. Cboe Options may apply a different allocation algorithm for series that open at a minimum price increment due to a sell market order imbalance. The Exchange does not believe it needs this flexibility.

[76] The proposed rule change corrects an error in the current Rule, which references Rule 21.9 rather than Rule 21.8.

[77] This is consistent with the definition of market orders in Rule 21.1(d). *See also* C2 Rule 6.11(d); and Cboe Options Rule 6.2, Interpretation and Policy .07.

[78] The proposed rule change makes corresponding changes to proposed Rule 21.17(d)(2).

[79] Proposed Rule 16.3 is the same as C2 Rule 1.2.

[80] Proposed Rule 21.2(c) is the same as C2 Rule 6.1(c).

[81] *See* proposed Rule 21.2(b)(2).

[82] The proposed rule change modifies the name of Rule 29.10, as it only applies to trading halts as proposed.

[83] The proposed rule change makes corresponding changes to paragraph lettering in Rule 29.10.

[84] *See* proposed Rule 21.2(b)(1).

options to trade until 4:00 p.m. or 4:15 p.m., the Exchange believes it is appropriate to have similar flexibility with respect to the Regular Trading Hours of options on Fund Shares and Index-Linked Securities. Other options exchanges have similar flexibility regarding trading hours.[85]

Proposed Rule 21.6(f) states after the RTH market close, Users may cancel orders with Time-in-Force of GTC or GTC that remain on the Book until 4:45 p.m. This proposed change provides Users with additional flexibility to manage their orders that remain in the Book following the market close. Cancelling a GTC or GTD order at 4:30 p.m. has the same effect as cancelling that order at 7:30 a.m. the following day—ultimately, it accommodates the User's goal of cancelling an order prior to it potentially executing during the Opening Auction Process the following morning.

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.[86] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[87] 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)[88] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to adopt Global Trading Hours will remove impediments to and perfect the mechanism of a free and open market and a national market system. Global Trading Hours is a competitive initiative designed to improve the Exchange's marketplace for the benefit of investors. The proposed rule change provides a new investment opportunity within the options trading industry that is consistent with the continued globalization of the securities markets and closer aligns the Exchange's trading hours with extended trading hours of stock exchanges. The Exchange believes the proposed rule change will enhance competition by providing a service to investors that most other options exchanges currently are not providing. The Exchange believes the competition among exchanges ultimately benefits the entire marketplace. Given the robust competition among the options exchanges, innovative trading mechanisms are consistent with the above-mentioned goals of the Exchange Act.

The proposed rule change also provides a mechanism for the Exchange to more effectively compete with exchanges located outside of the United States. Global markets have become increasingly interdepending and linked, both psychologically and through improved communications technology. This has been accompanied by an increased desire among investors to have access to U.S.-listed exchange products outside of Regular Trading Hours, and the Exchange believes this desire extends to its exclusively listed products. The Exchange believes that the proposed rule change is reasonably designed to provide an appropriate mechanism for trading outside of Regular Trading Hours while providing for appropriate Exchange oversight pursuant to the Act, trade reporting, and surveillance.

While only one other options exchange is currently open for trading outside of Regular Trading Hours, the Commission has authorized stock exchanges to be open for trading outside of these hours pursuant to the Act. Additionally, futures exchanges also operate outside of those hours. Thus, the proposed rule change to adopt Global Trading Hours is not novel or unique. The Exchange has currently authorized one class to list for trading during Global Trading Hours. As the proposed rule change is a new Exchange initiative, the Exchange believes it is reasonable to trade a limited number of classes upon implementation for which demand is believed to be the highest during Global Trading Hours.

The vast majority of the Exchange's trading rules will apply during Global Trading Hours in the same manner as during Regular Trading Hours, which rules have all be previously filed with the Commission as being consistent with the goals of the Act. Rules that will apply equally during Global Trading Hours include rules that protect public customers, impose best execution requirements on Options Members, and prohibit acts and practices that are inconsistent with just and equitable principles of trade as well as fraudulent and manipulative practices. The proposed rule change also provides opportunities for price improvement during Global Trading Hours and applies the same allocation and priority rules that are available to the Exchange during Regular Trading Hours. The Exchange believes, therefore, that the rules that will apply during Global Trading Hours will continue to promote just and equitable principles of trade and prevent fraudulent and manipulative acts.

The proposed rule change clearly identifies the ways in which trading during Regular Trading Hours will different from trading during Global Trading Hours (such as identifying order types and instructions that will not be available during Global Trading Hours). This ensures that investors are aware of any differences among trading sessions. The Exchange believes the differences are consistent with the expected differences in liquidity, participation, and trading activity between Regular Trading Hours and Global Trading Hours. The flexibility provided to the Exchange to make determinations for each trading session will allow the Exchange to apply settings and parameters to address the different market conditions that may be present during each trading session. Additionally, to further protect investors from any additional risks related to trading during Global Trading Hours, the proposed rule change requires that disclosures be made to customers describing these potential risks. The proposed All Sessions order and RTH Only order will protect investors by permitting investors who do not wish to trade during Global Trading Hours from having orders or quotes execute during those orders. Consistent with the goal of investor protection, the Exchange will not allow market orders during Global Trading Hours due to the expected increased volatility and decreased liquidity during these hours.

Additionally, the Exchange believes that the proposed rule change will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as the Exchange will ensure that adequate staffing is available during Global Trading Hours to provide appropriate trading support during those hours, as well as Exchange officials to make any necessary

[85] *See, e.g.,* C2 Rule 6.1(a).

[86] 15 U.S.C. 78f(b).

[87] 15 U.S.C. 78f(b)(5).

[88] *Id.*

determinations under the rules during Global Trading Hours (such as trading halts and trade nullification for obvious errors). The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Global Trading Hours. The Exchange's surveillance procedures will also be revised to incorporate transactions that occur and orders and quotations that are submitted during Global Trading Hours. The Exchange believes its surveillance procedures are adequate to properly monitor trading in XSP options during Global Trading Hours. Clearing and settlement processes will be the same for Global Trading Hours as they are for Regular Trading Hours transactions.

The proposed rule change further removes impediments to a free and open market and does not unfairly discriminate among market participants, as all Options Members with access to the Exchange may trade during Global Trading Hours using the same connection lines, message formats data feeds, and EFIDs they use during Regular Trading Hours, minimizing any preparation efforts necessary to participate during Global Trading Hours. Options Members will not be required to trade during Global Trading Hours.

As demonstrated above, while the proposed rule change increases the total time during which a Market Maker with XSP appointment must quote, this increase is de minimis given that a Market Maker's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate. Selecting an appointment in XSP options will be optional and within the discretion of a Market Maker. Additionally, the Exchange is providing Market Makers with the opportunity to quote during GTH (and receive the benefits of acting as a Market Maker with respect to transactions it effects during that time) without creating additional connections to the Exchange or undertaking separate membership requirements (as is required on Cboe Options). The Exchange believes Market Makers will have an incentive to quote in XSP options during Global Trading Hours given the significance of the S&P 500 Index within the financial markets, the expected demand, and given that the stocks underlying the index are also trading during those hours (which may permit execution of certain hedging strategies). Extending a Market Maker's appointment to Global Trading Hours will enhance liquidity during that trading session, which benefits all investors during those hours. The Exchange believes that the slight additional burden of extending the continuous quoting obligation to the GTH trading session in one class is outweighed by the Exchange's efforts to add liquidity in All Sessions classes, the minimal preparation a Market Maker may require to participate in the GTH trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit, and continues to maintain a balance of Market Maker benefits and obligations.

The proposed rule change is also consistent with Section 11A of the Act and Regulation NMS thereunder, because it provides for the dissemination of transaction and quotation information during Global Trading Hours through OPRA, pursuant to the OPRA Plan, which Commission approved and indicated to be consistent with the Act. While Section 11A and Regulation NMS contemplate an integrated system for trading securities, they also envision competition between markets, and innovation that provides marketplace benefits to attract order flow to an exchange does not result in unfair competition if other markets are free to compete in the same manner.[89]

The proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because, as noted above, another options exchange currently offers a Global Trading Hours session.[90] While there are some differences among the proposed rule change and the Cboe Options Global Trading Hours session, such as the length of the session (Cboe Options GTH trading session begins at 3:00 a.m. and the proposed Exchange GTH trading session begins at 8:30 a.m.), the participation (while all TPHs on Cboe Options will have the opportunity to participate, as all TPHs on the Exchange will, Cboe Options requires TPHs to obtain a separate GTH trading permit, log-ins, and Market Maker appointments to participate in GTH while the Exchange will not), the proposed Exchange GTH trading session is similar to the Cboe Options GTH trading session.

The Exchange believes the proposed rule change to adopt an opening auction will protect investors, because it will enhance the openings of series on the Exchange by providing an opportunity for price discovery based on then-current market conditions. The proposed Queuing Period is substantively the same as the current Order Entry Period on the Exchange. The proposed detail regarding the Queuing Period provide additional transparency regarding the handling of orders and quotes submitted during that time, and will thus benefit investors. The proposed rule change, including orders that are not permitted during the Queuing Period or orders that are not eligible to trade during the opening rotation, is also similar to the pre-opening period on Cboe Options.[91]

The proposed rule change will protect investors by ensuring they have access to information regarding the opening of a series, which will provide them with transparency that will permit them to participate in the opening auction process and contribute to, and benefit from, the price discovery the auction may provide. The proposed opening auction updates are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as all market participants may subscribe to the Exchange's data feeds that deliver these messages, and thus all market participants may have access to this information.

The proposed opening rotation triggers are substantially similar to the current events that will trigger series openings on the Exchange. The proposed trigger events will remove impediments to and perfect the mechanism of a free and open market and a national market system, as they ensure that during Regular Trading Hours, the underlying securities will have begun trading, or the underlying index values will have begun being disseminated, before the System opens a series for trading. As this information will not be available during Global Trading Hours, the Exchange believes it is appropriate to begin the opening

[89] *See* Exchange Act Release Nos. 73704 (November 28, 2014), 79 FR 72044 (December 4, 2014) (SR–CBOE–2014–062) (approval of proposed rule change for Cboe Options to extend its trading hours outside of Regular Trading Hours); and 29237 (May 24, 1991), 46 FR 24853 (May 31, 1991) (SR–NYSE–1990–052 and SR–NYSE–1990–053) (approval of proposed rule change for NYSE to extend its trading hours outside of Regular Trading Hours). The Exchange also notes that no other U.S. options exchange provides for trading XSP options outside of Regular Trading Hours, so there is currently no need for intermarket linkage during Global Trading Hours. If another Cboe Affiliated Exchange lists XSP options outside of Regular Trading Hours, trading of XSP options on the Exchange would comply with linkage rules.

[90] *See* Cboe Options Rules 6.1 and 6.1A.

[91] *See* Cboe Options Rule 6.2(a). Cboe Options provides a longer pre-opening period than the proposed rule change. However, the Exchange is not proposing to change the time at which it begins to accept orders and quotes, believes the time period is sufficient for market participants to submit orders and quotes to participate in the opening rotation.

rotation for Global Trading Hours at a specified time (as Cboe Options does).

The proposed Maximum Composite Width Check and Opening Collar will protect investors by providing price protection measures to prevent orders from executing at extreme prices at the open. The Exchange believes it is appropriate to open a series under the proposed circumstances and provide marketable orders with an opportunity to execute at a reasonable opening price (as discussed below), because there is minimal risk of execution at an extreme price. These proposed price protections incorporate all available pricing information, including Market Maker bulk messages (which are generally used to price markets for series) and any quotes disseminated from away markets, and thus may lead to a more accurate Opening Trade Price based on then-current market conditions. As noted above, Cboe Options applies similar price protections during its opening rotation. Cboe Options similarly considers Market Maker quotes (the equivalent of Market Maker bulk message on the Exchange), and in certain classes, quotes of away exchanges, and whether there are crossing orders or quotes when determining whether the opening width and trade price are reasonable. The Exchange proposes to calculate the maximum width and opening price range in a different, but reasonable manner intended to ensure a fair and orderly opening.

The proposed priority with respect to trades during the opening rotation are consistent with current priority principles that protect investors, which are to provide priority to more aggressively priced orders and quotes. Orders and quotes will be subject to the same allocation algorithms that the Exchange may apply during the trading day. The proposed priority and allocation of orders and quotes at the opening trade is substantially similar to the priority and allocation of orders and quotes at the opening of Cboe Options.[92]

The Exchange believes the proposed opening auction process is designed to ensure sufficient liquidity in a series when it opens and ensure series open at prices consistent with then-current market conditions, and thus will ensure a fair and orderly opening process. Additionally, as noted above, the proposed opening auction process is substantially similar to the opening auction process of Cboe Options.[93] As described above and below, the differences between proposed Rule 21.7 and Cboe Options Rule 6.2 primarily relate to differences between the exchanges, including functionality Cboe Options offers that the Exchange does not and products Cboe Options lists for trading that the Exchange does not.

The proposed rule change to provide the Exchange with flexibility regarding trading hours for index options, options on Fund Shares, and options on Index-Linked Securities will 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. This flexibility will permit the Exchange to modify trading hours to ensure that options are trading when instruments that investors use to price such options are also trading.

The proposed rule change is generally intended to align system functionality currently offered by the Exchange with Cboe Options functionality in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes, and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. The Exchange believes this consistency will promote a fair and orderly national options market system. When Cboe Options migrates to the same technology as that of the Exchange and other Cboe Affiliated Exchanges, Users of the Exchange and other Cboe Affiliated Exchanges will have access to similar functionality on all Cboe Affiliated Exchanges. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. The Exchange does not believe that the proposed rule change to adopt Global Trading Hours will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all Options Members will be able, but not be required, to participate during Global Trading Hours, and will be able to do so using the same connectivity as they use during Regular Trading Hours. Participation in GTH will be voluntary and within the discretion of Options Members. While the proposed rule change increases the total time during which a Market Maker with XSP appointment must quote, this increase is de minimis given that a Market Maker's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate. Selecting an appointment in XSP options will be optional and within the discretion of a Market Maker. Additionally, the Exchange is providing Market Makers with the opportunity to quote during GTH (and receive the benefits of acting as a Market Maker with respect to transactions it effects during that time) without creating additional connections to the Exchange or undertaking separate membership requirements (as is required on Cboe Options). Extending a Market Maker's appointment to Global Trading Hours will enhance liquidity during that trading session, which benefits all investors during those hours. The Exchange believes that the slight additional burden of extending the continuous quoting obligation to the GTH trading session in one class is outweighed by the Exchange's efforts to add liquidity in All Sessions classes, the minimal preparation a Market Maker may require to participate in the GTH trading session, and the benefits to investors that may result from that liquidity. Therefore, the Exchange believes the proposed rule change provides customer trading interest with a net benefit, and continues to maintain a balance of Market Maker benefits and obligations.

The Exchange does not believe that the proposed rule change to adopt Global Trading Hours will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change is competitive initiative that will benefit the marketplace and investors. The Exchange believes the proposed rule change will enhance competition by providing a service to investors that only one other options exchange current provides. Additionally, all options exchanges are free to compete in the same manner. The Exchange further believes that the same level of competition among options exchanges will continue during Regular Trading Hours. Because the Exchange proposes to make only exclusively listed products available for trading during Global Trading Hours, and because any All Sessions orders that do not trade during GTH will be eligible to trade during the RTH trading session in the same manner

[92] *See* Cboe Options Rule 6.2(c)(i)(C) and Interpretation and Policy .04.

[93] *See* Cboe Options Rule 6.2.

as all other orders during Regular Trading Hours, the proposed rule change will have no effect on the national best prices or trading during Regular Trading Hours. The Exchange also believes the proposed rule change could increase its competitive position outside of the United States by providing investors with an additional investment vehicle with respect to their global trading strategies during times that correspond with parts of regular trading hours outside of the United States.

The Exchange does not believe that the proposed rule change to adopt an opening auction process will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply to orders and quotes of all market participants in the same manner. The same order types that are not currently accepted prior to the opening, and that do not participate in the opening process, will similarly not be accepted during the Queuing Period or be eligible for trading during the opening rotation.

The Exchange does not believe that the proposed rule change to adopt an opening auction process will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it is designed to open series on the Exchange in a fair and orderly manner. The Exchange believes an opening auction process will enhance the openings of series on the Exchange by providing an opportunity for price discovery based on then-current market conditions. The proposed auction process will provide an opportunity for price discovery when a series opens ensure there sufficient liquidity in a series when it opens, and ensure series open at prices consistent with then-current market conditions (at the Exchange and other exchanges) rather than extreme prices that could result in unfavorable executions to market participants. Additionally, as discussed above, the proposed opening auction process is substantially similar to the Cboe Options opening auction process.[94]

The proposed rule change to provide the Exchange with flexibility regarding trading hours for certain products will not impose any burden on competition not necessary or appropriate under the Act, as another options exchange has the same flexibility.[95]

[94] *See* Cboe Options Rule 6.2.

[95] *See* C2 Rule 6.1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[96] and subparagraph (f)(6) of Rule 19b–4 thereunder.[97]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–027 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.

[96] 15 U.S.C. 78s(b)(3)(A)(iii).

[97] 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.

All submissions should refer to File Number SR–CboeEDGX–2019–027. 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–CboeEDGX–2019–027 and should be submitted on or before June 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[98]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09729 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

[98] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33469; 812–14996]

Toroso Investments, LLC and Tidal ETF Trust; Notice of Application

May 8, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2

under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Tidal ETF Trust (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Toroso Investments, LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on January 9, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 3, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Toroso Investments, LLC and Tidal ETF Trust, 898 N Broadway, Suite 2, Massapequa, New York 11758.

FOR FURTHER INFORMATION CONTACT: Jill Corrigan, Senior Counsel, at (202) 551–8929, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. The Initial Adviser is the investment adviser to the Aware Ultra-Short Duration Enhanced Income ETF (the ''Initial Fund''), a series of the Trust, pursuant to an investment management agreement with the Trust (''Investment Management Agreement'').[1] Under the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust (''Board''), will provide continuous investment management of the assets of each Subadvised Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers.[2] The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Fund. The Adviser will evaluate, select, and recommend Sub-Advisers to manage the assets of a Subadvised Fund and will oversee, monitor and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire certain Sub-Advisers pursuant to Sub-Advisory Agreements and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Fund to disclose (as both a dollar amount and a percentage of the Subadvised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure'').[4]

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Funds' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreement will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Funds. Applicants believe that the requested relief from the

[1] Applicants request relief with respect to the Initial Fund, as well as to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that, in each case, is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with, the Initial Adviser or its successors (each, also an ''Adviser''), uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a ''Subadvised Fund''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Subadvised Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the Trust (each, a ''Feeder Fund'') may invest substantially all of their assets in a Subadvised Fund (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

[2] As used herein, a ''Sub-Adviser'' for a Subadvised Fund is (1) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Subadvised Fund, or (2) a sister company of the Adviser for that Subadvised Fund that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Subadvised Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Subadvised Fund (''Non-Affiliated Sub-Advisers'').

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (''Affiliated Sub-Adviser'').

[4] For any Subadvised Fund that is a Master Fund, the relief would also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09800 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85794; File No. SR–CboeBYX–2019–007]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 11.13 (Order Execution and Routing) and Fee Schedule To Delete References to TRIM2 and SWPB Routing Options

May 7, 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 April 29, 2019, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend Rule 11.13 (Order Execution and Routing), as well as its Fee Schedule, to delete references to the TRIM2 and SWPB routing options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), 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 11.13(b)(3)(G) (Other Routing Strategies) to delete the TRIM2 routing option. The Exchange also proposes to amend its fee schedule to delete references to the TRIM2 routing options under fee codes BJ and C, as well as the ''Routing Tier'' under footnote 3. Additionally, the Exchange proposes to amend Rule 11.13(b)(3)(I) (SWP) to delete the SWPB routing option and to delete references to SWPB in the fee schedule under fee code SW and under footnote 9. The Exchange intends to implement the proposed rule changes on May 1, 2019.

Currently, Rule 11.13(b)(3)(G) provides for the routing options under which an order checks the System[5] for available shares if so instructed by the entering User[6] and then is sent to destinations on the applicable System routing table. The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.[7] Rule 11.13(b)(3)(G) currently includes TRIM2 as one of such routing options.[8] In addition, current fee code BJ is yielded on orders routed to EDGA using TRIM, TRIM2 or SLIM routing strategy[9] and fee code C is yielded on orders routed to BX using Destination Specific, TRIM, TRIM2 or SLIM routing strategy.[10] Also, current footnote 3 provides for additional rebate per share for orders yielding fee code C (thus inclusive of a TRIM2 routing strategy) if a Member achieves certain criteria.

Current Rule 11.13(b)(3)(I) provides for SWP routing options. SWP is a routing option under which an order checks the System for available displayed shares and then is sent to destinations on the System routing table. SWP orders route only to Protected Quotations and only for displayed size. Specifically, the current rule provides for two forms of SWP routing, SWPA and SWPB. A SWPA order routes to destinations on the System routing table even if at the time of entry there is an insufficient share quantity in the SWPA order to fulfill the displayed size of all Protected Quotations, whereas an entire SWPB order will be cancelled back to a User immediately if at the time of entry there is an insufficient share quantity in the SWPB order to fulfill the displayed size of all Protected Quotations. Moreover, current fee code SW is yielded on orders routed using Parallel T, SWPA or SWPB routing strategies,[11] and current footnote 9 describes the fees charged for orders yielding fee code SW that remove liquidity in securities priced below $1.00 for Parallel T, SWPA or SWPB routed executions.

The Exchange has determined that because few Users elect the TRIM2 routing option and the SWPB routing option, which often experiences no usage for extended periods of time, the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support these products. Therefore, the Exchange now proposes to delete TRIM2 as a routing option under Rule 11.13(b)(3)(G)(v) and SWPB as a routing option under Rule 11.13(b)(3)(I). The Exchange proposes to amend the Rule formatting accordingly, changing current subparagraph (b)(3)(G)(vi) to subparagraph 11.13(b)(3)(G)(v). The Exchange also proposes to amend its fee schedule to delete references to the TRIM2 routing option under fee codes BJ and C, as well

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The ''System'' is the Exchange's electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Exchange Rule 1.5(aa).

[6] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(cc).

[7] The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *See* Exchange Rule 11.13(b)(3).

[8] TRIM2 routing strategy currently sends orders to: BYX + DRT + BX + EDGA. *See also* note 3.

[9] Orders that yield fee code BJ receive a rebate of $0.0024 per share.

[10] Orders that yield fee code C receive a rebate of $0.0010 per share.

[11] Orders that yield fee code SW receive a discounted fee of $0.0033 per share.

as within the ''Routing Tier'' under footnote 3, and to delete references to the SWPB routing option under fee code SW and footnote 9. Users seeking to route to other trading centers may use alternative methods, such as utilizing other routing strategies offered by the Exchange, or connecting to those venues directly or through a third party service provider.

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.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] 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)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the TRIM2 and SWPB routing options will no longer be available to all Users. Also, the Exchange believes the proposed rule change to remove references to TRIM2 and SWPB will remove impediments to the mechanism of a free and open market, thereby protecting investors and the public interest. As stated, the Exchange noted that few Users elect the TRIM2 or SWPB routing options and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support these products. Therefore, the Exchange is discontinuing these routing options. The Exchange notes that routing through the Exchange is voluntary and alternative routing options offered by the Exchange as well as other methods remain available to Users that wish to route to other trading centers. In addition, neither the TRIM2 nor the SWPB routing option are core product offerings by the Exchange, nor is the Exchange required by the Act to offer such products. By removing references to routing options that will no longer be offered by the Exchange, the Exchange believes the proposed rule change will remove impediments to the mechanism of a free and open market and protect investors by providing investors with rules that accurately reflect routing options currently available.

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. The proposed rule change to remove TRIM2 and SWPB is not designed to address any competitive issues but rather to delete the TRIM2 and SWPB routing options that are rarely used on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 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.[17]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[18] 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 period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would accurately reflect routing options that are currently available on the Exchange and delete routing options no longer offered by the Exchange. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[20]

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–CboeBYX–2019–007 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–CboeBYX–2019–007. 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

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 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).

[20] 15 U.S.C. 78s(b)(3)(C).

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–CboeBYX–2019–007 and should be submitted on or before June 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09727 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85795; File No. SR–CboeBZX–2019–037]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 11.13 (Order Execution and Routing) and the Fee Schedule To Delete References to the TRIM2 and SWPB Routing Options

May 7, 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 April 29, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 11.13 (Order Execution and Routing), as well as its Fee Schedule, to delete references to the TRIM2 and SWPB routing options. The Exchange also proposes to amend Rule 11.13 to update references to the TRIM routing strategy. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/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 11.13(b)(3)(G) (Other Routing Strategies) to delete the TRIM2 routing option, as well as add language codifying User designation of the TRIM routing option. The Exchange also proposes to amend its fee schedule to delete references to the TRIM2 routing options under fee codes BJ, BY and TV. The Exchange also proposes to amend Rule 11.13(b)(3)(I) (SWP) to delete the SWPB routing option and to delete references to SWPB in the fee schedule under fee code SW and under footnote 9. The Exchange intends to implement the proposed rule changes on May 1, 2019.

TRIM Routing Strategies

Currently, Rule 11.13(b)(3)(G) provides for the routing options under which an order checks the System[5] for available shares if so instructed by the entering User[6] and then is sent to destinations on the applicable System routing table. The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.[7] Rule 11.13(b)(3)(G) currently includes TRIM2 as one of such routing options.[8] In addition, current fee code BJ is yielded on orders routed to EDGA using TRIM,[9] TRIM2 or SLIM routing strategy,[10] fee code BY is yielded on orders routed to BYX using Destination Specific, TRIM, TRIM2 or SLIM routing strategy,[11] and fee code TV is yielded on orders routed to BX using TRIM, TRIM2, or SLIM routing strategy.[12]

The Exchange has determined that because few Users elect the TRIM2 routing option, the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support the product. Therefore, the Exchange now proposes to delete TRIM2 as a routing option under Rule 11.13(b)(3)(G)(v).[13] The Exchange also proposes to amend its fee schedule to delete references to the TRIM2 routing option under fee codes BJ, BY and TV. Users seeking to route to other trading

[5] The ''System'' is the Exchange's electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Exchange Rule 1.5(aa).

[6] The term ''User'' is defined as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(cc).

[7] The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *See* Exchange Rule 11.13(b)(3).

[8] TRIM2 routing strategy currently sends orders to: BZX + BYX + DRT Venues + BX + EDGA + EDGA. *See also* note 3.

[9] TRIM routing strategy currently sends orders to: BZX + BYX + EDGA + NYSE National + BX + NYSE American + DRT Venues. *See also* note 3.

[10] Orders that yield fee code BJ receive a rebate of $0.0024 per share.

[11] Orders that yield fee code BY receive a rebate of $0.0015 per share.

[12] Orders that yield fee code TV receive a rebate of $0.0010 per share.

[13] The Exchange also proposes to update the subsequent numbering as a result of this proposed deletion.

centers may use alternative methods, such as utilizing other routing strategies offered by the Exchange, or connecting to those venues directly or through a third party service provider.

The Exchange also proposes to specify under Rule 11.13(b)(3)(G) that in connection with TRIM, [14] a routing option currently available to all Users and provided for under current subparagraph (b)(3)(G)(iv), a User may designate that an order first routes to Cboe BYX Exchange, Inc. (''BYX''), checks the System for available shares, and then routes to other destinations on the System routing table. This proposed rule change does not create a new routing strategy, but rather codifies a routing strategy that is already offered on the Exchange.[15] The Exchange notes that TRIM also has a variant routing strategy (TRIM-) in that a User may designate an order to skip the Exchange and otherwise send orders to the same venues as TRIM. The TRIM routing strategy and its variation are focused on seeking execution of orders while minimizing execution costs by routing to certain low cost execution venues on the Exchange's System routing table. TRIM currently offers Users more flexibility in routing orders consistent with Regulation NMS. No changes to the functionality of the TRIM routing strategy are proposed by this filing.[16]

SWPB Routing Strategy

Currently, Rule 11.13(b)(3)(I) provides for SWP routing options. SWP is a routing option under which an order checks the System for available displayed shares and then is sent to destinations on the System routing table. SWP orders route only to Protected Quotations and only for displayed size. Specifically, the current rule provides for two forms of SWP routing, SWPA and SWPB. A SWPA order routes to destinations on the System routing table even if at the time of entry there is an insufficient share quantity in the SWPA order to fulfill the displayed size of all Protected Quotations, whereas an entire SWPB order will be cancelled back to a User immediately if at the time of entry there is an insufficient share quantity in the SWPB order to fulfill the displayed size of all Protected Quotations. Moreover, current fee code SW is yielded on orders routed using Parallel T, SWPA or SWPB routing strategies,[17] and current footnote 9 describes the fees charged for orders yielding fee code SW that remove liquidity in securities priced below $1.00 for Parallel T, SWPA or SWPB routed executions.

Like that of TRIM2, the Exchange has determined that due to diminished User election of the SWPB routing option, which often experiences no usage for extended periods of time, the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support the product. Therefore, the Exchange is decommissioning SWPB routed orders on the Exchange.[18] As a result, the Exchange now proposes to delete the SWPB routing option under Rule 11.3(b)(3)(I), amending the language as necessary to provide only for SWPA orders. The Exchange also proposes to delete references to SWPB under fee code SW and its accompanying footnote 9.

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.[19] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [20] 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) [21] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the TRIM2 routing option and the SWPB routing option will no longer be available to all Users. Also, the Exchange believes the proposed rule change to remove references to TRIM2 and SWPB will remove impediments to the mechanism of a free and open market, thereby protecting investors and the public interest. As stated, the Exchange has noted that few Users elect the TRIM2 and SWPB routing options and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support these products. Therefore, the Exchange is discontinuing these routing options. The Exchange notes that routing through the Exchange is voluntary and alternative routing options offered by the Exchange as well as other methods remain available to Users that wish to route to other trading centers. In addition, neither the TRIM2 nor the SWPB routing options are core product offerings by the Exchange, nor is the Exchange required by the Act to offer such products. By removing references to routing options that will no longer be offered by the Exchange, the Exchange believes the proposed rule change will remove impediments to the mechanism of a free and open market and protect investors by providing investors with rules that accurately reflect routing options currently available on the Exchange.

Additionally, the Exchange believes that the amendment to codify User designation of the TRIM routing strategy, which is already available to Users,[22] will also benefit investors by providing investors with rules reflecting the routing strategies currently offered by the Exchange. The Exchange notes that the TRIM routing strategy (and its variant strategy) is available to all Users, thereby benefitting all Users equally.

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. The proposed rule change to remove TRIM2 and SWPB is not designed to address any competitive issues but rather to delete the TRIM2 and SWPB routing options that are rarely used on the Exchange and codify the User designation regarding an existing strategy currently provided for on the Exchange.

[14] *See supra* note 9.

[15] *Available at: https://cdn.cboe.com/resources/features/Cboe_USE_RoutingStrategies.pdf. See also* note 3.

[16] *See supra* note 7.

[17] Orders that yield fee code SW receive a discounted fee of $0.0033 per share.

[18] The Exchange notes that its affiliated exchanges, BYX, EDGA, and Cboe EDGX Exchange, Inc. (''EDGX''), are simultaneously proposing to decommission the SWPB routing option.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *See supra* note 15.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 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.[25]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [26] 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 period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would accurately reflect the routing options currently available on the Exchange and how those routing options would operate. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[28]

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–2019–037 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–2019–037. 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–2019–037 and should be submitted on or before June 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Deputy Secretary.

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] 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).

[28] 15 U.S.C. 78s(b)(3)(C).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Regulation A (Form 1–A), SEC File No. 270–110, OMB Control No. 3235–0286

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation A (17 CFR 230.251 through 230.263) provides an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain limited offerings of securities by issuers who do not otherwise file reports with the Commission. Form 1–A is an offering statement filed under Regulation A. The paperwork burden from Regulation A is imposed through the forms that are subject to the disclosure requirements in Regulation A and is reflected in the analysis of the form. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burden imposed by Regulation A to be a total of one hour. We estimate that approximately 179 issuers file Forms 1–A. We estimate that Form 1–A takes approximately 732.28 hours to prepare. We estimate that 75% of the 732.28 hours per response (549.21 hours) is prepared by the company for a total annual burden of 98,309 hours (549.21 hours per response × 179 responses).

Written comments are invited on: (a) Whether this proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2019.

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form F–7, SEC File No. 270–331, OMB Control No. 3235–0383

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–7 (17 CFR 239.37) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) used to register securities that are offered for cash upon the exercise of rights granted to a registrant's existing security holders to purchase or subscribe such securities. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–7 takes approximately 4 hours per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of 4 hours per response (one hour) is prepared by the company for a total annual reporting burden of 5 hours (one hour per response × 5 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 8, 2019.

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85798; File No. SR–BOX–2019–15]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Criteria for Listing an Option on an Underlying Covered Security

May 7, 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 April 25, 2019, BOX Exchange LLC (''Exchange'' or ''BOX'') 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 5020 (Criteria for Underlying Securities) to modify the criteria for listing an option on an underlying covered security. 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 5020 (Criteria for Underlying Securities) to modify the criteria for listing an option on an underlying covered security. This is a competitive filing that is based on a proposal submitted by NASDAQ PHLX LLC (''Phlx'') and approved by the Commission.[3] The Exchange proposes to modify Rule 5020(b)(5)(i) to permit the listing of an option on an underlying covered security that has a market price of at least $3.00 for the previous three

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–82474 (January 9, 2018) (Order Approving SR–Phlx–2017–75).

consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (''OCC'') for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Rule 5020.

Currently, the underlying covered security must have a closing market price of at least $3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a listing certificate to the OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded, but the measurement will be the price over the prior three consecutive business day period preceding the submission of the listing certificate to OCC, instead of the prior five business day period.

The Exchange acknowledges that the Options Listing Procedures Plan [4] requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.[5] The proposed amendment will still comport with that requirement. For example, if an initial public offering (''IPO'') occurs at 11 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four business days of an IPO becoming available instead of six business days (five consecutive days plus the day the listing certificate is submitted to OCC).

At the time the Exchange adopted the ''look back'' period of five consecutive business days, it determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability.[6] Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading of options on the Exchange.[7]

Furthermore, the Exchange notes that the scope of its surveillance program also includes cross market surveillance for trading that is not just limited to the Exchange. In particular, the Financial Industry Regulatory Authority (''FINRA''), pursuant to a regulatory services agreement, operates a range of cross-market equity surveillance patterns on behalf of the Exchange to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash shales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange, including data from the New York Stock Exchange (''NYSE'') and from the Nasdaq Stock Market (''Nasdaq'').

Additionally, for options, the Exchange, through FINRA, utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on BOX options facility (*i.e.,* mini-manipulation strategies). Accordingly, the Exchange believes that the cross market surveillance performed by FINRA on behalf of the Exchange, coupled with the Exchange staff's real-time monitoring of similarly violative activity on the exchange as described herein, reflects a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the National Market System of The Nasdaq Stock Market (now known as the Nasdaq Global Market) (collectively, the ''Named Markets''), as provided for in the definition of ''covered security'' from Section 18(b)(1)(A) of the 1933 Act.[8] Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

Furthermore, according to Phlx's approved proposal, the Nasdaq, had no cases, within a five year period ending in 2018, where an IPO-related issue for which it had pricing information qualified for the $3.00 price requirement during the first three (3) days of trading and did not qualify for the $3.00 price requirement during the first five (5) days.[9] In other words, none of these qualifying issues fell below the $3.00 threshold within the first three (3) or five (5) days of trading. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with Nasdaq's findings related to the IPO-related issues as described herein, adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for

[4] The Plan for the Purpose of Developing and Implementing procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (''OLPP'')) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

See Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include Phlx; OCC; BATS Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

[5] *See* OLPP at page 3.

[6] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19,2003) (SR–ISE–2003–04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR–Amex–2003–19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR–Phlx–2003–27)

[7] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange, through the Financial Industry Regulatory Authority (''FINRA''), has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real time patterns are active for the new security as soon as the IPO begins trading.

[8] *See* 15 U.S.C. 77r(b)(1)(A).

[9] There were over 750 IPO-related issues on Nasdaq within the past five years. Out of all of the issues with pricing information, there was only one issue that had a price below $3.00 during the first five consecutive business days. The Exchange notes, however, that Nasdaq allows for companies to list on the Nasdaq Capital Market at $2.00 or $3.00 per share in some instances, which was the case for this particular issue. *See* Nasdaq Rule 5500 Series for initial listing standards on the Nasdaq Capital Market. *See also* supra note 3.

underlying covered securities. In particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count will generally not be known until T+2.[10] The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Exchange Rule 15c6–1(a) to adopt the shortened settlement cycle,[11] and the look back period of three (3) consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (*i.e.,* within three (3) business days) and therefore the number of shareholders could be verified within three (3) business days, thereby enabling options trading within four (4) business days of an IPO (three (3) consecutive business days plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that various brokerage firms that have a large retail customer clientele can confirm the number of individual customers who have a position in new issues. The earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). For the foregoing reasons, the Exchange believes that basing the proposed three (3) business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change will apply to all covered securities that meet the criteria of Rule 5020. Pursuant to Rule 5020, the Exchange establishes guidelines to be considered in evaluating the potential underlying securities for Exchange option transactions.[12] However, the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be approved as an underlying security.[13] As part of the established criteria, the issuer must be in compliance with any applicable requirement of the Securities Exchange Act of 1934.[14] Additionally, in considering the underlying security, the Exchange relies on information made publicly available by the issuer and/or the markets in which the security is traded.[15] Even if the proposed option meets the objective criteria, the Exchange may decide not to list, or place limitations or conditions upon listing.[16] The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

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''),[17] in general, and Section 6(b)(5) of the Act,[18] 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 that the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the $3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three (3) consecutive business day timeframe. The Exchange also believes that the proposed three (3) consecutive business day timeframe would continue to be a reliable test for price stability in light of Nasdaq's findings that none of the IPO-related issues on Nasdaq, within a five year time period ending in 2018, qualified for the $3.00 per share price standard during the first three trading days fell below the $3.00 threshold during the fourth or fifth trading day. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,[19] together with existing trading surveillances, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. For the foregoing reasons, the Exchange believes that the proposed amendments will remove impediments and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedge their investment in the stock in a shorter amount of time than what is currently in place.[20]

Finally, it should be noted that a price/time standard for the underlying security was first adopted when the listed options market was in its infancy, and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.[21] When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security.[22] These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial enough so as not to be readily susceptible to manipulation.[23] At the time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the

[10] The number of shareholders of record can be validated by large clearing agencies such as the Depository Trust and Clearing Corporation (''DTCC'') upon the settlement date (*i.e.,* T+2).

[11] *See* Securities Exchange Act Release no. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7–22–16).

[12] *See* Exchange Rule 5020. The Exchange established specific criteria to be considered in evaluating potential underlying securities for Exchange option transactions.

[13] *Id.*

[14] *See* Exchange Rule 5020(b)(3).

[15] *See* Exchange Rule 5020(d).

[16] *See* Exchange Rule 5020(b).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* notes 12–16 above.

[20] This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

[21] *See* Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949–01 (September 5, 1991) (SR–AMEX–86–21; SR–CBOE–86–15; SR–NYSE–86–20; SR–PSE86–15; and SR–PHLX–86–21) (''1991 Approval Order'') at 43949 (discussing the Commission's concerns when options trading initially commenced in 1973).

[22] *See* 1991 Approval Order at 43949.

[23] *Id.*

limited experience of investors with options trading.[24]

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,[25] including reducing the price/time standard in 2003 from $7.50 per share for the majority of business days over a three month period to the current $3.00 per share/five business day standard (''2003 Proposal'').[26] It has been over sixteen years since the Commission approved the 2003 proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, the Exchange is only proposing a modest reduction of the current five (5) business day standard to three (3) business days to correspond to the securities industry's move to a T+2 standard settlement cycle.[27] The $3.00 per share standard and all other initial options listing criteria in Rule 5020 will remain unchanged by this proposal. For the reasons discussed herein, the Exchange therefore believes that the proposed three (3) business day period will be beneficial to the marketplace without sacrificing investor protections.

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 Phlx that was approved by the Commission.[28] The proposed rule change will reduce the number of days to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[29] and subparagraph (f)(6) of Rule 19b–4 thereunder.[30]

A proposed rule change filed under Rule 19b–4(f)(6)[31] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[32] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the waiver of the operative delay will ensure fair competition among the exchanges by allowing the Exchange to modify the criteria for listing an option on an underlying covered security which is currently allowed on other options exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–2019–15 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–2019–15. 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

[24] *Id.*

[25] *See e.g.,* 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from $10 per share each day during the preceding three calendar months to $7.50 per share for the majority of days during the same period).

[26] *See* Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR–CBOE–2002–62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR–PCX–2003–06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SRAmex–2003–19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR–Phlx–200327).

[27] *See supra* note 11.

[28] *See supra,* note 3.

[29] 15 U.S.C. 78s(b)(3)(A)(iii).

[30] 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 the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2019–15 and should be submitted on or before June 3, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09724 Filed 5–10–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 19979, 7 May 2019.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, May 9, 2019 at 9:00 a.m.

CHANGES IN THE MEETING: The following item will not be considered during the Open Meeting on Thursday, May 9, 2019:

• Whether to propose certain rule amendments and interpretive guidance regarding the cross-border application of certain security-based swap requirements under the Securities Exchange Act of 1934 that were added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 8, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–09894 Filed 5–9–19; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 37

This document replaces and supersedes ''Line of Succession Designation No. 1–A, Revision 36''.

Line of Succession Designation No. 1–A, Revision 37:

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d), to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff;

(2) General Counsel;

(3) Associate Administrator, Office of Capital Access;

(4) Associate Administrator, Office of Disaster Assistance;

(5) Regional Administrator for Region IX; and

(6) Regional Administrator for Region VIII.

Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, ''absence from the office,'' as used in reference to myself in paragraph (a) above, means the following:

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(b) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a)(1) through (6), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(c) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(d) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (6), above, with respect to the authorities, duties, and responsibilities of their full-time positions (except that such official cannot both recommend and approve an action).

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–09775 Filed 5–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 10768]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) Public Meeting Notice

The Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Advisory Committee) will convene on Wednesday, June 26, from 1:30 p.m. until approximately 3:30 p.m. The meeting will take place at the U.S. Department of State, Harry S Truman Building, 2201 C Street NW, Washington, DC, in Room 1485.

The Advisory Committee will recommend grant recipients for the 2019 funding opportunity for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the chairperson and members of the committee. The committee will provide an overview and discussion of grant proposals from ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union,'' based on the guidelines set forth in the June request for proposals published on *Grants.gov* and SAMS Domestic (*mygrants.service-now.com*). Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program.

This meeting will be open to the public; however, attendance is limited to available seating. Entry into the Harry S Truman building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify the Title VIII Program Officer at the U.S. Department of State at *TitleVIII@state.gov,* subject: Public Meeting RSVP, no later than close of business, Tuesday, June 25, 2019.

For pre-clearance into the Harry S Truman building, the Title VIII Program Officer will request identifying data pursuant to Public Law 99–399

[34] 17 CFR 200.30–3(a)(12).

(Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. This information is being collected pursuant to 22 U.S.C. 2651a and 22 U.S.C. 4802 for the purpose of screening and pre-clearing participants to enter the host venue at the U.S. Department of State, in line with standard security procedures for events of this size. The Department of State will use this information consistent with the routine uses set forth in the System of Records Notices for Security Records (State-36). Provision of this information is voluntary, but failure to provide accurate information may impede your ability to register for the event. Please see the Security Records System of Records Notice (State–36) at *https://www.state.gov/documents/organization/242611.pdf* for additional information.

All attendees must use the 2201 C Street entrance and must arrive no later than 12:30 p.m. to pass through security before entering the building. The Program Officer cannot admit visitors who arrive without prior notification or without photo identification.

Sidni J. Dechaine,

Designated Federal Officer, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union. U.S Department of State.

[FR Doc. 2019–09784 Filed 5–10–19; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice 10767]

30-Day Notice of Proposed Information Collection: Request for Commodity Jurisdiction Determination

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to June 12, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

You must include the information collection title (Request for Commodity Jurisdiction Determination), form number (DS–4076), and the OMB control number (1405–0163) in all correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached at *battistaal@state.gov* via email or 202–663–3136 via phone.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Commodity Jurisdiction Determination.
- *OMB Control Number:* 1405–0163.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Directorate of Defense Trade Controls (PM/DDTC).
- *Form Number:* DS–4076.
- *Respondents:* Any person requesting a commodity jurisdiction determination.
- *Estimated Number of Respondents:* 600.
- *Estimated Number of Responses:* 600.
- *Average Time per Response:* 4 hours.
- *Total Estimated Burden Time:* 2,400 annual hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Pursuant to ITAR § 120.4, a person, as defined by ITAR § 120.14, may request a written determination from the Department of State stating whether a particular article or service is covered by the United States Munitions List (USML). Form DS–4076 is the means by which respondents may submit this request. Information submitted via DS–4076 will be shared with the Department of Defense, Department of Commerce, and other USG agencies, as needed, during the commodity jurisdiction process. Determinations will be made on a case-by-case basis based on the commodity's form, fit, function, and performance capability.

Methodology

Respondents must submit the DS–4076 electronically through DDTC's electronic system. Respondents may access the DS–4076 on DDTC's website, *www.pmddtc.state.gov,* under Commodity Jurisdictions (CJs).

Karen M. Wrege,

Chief Information Officer.

[FR Doc. 2019–09827 Filed 5–10–19; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2019–23]

Petition for Exemption; Summary of Petition Received; Bell Helicopter Textron

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 3, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–0997 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

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

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2019.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0997.

Petitioner: Bell Helicopter Textron.

Section(s) of 14 CFR Affected: §§ 45.23(b); 45.27(a); 45.29; 61.113(a) & (b); 91.9(b)(2); 91.119(c); 91.121; 91.151(b); & 91.203(a) & (b).

Description of Relief Sought: The proposed exemption, if granted, would allow the petitioner to operate the xFold DragonH vertical takeoff and landing unmanned aircraft system, with a maximum takeoff gross weight of 480 pounds. The operation will be in conjunction with a special airworthiness certificate in order to conduct operations for experimental research and development purposes at altitudes not greater than 400 feet above ground level, Class G airspace, within visual line of sight, and above an area of Palo Pinto County, Texas.

[FR Doc. 2019–09824 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0362]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Renewal, Maintenance, Preventive Maintenance, Rebuilding, and Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The Information to be collected is necessary to insure the safety of the flying public. Documentation of maintenance repair actions record who, what, when, where and how of the task performed. All maintenance actions as well as documentation are required. This collection focuses on the Form 337 which is collected by the FAA. Other records for preventative maintenance, and logbook entries are not collected by the FAA serve as a responsibility of the owner to maintain in case of verification of airworthiness when seeking approvals or sale of the aircraft. This insures proper certification of personnel; proper tooling is utilized and accurate measures to insure safety. Total form 337s submitted in 2017 is 54,237. Total aircraft registrations on file is 289,490. It is estimated by the numbers collected one in every five aircraft have a 337 form submitted for major alteration and repairs performed. Each 337 takes approximately 1 hour.

DATES: Written comments should be submitted by July 12, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By email: Jude Sellers, @ *jude.n.sellers@faa.gov.*

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0020.

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Form Numbers: Aircraft maintenance logbooks and form 337.

Type of Review: Renewal of information collection.

Background: Title 14 CFR part 43 mandates information to be provided when an alteration or major repair is performed on an aircraft of United Sates registry. Submission of Form 337 is required for capture in the aircraft permanent records for current and future owners to substantiate the requirements of the regulations, prior to operation of the aircraft. Aircraft owners have the responsibility of documentation and submission of all maintenance records performed to their aircraft.

Respondents: 289,490 Aircraft owners.

Frequency: On occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: Industry Annual burden 54,237 man hours.

Issued in Washington, DC, on May 8, 2019.

Jude Sellers,

Aviation Safety Inspector, AFS–350 General Aviation Maintenance Branch.

[FR Doc. 2019–09770 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0010, Notice 1]

Spartan Motors USA, Inc, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Spartan Motors USA, Inc (Spartan), has determined that certain model year (MY) 2015–2019 Spartan Specialty MM and K2 motorhome chassis do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems.* Spartan filed a noncompliance report dated December 18, 2017, subsequently petitioned NHTSA on January 15, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of petition and offers the opportunity for public comment.

DATES: The closing date for comments on the petition is June 12, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Spartan has determined that certain MY 2015–2019 Spartan Specialty MM and K2 motorhome chassis do not fully comply with paragraph S5.1.2.1 of FMVSS No. 121, *Air Brake Systems* (49 CFR 571.121). Spartan filed a noncompliance report dated December 18, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Spartan subsequently petitioned NHTSA on January 15, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompli*ance.

This notice of receipt of Spartan's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

II. Vehicles Involved: Approximately 414 MY 2015–2019 Spartan Specialty MM and K2 motorhome chassis manufactured between February 12, 2014, and December 11, 2017, are potentially involved.

III. Noncompliance: Spartan described the noncompliance as the combined volume of air in the service and supply reservoirs in the air brake system does not meet the required minimum of twelve times the combined volume of air from all service brake chambers as specified in paragraph S5.1.2.1 of FMVSS No. 121.

IV. Rule Requirements: Paragraph S5.1.2.1 of FMVSS No. 121, titled ''*Air Brake Systems*'' includes the requirements relevant to this petition. The combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined volume of all service brake chambers.

V. Summary Spartan's of Petition: Spartan described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it related to motor vehicle safety.

In support of its petition, Spartan submitted the following reasoning:

1. Paragraph S5.1.2.1 of FMVSS No. 121, requires the combined volume of all service reservoirs and supply reservoirs to be at least 12 times the combined volume of all service brake chambers. The chassis affected by this condition are equipped with a T–24 brake chamber on the steer axle, T–30 brake chamber on the drive axle and T–16 brake chamber on the tag axle. In using the values in Table V of FMVSS No. 121, the cumulative air capacity of these brake chambers would be 404 cubic inches. Multiplying by 12, the needed air reservoir capacity would be 4,848 cubic inches. To better illustrate the issue, refer to the table below:

Brake chamber size	FMVSS No. 121 Cu. In. (Table V)	Number of chambers total Cu. In.	Total Cu. In.
T–24	67	2	134
T–30	89	2	178

Brake chamber size	FMVSS No. 121 Cu. In. (Table V)	Number of chambers total Cu. In.	Total Cu. In.
T–16	46	2	92
Total Chamber Cu. In.			404
Required Air Reservoir Capacity (using 12X Multiplier) Cu. In.			4,848
Spartan Actual Reservoir Capacity (Cu. In.)			4,674
Additional Capacity Needed (Cu. In.)			174

Cubic Inch—Cu. In.

In paragraph S5.1.1 of FMVSS No. 121, the vehicle is to be equipped with an air compressor of sufficient capacity to increase air pressure in the supply and service reservoirs from 85 psi to 100 psi when the engine is operating at the vehicle manufacturer's maximum recommended revolutions per minute (r.p.m.) within a time, in seconds, determined by the quotient (actual reservoir capacity × 25)/required reservoir capacity). In using this equation, vehicles subject to the condition represented in the table above, the air pressure would be required to go from 85 psi to 100 psi within 24 seconds (4,674 * 25)/4,848). Using the same equation and the required air reservoir capacity of 4848 cubic inches, the air pressure would need to increase from 85 psi to 100 psi within 25 seconds. Vehicles subject to the condition that has resulted in the non-compliance to paragraph S5.1.2.1 could increase air pressure from 85 psi to 100 psi in less than 6 seconds, well within the requirement of 25 seconds. Further, vehicles subject to this condition have a cut in pressure set at, or greater than, the minimum requirement of 100 psi.

The impact of having 3.5 percent less air reservoir capacity than required, the difference in the cut in pressure requirement of only 1 second would appear to have an adverse consequence of a slight increase in air compressor cycling. However, this would be dependent on application of the service brakes.

Motorhomes have a similar duty cycle to that of a tractor-trailer where they are driven at highway speeds with infrequent brake applications during such drives. Motorhomes also are largely driven from owner residences to campground locations throughout the traveling season.

Given these brake applications would appear to be less frequent than those in stop and go applications. The lower than required capacity, with the one second difference time to increase air pressure, may not be noticeable by the driver and would not impact the braking performance of the vehicle.

2. *Air System Warning:* The completed motorhomes subject to this condition are equipped with two air gauges that monitor the air system pressure in both system 1 and system 2. In addition to the air gauges, there are both a warning light and audible alarm to alert the driver in the event of a low air condition.

In conclusion, Spartan stated that the actual air reservoir capacity in the affected motorhome chassis may be 3.5 percent less (174 cubic inches) than the calculated required amount. However, due to the duty cycle of a motorhome and the air compressor cycling, that is well within the required time using the equation from FMVSS No. 121, Spartan believes the noncompliance is inconsequential as it relates to motor vehicle safety. The less than required capacity does not appear to impact vehicle braking performance (*e.g.,* stopping distance, brake application, and release timing). The completed vehicles are equipped with dual air gauges, a visual and audible warning system to alert the driver to a loss of air in the air brake system. Given the aforementioned, Spartan expressed the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Spartan no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Spartan notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–09752 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0073; Notice 2; Docket No. NHTSA–2017–0100; Notice 2]

FCA US LLC and Volkswagen Group of America, Inc., Grant of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petitions.

SUMMARY: FCA US LLC (FCA US), (formally known as: Chrysler Group LLC) and Volkswagen Group of America, Inc. (Volkswagen), have determined that certain Mopar Service seat belt assemblies sold to FCA dealers and Volkswagen dealers as replacement equipment in certain model year (MY) 1992–2018 FCA US motor vehicles and certain MY 2009–2018 Volkswagen Routan motor vehicles, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies.* The petitioners have requested that NHTSA deem the subject noncompliance inconsequential to motor vehicle safety. This document grants both petitions in full.

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety

Compliance, NHTSA, telephone 202–366–0661, facsimile 202–366–3081.

SUPPLEMENTARY INFORMATION:

I. *Overview:* FCA US has determined that certain Mopar Service seat belt assemblies sold to FCA dealers as replacement equipment in certain MY 1992–2018 FCA US motor vehicles do not fully comply with paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209, *Seat Belt Assemblies* (49 CFR 571.209). FCA US filed a noncompliance report dated July 25, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* FCA US also petitioned NHTSA on August 17, 2017, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) & 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.* Notice of receipt of FCA US's petition was published with a 30-day public comment period, on December 7, 2017, in the **Federal Register** (82 FR 57814). No comments were received.

Volkswagen has determined that certain Mopar Service seat belt assemblies sold to Volkswagen dealers as replacement equipment in certain MY 2009–2018 Volkswagen Routan motor vehicles do not fully comply with paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209. Volkswagen filed a noncompliance report dated November 8, 2017, pursuant to 49 CFR part 573. Volkswagen petitioned NHTSA on November 29, 2017, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) & 30120(h) and 49 CFR part 556. Notice of receipt of Volkswagen's petition was published with a 30-day public comment period, on March 21, 2018, in the **Federal Register** (83 FR 12458). No comments were received.

II. *Equipment Involved:* Approximately 1,900 replacement seat belt assemblies manufactured between June 25, 2008, and October 25, 2013 for installation in certain MY 2009–2018 Volkswagen Routan motor vehicles are potentially involved.

Approximately 728,100 Mopar Service seat belt assemblies sold to FCA dealers as replacement equipment for use in the following FCA motor vehicles are potentially involved:

- 2010–2017 Ram 3500 Cab Chassis (''DD'')
- 2016–2017 Ram 3500 Cab Chassis (''DF'')
- 2010–2017 Ram 2500 (''DJ'')
- 2010–2017 Ram 4500/5500 Cab Chassis (''DP'')
- 2009–2017 Ram 1500 (''DS'')
- 2010–2017 Ram 3500 (''D2'')
- 2012–2017 Fiat 500 (''FF'')
- 2009–2017 Dodge Journey (''JC'')
- 2007–2017 Jeep Wrangler (''JK'')
- 2014–2017 Jeep Cherokee (''KL'')
- 2015–2017 Dodge Challenger (''LA'')
- 2012–2017 Chrysler 300 (''LX'')
- 2012–2017 Dodge Charger (''LD'')
- 2008–2017 Jeep Compass (''MK'')
- 2008–2017 Jeep Patriot (''MK'')
- 2012–2017 Dodge Dart (''PF'')
- 2015–2017 Chrysler 200 (''UF'')
- 2008–2017 Chrysler Town & Country (''RT'')
- 2008–2017 Dodge Grand Caravan (''RT'')
- 2017 Chrysler Pacifica (''RU'')
- 2011–2017 Dodge Durango (''WD'')
- 2011–2017 Jeep Grand Cherokee (''WK'')
- 2013–2017 Dodge SRT Viper (''ZD'')
- 2002–2008 Dodge Ram 1500 (''DR'')
- 2004–2010 Dodge Durango (''HB'')
- 2007–2010 Chrysler Aspen (''HG'')
- 2005–2012 Dodge Dakota (''ND'')
- 1994–2002 Dodge Ram 1500 (''BR'')
- 1993–2004 Dodge Intrepid (''LH'')
- 1993–2004 Chrysler Concorde (''LH'')
- 1993–2004 Chrysler 300M (''LH'')
- 1995–2005 Dodge Neon (''PL'')
- 2006–2012 Dodge Caliber (''PM'')
- 1997–2000 Plymouth Prowler (''PR'')
- 2001–2002 Chrysler Prowler (''PR'')
- 2001–2010 Chrysler PT Cruiser (''PT'')
- 1992–2002 Dodge Viper (''SR'')
- 2003–2010 Dodge Viper (''ZB'')
- 1993–1998 Jeep Grand Cherokee (''ZJ'')
- 2014–2018 Ram ProMaster (''VF'')
- 2015–2018 Ram ProMaster City (''VM'')
- 2015–2018 Jeep Renegade (''BU'')
- 2015–2017 Fiat 500x (''FB'')
- 2014–2017 Fiat 500L (''BF'')
- 2016–2017 Alfa Romeo Giulia (''GA'')
- 2015–2017 Alfa Romeo 4C (''4C'')
- 2017 Fiat 124 Spider (''BA'')

III. *Noncompliance:* The petitioners explain that the subject noncompliance involves the Mopar Service Seat Belt assemblies sold to both FCA US and Volkswagen dealerships for use or for subsequent resale to dealers, for repairs by dealership service technicians, or dealership retail customers for installation and replacement parts in certain FCA US and Volkswagen vehicles. Specifically, the subject seat belt assemblies were sold without the proper inclusion of the ''I-Sheets'' (*i.e.,* ''Installation instructions'' and ''Usage and maintenance instructions''), and therefore, do not meet all applicable requirements specified in paragraphs S4.1(k) and 4.1(l) of FMVSS No. 209.

IV. *Rule Text:* Paragraph S4.1(k) and S4.1(l) of FMVSS No. 209 includes the requirements relevant to this petition:

- A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle.
- The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c (1973) (incorporated by reference, see § 571.5).
- If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:
  - This seat belt assembly is for use only in [insert specific seating position(s), *e.g.,* ''front right''] in [insert specific vehicle make(s) and model(s)].
- A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components.
- The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

V. *Summary of Petitions:* The petitioners described the subject noncompliance and stated their belief that the noncompliance is, in each case, inconsequential as it relates to motor vehicle safety.

In support, the petitioners submitted the following arguments:

1. The subject seat belt assemblies are only sold to FCA US and Volkswagen authorized dealerships for installation as replacement seat belts in certain FCA US and Volkswagen motor vehicles. These assemblies are not sold to aftermarket auto parts distributors or retail outlets.

2. The subject seat belt assemblies are clearly labeled and identifiable by part number in both the FCA US part system and Volkswagen's parts catalogue for use on specific make, model, and model

year vehicles, and for specific seating positions.

3. In order to purchase these parts, the buyer would need to supply either the part assembly number or make, model, model year and seating position of the vehicle, thus, only the proper assembly would be sold to the end user.

4. Installation of the seat belt assembly is a complex process in the modern motor vehicle, unlike the vehicles in the past that the provisions [paragraph S4.1 of FMVSS No. 209] were intended to address. The method of identification and the physical differences between belt retractors and attachment hardware, as well as the vehicle installation environment, preclude the misinstallation of seat belt assemblies.

5. FCA US states that the proper installation procedure for all Mopar Service Seat Belt assemblies are clearly described in FCA US service manuals, which are also available online through DealerCONNECT and sold to the public through Mopar and FCA US brand websites. With respect to seat belt usage and installation instructions, FCA US stated that consumers who have purchased the seat belt assemblies in the past can contact the Parts Department at their dealer for a copy of the Instruction Sheets at no cost. FCA US also stated that instructions and information regarding proper usage, proper maintenance, and periodic inspection for damaged seat belts are included in the vehicle's Owner's Manual.

6. Volkswagen stated that their seat belt assembly installation instructions are included in Volkswagen Service Manuals and are available to independent repair shops and to individual owners, who can also purchase the Service Manual (which is a paid subscription) or seek dealer assistance and obtain copies of the installation instructions free of charge, if necessary. The instructions are also available on Parts on Command (POC) and can be printed, in house, at the dealership free of charge for the customers. In most cases, reference to the installation instructions will not be necessary because the seat belt installation will be to replace an existing belt and the installation procedure will just be the reverse of the removal procedure. With respect to seat belt usage and maintenance instructions, Volkswagen also stated that they have been included in all Volkswagen owners' manuals.

7. FCA US has notified its dealer of the existence of the noncompliance and the dealer will be automatically prompted to include the Service Instructions Sheets at the time when a customer purchases a seat belt assembly.

8. Volkswagen stated that the packaging for the supplied service seat belts should have been accompanied by the instruction sheet, however, because there was insufficient information to confirm that the instruction sheet accompanied the affected service parts. Volkswagen has determined to notify its dealers of the existence of the noncompliance. Volkswagen also stated that the instructions are now available on Parts on Command (POC) and can be printed free of charge at the dealership. These instruction sheets are required to be provided with every safety belt assembly or safety belt buckle sold-whether it be retail, wholesale, or in the shop.

9. The petitioners are not aware of any incidents or consumer complaints relating to the absence of the I-Sheet and use instructions with the sale of any of the subject seat belt assemblies.

FCA US and Volkswagen stated that there have been many instances of similar documentation omissions where the agency has granted inconsequential treatment. The petitioners cited the following examples: Mitsubishi Motors North America, Inc. (77 FR 24762, April 25, 2012); Bentley Motors, Inc. (75 FR 35877, September 20, 2011); Hyundai Motor Company (73 FR 49238, March 2, 2009); Ford Motor Company (73 FR 11462, March 3, 2008); Mazda North America Operations (73 FR 11464, March 3, 2008); Ford Motor Company (73 FR 63051, October 22, 2008); and TRW, Inc. (58 FR 7171, February 4, 1993).

FCA stated that the most notable grant of inconsequential treatment is Subaru of America, Inc. (65 FR 67471, November 9, 2000), where the agency made the following succinct observations:

> There seems to be little need for the installation instructions with replacements for original equipment seat belts. The SAE J800c Recommended Practice incorporated in FMVSS No. 209 appears to have been written as a guide on how to install a seat belt where one does not exist. The Recommended Practice discusses such things as how to determine the correct location for anchorages, how to create adequate anchorages and how to properly attach webbing to the newly installed anchorages. These instructions do not apply to today's replacement market. Additionally, vehicle manufacturers provide service manuals on how seat belts should be replaced. NHTSA does not believe the ''how to'' instructions are necessary in this case. Next, we note that the subject seat belt assemblies were distributed without the required 'usage and maintenance instructions' specified in FMVSS No. 209, S4.1(l), which requires that seat belt assemblies sold as replacement equipment have owner instructions on how to wear the seat belt and how to properly thread the webbing on seat belts where the webbing is not permanently attached. NHTSA believes that the proper usage is adequately described in the vehicle owner's manual. NHTSA does not believe that instructions about the proper threading of webbing is applicable to modern original equipment automobile seat belt systems. This second instruction sheet is either duplicated in the owner's manual or not applicable.

The FCA US understands that while they may believe FMVSS No. 209 S4.1(k) and S4.1(l) are somewhat antiquated, it is nevertheless required to fully comply with this safety standard. In this regard, the petitioners have made process changes to ensure that hard copies of the I-Sheets will be included with all seat belt assemblies shipped to its dealers. FCA US has implemented changes in its part ordering process to ensure that all I-Sheets for Mopar Service Seat Belt assemblies affected by recall T49 (NHTSA 17E–039) have been uploaded to online resources (StarParts™ and DealerCONNECT) and directly linked to the specific Mopar Service Seat Belt part numbers. Going forward, this hard copy and on-line mating of the service parts and S4.1(k) and S4.1(l) instructions will ensure that the documentation requirement of FMVSS No. 209 will be met.

The petitioners concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. *NHTSA's Analysis:* To help ensure proper installation, usage, and maintenance of seat belt assemblies, paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 require that installation, usage, and maintenance instructions be provided with seat belt assemblies other than those installed by an automobile manufacturer.

First, with respect to the need to allow consumers to select the correct seat belt for their vehicle, we note that the subject seat belt assemblies are only made available to FCA US and Volkswagen authorized dealerships for their use or subsequent resale. Because the parts ordering process used by FCA US and Volkswagen authorized dealerships clearly identifies the correct service part by a vehicle's model, model year, and seating position, NHTSA believes that it is unlikely that an inappropriate seat belt assembly will be

sold by the FCA US and Volkswagen dealership for a specific seating position within a vehicle.

Second, NHTSA recognizes the importance of having installation instructions available to installers as well as use and maintenance instructions available to consumers. The risk created by this noncompliance is that someone who purchased an assembly is unable to obtain the necessary installation information and therefore incorrectly installs the seat belt assembly. We note that technicians at dealerships have access to the seat belt assembly installation instructions in vehicle Service Manuals. Installers other than dealership technicians can obtain a copy of the installation instructions, free of charge, through the dealerships' network. The installation instructions are also available in the docket because they were submitted with the manufacture's petitions. FCA US and Volkswagen also stated that the subject seat belt assemblies can only be properly installed in the correct seat position of their intended vehicles. Thus, we conclude that installers have reasonable opportunities to locate installation instructions which would permit a proper installation, and that the instructions can be obtained free of charge.

In addition, NHTSA takes this opportunity to clarify prior statements concerning SAE Recommended Practice J800c. Paragraph S4.1(k) of FMVSS No. 209 requires ''at least those items specified in SAE Recommended Practice J800c'' be included in seat belt assembly instructions. As stated in SAE J800c, the ''minimum instruction requirements may be supplemented by more specific manufacturer's instructions, if they are necessary to provide installation instructions in a particular vehicle.'' Although mainly containing universal seat belt assembly installation instructions, SAE J800c acknowledges seat belt assemblies intended for installation in specific vehicles may require additional installation instructions. Also, per FMVSS No. 209, seat belt assembly intended for installation in specific vehicles must also have installation instructions provided when a seat belt assembly is not sold as an original item on a motor vehicle. To fulfill this intent, we conclude, as detailed in the previous paragraph, that installers should be able to obtain installation instructions which would permit a proper installation, and that the instructions can be obtained free of charge.

With respect to seat belt usage and maintenance instructions, we note that this information is readily available in the vehicle owner's manuals. In addition, consumers can also obtain this information, free of charge, through the vehicle's dealership networks. Thus, with respect to usage and maintenance instructions, it appears that there are satisfactory alternatives to meeting the intent of S4.1(l) of FMVSS No. 209.

NHTSA has granted similar petitions for failure to comply with requirements pertaining to seat belt assembly installation and usage instruction. Refer to Ford Motor Company (73 FR 11462, March 3, 2008); Mazda North America Operations (73 FR 11464, March 3, 2008); Ford Motor Company (73 FR 63051, October 22, 2008); Subaru of America, Inc. (65 FR 67471, November 9, 2000); Bombardier Motor Corporation of America, Inc. (65 FR 60238, October 10, 2000); TRW, Inc. (58 FR 7171, February 4, 1993); and Chrysler Corporation, (57 FR 45865, October 5, 1992).

VII. *NHTSA's Decision:* In consideration of the foregoing, NHTSA finds that both FCA US and Volkswagen have met their burden of persuasion that the FMVSS No. 209 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, FCA US and Volkswagen's petitions are hereby granted and FCA US and Volkswagen are consequently exempted from the obligation to provide notification of, and remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allows NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject equipment that FCA US and Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant equipment under their control after FCA US and Volkswagen notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–09751 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0004; Notice 1]

Daimler Trucks North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Daimler Trucks North America, LLC (DTNA), has determined that certain model year (MY) 2013–2018 Thomas Built Buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 222, *School Bus Passenger Seating and Crash Protection*. DTNA filed a noncompliance report dated November 27, 2017. DTNA in Collaboration with SynTec Seating Solutions, LLC ''SynTec'' (the seating manufacturer), subsequently petitioned NHTSA on December 15, 2017, and later updated it on September 21, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of DTNA's petition.

DATES: The closing date for comments on the petition is June 12, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the

Federal Docket Management System (FDMS) website at *https://www.regulations.gov/*. Follow the online instructions for submitting comments.

• Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: DTNA has determined that certain MY 2013–2018 Thomas Built Buses do not fully comply with paragraph S5.3.1.3 of FMVSS No. 222, *School Bus Passenger Seating and Crash Protection* (49 CFR 571.222). DTNA filed a noncompliance report dated November 27, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA subsequently petitioned NHTSA on December 15, 2017, and later amended it on September 21, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Noncompliance or Defect.*

This notice of receipt, of DTNA's petition, is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Buses Involved: Affected are approximately 3,222 MY 2013–2018 versions of the following Thomas Built Buses, manufactured between August 24, 2012, and May 1, 2017, specifically:

• Thomas Built Buses Saf-T-Liner C2
• Thomas Built Buses Saf-T-Liner EFX
• Thomas Built Buses Saf-T-Liner HDX
• Thomas Built Buses Minotour DRW

III. Noncompliance: DTNA explains that the noncompliance is that the subject buses are equipped with seats that have Type 2 (lap/shoulder) seat belts, manufactured by SynTec Seating Solutions, LLC (SynTec), that do not meet the head form force distribution impact requirement as specified in paragraph S5.3.1.3 of FMVSS No. 222. Specifically, the Type 2 seat belts include a plastic bezel, where the seat belt is routed through the seat, located within the head protection zone.

IV. Rule Requirements: Paragraph S5.3.1.3 of FMVSS No. 222, titled ''Head form force distribution'' includes the requirements relevant to this petition:

• When any contactable surface of the vehicle within the zones specified in paragraph S5.3.1.1 is impacted from any direction at 6.7 m/s by the head form described in paragraph S6.6, the energy necessary to deflect the impacted material shall be not less than 4.5 joules before the force level on the head form exceeds 667 N.

• When any contactable surface within such zones is impacted by the head form from any direction at 1.5 m/s the contact area on the head form surface shall be not less than 1,935 mm^2.

V. Summary of DTNA's Petition: DTNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

DTNA provided the following background information:

1. In January 2011, SynTec introduced the M2K lap/shoulder seat in order to provide a number of additional safety features to passengers. The company sold 2,272 M2K lap/shoulder seats to Thomas Built Buses before discontinuing the product in 2012. SynTec then improved upon the M2K lap/shoulder seat design with the S3C seat, which the Company introduced in 2012. The back of these seats are substantially higher than earlier school bus passenger seats and are equipped with lap/shoulder seat belts. The seat also includes: Color coding and key buckles to prevent improper buckling, a fixed buckle anchorage to prevent side occupant incursion, flip up buckles in pockets to be out of the way from debris, high shoulder anchorage, and contoured seat cushion. The plastic ''bezel'' (the location from which the lap/shoulder harness exits the seat back) was intentionally set high on the seat fronts to provide protection to the maximum range of occupants. Some M2K and S3C seats also are equipped with an integrated child seat.

2. To ensure that the Affected Seats complied with all laws and regulations, SynTec contracted with a third party, MGA Research Corporation (''MGA''), to conduct certification testing under FMVSS No. 222. Specifically, MGA conducted tests on the M2K seat in June 2011, and on the S3C seat in August 2012. The M2K and S3C complied with FMVSS No. 222 requirements with respect to the back of the seat. Consistent with the industry norm and MGA's past practice, MGA did not test targets on the front of the seat. Based on its interactions and conversations with MGA, SynTec understood that back seat-only testing represents the industry norm. Front of the seat testing is not conducted due to the low risk of harm from the front, and because the small head impact zone makes it impossible to conduct the test per the recommended test procedure. Indeed, as referenced above, the testing was designed to ensure that the back of the seat was an energy absorber and that various hazards were eliminated from the top. Nonetheless, these early MGA tests results, specifically, the product's head injury criterion (HIC) values and the strong contact area and impact velocity scores on the back of the seat, highlighted the improved safety benefits of SynTec's new seat design.

In support of its petition, DTNA provided the following:

1. The S5.3.1.3 tests are outmoded for the front of the seat and the equipment's HIC scores represent the most accurate accounting of the seat's safety.

2. As highlighted above, the original intent of the contact surface test was to precipitate the elimination of metal grab bars and other hostile objects above the passenger seats that could come into contact with the occupant's head in the event of a crash. *See* 38 FR 4776 (Feb. 22, 1973) (Proposed Rule) (stating the goal of ''eliminating exposed metal bars and similar designs and making the seat itself a significant energy absorber.'') Likewise, the energy deflection analysis

was designed to ensure that the seat would depress and distribute the force of impact in a manner that could not be achieved with exposed metal surfaces on the seat.

3. Although SynTec was noncompliant with these two tests, the requirements are now outmoded with respect to the front of the affected seats because the various hazards they are seeking to guard against no longer exist. Indeed, the noncompliance did not occur because of a hazard that the regulations were designed to protect against. Rather, as explained below, the noncompliance resulted from a high-placed bezel that actually makes the affected seats safer for more occupants. The two tests were crafted for a school bus seat design that was substantially different and less safe than the superior versions that exist in the market today.

4. Given that these tests are outmoded, the most accurate measure of head safety for the front of the seat is the product's HIC value. The HIC is the most widely accepted measure of head injury in use today. Indeed, it is the standard measure of head injury throughout the FMVSSs. *See, e.g.,* FMVSS No. 201 and 208. Similarly, HIC is the metric used by NHTSA's New Car Assessment Program. *See* 80 FR 78522, 78533 (2015) (noting that the HIC value ''is currently in use in FMVSS No. 208 and frontal NCAP tests.'') The HIC measure is particularly valuable since it accounts for energy absorption and contact area by measuring the deceleration of the head form over time.

5. Over the past few years, both SynTec and NHTSA, internally and at accredited external test agencies, have conducted HIC testing on the front of the affected seats. During testing, the seats were positioned at various angles, and impacts were performed on multiple locations of the seat within the head protection zone ''hits'', including on the portion of the plastic bezel that protrudes into the top 76 mm on the front. These test results always produced a HIC value well below 1,000. For instance, since March 2017 SynTec has conducted 253 ''hits'' on the front of the seat. The average HIC value during these tests was 114.1, with a low score of 51.7 and a high HIC value of 311.8. Even the product's highest HIC value falls far short of the 1,000 maximum requirement. These values illustrate the safety of SynTec's product and the inconsequentiality of the noncompliance with the other FMVSS No. 222 test requirements.

6. Simply stated, the tests which prompted DTNA and SynTec's 573 Reports, are searching for hazards on the front of the seat that do not exist in the affected seats. *See* 38 FR 4776 (Feb. 22, 1973) (Proposed Rule). As the product's HIC values show, the technical noncompliance of the SynTec seats on these two tests is not relevant to the product's safety. Accordingly, NHTSA should grant this petition for inconsequentiality.

7. The source of SynTec's noncompliance enhances the product's safety. SynTec's seats are safer than regulators could have envisioned in 1976. Indeed, the cause of the noncompliance, the location of the plastic bezel, renders the seat safer than it would be with a bezel that was not placed in the head protection zone. This higher positioning combined with higher seat backs provides a belt for a maximum range of occupants and keeps hard objects away from the most vulnerable passengers. SynTec utilized automotive best practices and BELFIT software from the Motor Industry Research Association to determine the optimum geometric place for the belt position. SynTec's objective was to provide maximum protection, taking into account the wide range of occupant sizes riding on a school bus. Based on this analysis, it placed the bezel at the higher portion of the seat. The position also allowed for more adjustment by the d-ring, for better torso restraint, and for a more comfortable fit (thereby encouraging use).

8. The higher shoulder harnesses also keep hard surfaces away from small occupants who are most vulnerable. A typical occupant in the vehicle would have a greater chance of coming into contact with a lower bezel. In seats with lap/shoulder belts with a lower bezel, the bezel would land in a smaller occupant's head area. Similarly, most designs that include an integrated child seat, have a hard surface that sits behind a smaller occupant's head. In contrast, the affected seat's higher bezel location places the bezel outside of a smaller occupant's head area. Likewise, for smaller occupants using integrated child seats, the bezel also falls outside of the occupant head area. Essentially, the higher bezel ensures better protection for the most vulnerable riders. Rather than cause any safety issues, the noncompliance, which occurred because of the location of the plastic bezels, makes the affected seats safer.

9. The noncompliance at issue relates to front-of-seat tests designed to address features that are no longer present in school buses, such as metal bars at the top of seat backs and low seat backs. Therefore, DTNA believes the noncompliance is inconsequential as it relates to school bus safety. Moreover, the location of the plastic bezel on the lap/shoulder belts, which is the source of the noncompliance, is actually a safety improvement, in that its high position allows for maximum occupant ranges and fit, and protects the smallest seat occupants. A typical occupant in the vehicle would have a greater chance of coming into contact with a compliant lower bezel.

10. Thus, the design represents an enhanced level of safety for school bus occupants, especially younger passengers who are more vulnerable in the event of a crash. Consistent with the enhanced safety design of the lap/shoulder belt, DTNA is not aware of any complaints, injuries or reports of safety concerns regarding this issue.

11. *NHTSA Precedents*—DTNA notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for a wide range of issues where a technical non-compliance exists, but does not create a negative impact on safety. In the case detailed within this petition, the lap/shoulder belt is an optional feature on the vast majority of school buses. When added, lap/shoulder belts increase the safety of the occupants as compared to a bus without passenger seatbelts. Also, the high bezel increases the child protection performance requirements by reducing the likelihood of an occupant coming into contact with the hard surface. The following examples are petitions for inconsequentiality that were granted by NHTSA and are described within this petition to support DTNA's argument that, while technically non-compliant, NHTSA has previously granted inconsequentiality for cases where an additional level of safety above the requirements of the standard is provided.

12. *See* 70 FR 24464 (May 9, 2005), Docket No. NHTSA 2005–20545 (Grant of Petition for IC Corporation) for an example of a petition for inconsequentiality that was granted by NHTSA. In this instance, school buses were manufactured that were not compliant with FMVSS 217, but it was deemed inconsequential because it did not compromise safety. ''. . . The Agency agrees with IC that in this case the noncompliance does not compromise safety in terms of emergency exit capability in proportion to maximum occupant capacity, access to side emergency doors, visibility of the exits, or the ability of bus occupants to exit after an accident.''

13. *See also 63 FR 32694 (June 15, 1998),* Docket No. NHTSA 98–3791 (Grant of Petition for New Flyer of America, Inc.) for another example of a petition for inconsequentiality that was

granted. In this case, non-school buses were manufactured that were not compliant with FMVSS 217, but were granted inconsequentiality because the buses had additional safety features that were not required in the standard. The following quote is from NHTSA's notice granting the petition: ''Thus, the buses have the minimum number of emergency exits required by FMVSS No. 217. However, these exits were not distributed properly. Instead of a second emergency exit on the right side, these buses have an additional roof exit. This additional roof exit would provide for much need emergency exit openings should the bus occupants need to evacuate due to a rollover incident. While this additional roof exit is not required by the standard, it does provide for an additional level of safety in the above situation. In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it described above is inconsequential to motor vehicle safety.'' Id.

DTNA expressed the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that DTNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after DTNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–09753 Filed 5–10–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2019. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABDULSALAM	ABDULAZIZ	MOHAMMAD
ADAM	OMER.	
ADAMS	BONNIE	LEE
ADAMS	JAMES	RUSSELL
ADAMS	SHARON	LORRAINE
AGARI	KAZUMI.	
AGUR	ELLA	ARYIELA
AHERN	IAN	BRUCE
AHLI	MANAL	ALI MOHAMMAD DOAYA
AHN	GINA.	
AIRTH	KIMBERLY	DOREEN
AJMONE-MARSAN	COSIMO	MARCO
AL HASHEM	ABDULMOHSEN	SHUKRI
ALCALA	SHERRY	EVE
ALDAEAJ	ABDULLAH	HAMAD
AL-JASER	SHAKIR	AHMAK
ALKEMA	SJOERD	CHRISTOPH MARTY
ALLAN	ROSS	BRUCE
ALLEN	ROBIN	RENEE
ALMUHANNA	AHMAD	NABEEL
ALOSHBAN	GHASSAN	ABDUL-AZIZ
AL-SALEH	HASHIM	ADNAN ABDULLAH
ALTENBURG	LORENZ	BERNARDEAU
ALURWAR	ANJALI	ANADRAO
AMBERG	CARLETON	STARK
AMBROSIONI	PIERLUCA	MARIA
ANDERSON	CHIARA	LENA
ANDERSON	DAVID	BRIAN
ANDERSON	JOHN	MICHAEL
ANDERSON	MEGAN	P.
ANDERSON-KNIGHT	HANNAH	E.
ANGELL	BARBARA	JOY
ANGLETON	ROBERT	NICHOLAS
ANLIKER	VERENA	GERTRUDE
ANSEL	TRUDY	MARGIE
ANSLOW	JUNE	ARLENE

Last name	First name	Middle name/initials
AOKI	MASAHIKO.	
ARIVAZHAGAN	KUGAN.	
ARKIN	FATIMA	MALCAMPO
ASHTON	MICHELE	ANN HESKETH
AVIAD	JACOB.	
AWWAD	SARA	ABDELKARIM
BAIER	KRYSTAL	ROSE
BAIRD	DAYLE	ROBIN
BAKER	JOHN	LUTHER
BALAZ	BRIGITTA	ELFRIEDE
BALLANTINE	TANIA	NICOLE
BALLESTER, JR	RAUL	ELISEO
BARIL	ANNE.	
BARLIEB	YASMINE	NATHALIE F.
BARNES	SARA	KELLY
BARROS	RODRIGO	JUAN
BARTHOLOMEW	GALINA.	
BARTOLOME PRIETO	MARIA	VICTORIA
BASU	KAJARI.	
BAUMGARTNER	ELISABETH	NATHALIE
BAX-GARMAN	TRICIA	ANN
BAYLISS	CYNTHIA	S.M.
BECKER	BRADLEY	WILLIAMSON
BECK-OLIVER	KATHRYN	ANNE
BEGIN	GENEVIEVE	FRANCOISE
BELAIEFF	WILSON	ANDREW
BELISLE	KEVIN	VICTOR
BENOIT	BEATRICE	ELAINE
BERG	CELINE	ANNIE
BERG	JASMINE	SOFIA
BERNARD	MARIE	THERESA
BERNARDI	LEANDRO.	
BERNTHALER	NICKLAS	FLOYD
BERTHEAS	ALEXANDRE	EMMANUEL
BEUTLER	THOMAS	CHRISTIAN
BEZERRA	VICTORIA	DE MORAES
BHASIN	RAJESH.	
BIANCHI	WALTER.	
BIGOURET	VANESSA	MILLER
BLACKBURN	AVERIL	BRONWEN
BLACKBURN	GEORGE.	
BLANC	CYRIL	ANDRE
BLANCO-HOUSTON	JOHN	PATRICK
BOANO	JULIE	MARTINE
BOHNERT	CHRISTINE	BARBARA
BOHNERT	UTE	IRENE
BOLLIGER	KATHARINA.	
BOLTON	ALAN	JAMES
BORAGNO	MARY	GLENN
BORAGNO	WILLIAM	REMO
BOREL	CORINNE	CHRISTIANE
BORES	MELANIE	CHARLOTTE
BOTTING	DAVID	JOHN
BOUSCHER	KEITH	BRIAN
BOUTIN	BARBARA.	
BOWERING	NORBERT	R.
BRAGAGNOLO	BRITNEY	MARIE
BRAGG	NATHAN	RIDGLEY
BRAIN	IMOGEN	EMMA
BRAMLEY	DONNA	PATRICIA
BRANDES	SIMEON	ETHAN
BREMER	ELENA	MARIE
BRENT	GAIL	FERRINGTON
BREVAL	PATRICK	CHARLES
BRICKSON	REBECCA	ANN
BRIDGMAN	DAVID	MITCHELL
BRIND'AMOUR RIFFOU	CAMELIA	MACKENZIE
BROCHU	DIANE	GISELE
BRODERICK	SHANNON	LYNN
BROOKS	DAVID	DEXTER
BROWN	GREGORY	SCOTT
BRUGGMANN	RAPHAEL	LAWRENCE
BRUSH	GARY	EUGENE
BUCHANAN	MICHAEL	S.

Last name	First name	Middle name/initials
BUCHWALD	KURT	ALEXANDER
BUNTON	ANTHONY	DAVID
BUNTON	MICHAEL	PETER
BURCKHARDT	STEFAN	JURG
BURGI	CHRISTIAN.	
BURKHARD	JENNIFER	BEATRIX
BURKOM	BERNARD	LEE
BURMANN	KATJA	MARIKA
BURNETT	DAVID	GARY
BURTON	THOMAS	ELLIOT
BUTCHER	HARVEY	RAYMOND
BUTLER	LORRAINE	SUE
BUURMAN	MARIA	WILHELMINA
BYRNE	FRANCIS	MICHAEL
CAHILL	JENNIFER	MARGARET
CALLENDER	LESLIE	LAUREN
CAMPBELL	SHAYNA	RAE
CAPALDI	JOHN	WILLIAM
CAPE	HUNTER	ROBERT
CAPRIOTTI	JOSEPH	A.
CARLAN-RIDDELL	SHANNA	KIM
CARTER	SANDRA	FRIEDERIKE
CASTELLI	CAROLINE	ANNE
CAUSER	ROBERT	NORMAN
CHAMMAS	EDWARD	EMILE
CHAN	JOANNA	MAN JUNG
CHAN	PAUL	WAI BUN
CHAN	STEPHANIE	WING KWAN
CHAPMAN	DAVID	EUGENE
CHARBONNEAU III	HERBERT	RAYMOND
CHARNOCK	ANGELA	HARRIET
CHARRON	DIANE	LORI
CHASE	MONICA.	
CHAURASIA	HARI	PRASAD
CHAWORTH-MUSTERS	TESSA	MARY CATHERINE
CHEN	ANDREW	DEAN
CHEN	DEREK.	
CHEN	LIAN	YUI
CHENG	PI	YING CHARLOTTE
CHEUNG	DENNIS	CHI KUN
CHEW	ROSEMARY.	
CHIRATHIVAT	BANGONCHOM.	
CHO	ELAINE	KYUNGJA
CHOI	CLIFF.	
CHOI	EUGENE.	
CHONG	KAREN	KAM YEE
CHOQUARD	NOELLE	CATHERINE
CHORZEMPA	DANIEL	WALTER
CHOW	GARY	EDWARD
CHUAH	EDWIN	TZE YONG
CHUN	ELYSE.	
CHUNG	HAROLD	CHOI
CHUNG	JULIANA	WENDY
CICERCHIA	EDITH	E.I.
CICERCHIA	MICHAEL	ANTHONY
CLARK	REBECCA	ANN
CLARK	SHEILA	E.
CLEGG	LAUREN	ELIZABETH
CLEMENTS	BARBARA	V.
COBBAN	PAUL	ARTHUR
CODERRE	KIRBY	DANIEL
CODERRE	PATRICIA	KAY
COHEN	BAT-SHEVA.	
COLEMAN	LORNA	MAE
COLLIER	LESLIE	HELEN
COLONNELLO	DANIELE	CLAUDIO
CONLIN	ALISON	ANN
CONNELLY	BUNGORN.	
CONNER	BRYAN	KEITH
CONNOLLY	JOHN	FRANCIS
CONRADS	HANS-GEORG	PETER
CONSIDINE	DAVID	M.
COOKE	GRAHAM	ROLAND JAMESON
COPTI	GEORGES	GABRIEL

Last name	First name	Middle name/initials
CORTELLI	GEORGIANA.	
COUNIHAN	TIMOTHY	JOHN
COWAN	EMILY	ROSE
COX	MARTIN	ALLEN
CRAIG	ANDREW	GORDON
CRANSTON	ROSS	DOUGLAS
CRAWFORD	THOMAS	KEITH
CRESCI	BETTINA	ODETTE
CROMBEEN	BRANDON	JAMES
CRONKHITE	MELISSA.	
CROOK	NIKITA	ALICE
CROWLEY	ERIK	WIKSTROM
CROWTHER	DAVID	RICHARD G.
CUNNINGHAM	MARY	CAROL
CUPERUS	ANN	REESER
CYPHER	RAYMOND	AARON
DAHN	JEFFERY	RAYMOND
DANIEL	KIMBERLY	BETH
DANIEL	MARK	JEFFREY
DANIEL	WENDY	JEAN
D'ARAGONA	ROBERTO	BILOTTI RUGGI
DE BOISSESON	VERONIQUE.	
DE CORDIER	JOELLE	KIRIT
DE COULON	ANDRE	ALAIN GUSTAVE
DE GRAZIA	MARCO.	
DE JESUS	FRANCESCA	KASANDRA TIU-LAUREL
DE JONGE	LODEWIJK	DANIEL
DE LEEUW	MATTHEW	LEMUEL
DE MOL VAN OTTERLOO	SCIPIO	ALEXANDER
DE SANTIS	MATTHEW	XAVIER
DE VILLA PUCKETT	AUDRA	MARIE
DECLUDT	AMAURY	ROBERT EMMANUEL
DEHAAS	JOHANNES	JACOBUS
DEL GIUDICE VILLENA	SALVATORE	SIMON
DEL RICCIO	COSTANTINO	JOHN
DELARUE	CHRISTINE.	
DELORME	CHLOE	MARIE
DEMENS	GORDON	PATRICK
DEMETRAKOPOULOS	DEMETRIOS	YORGO
DESAI	KEVIN.	
DEWERPE	SARAH	KHANOUM SAOUD BECK SALAAM
DI LORENZO	MARGO.	
DICK	PHILIPPE	LUIZ
DICKIE	SEAN	JOHN
DIETRICH BRAGG	ANNE	CATHERINE
DIMMOCK	DANIEL	KENNETH
DIMMOCK	NATASHA	LEIGH
DITLOVE	MARK	DAVID
DO	PETER	DUY DAT
DOEKSEN	THOMAS	VOLKERT FRISO
DOLLOIS	ANNE	MARIE MADELEINE
DONNELLY	ANTHONY	FRANCIS
DORE	KATHRYN	ANN
DOUGLAS	DANNY	V.
DOVELL	ANDREW	CLEMENT
DOYLE	SUSAN	KAYE
DREW	ELIZABETH	ANN
DUGGAN	CAROL	ANN
DUIJN	WOUTER	CHRISTIAN
DUNCAN	JENNIFER	APRIL
DUNN	MATTHEW	GORDON
DUNNE	MARCELA	ISABEL
DUNNETT	BRADLEY	RANDAL
DURAN	VICTOR	VLADIMIRO
DUTHOIT	JOHN	PETER
ECKLER	SIBYLLE	MARIA
EDAMURA	CAREN	MARGARET
EING	PATRICIA	SOPHIA
ELFORD	KIMBERLY	JOY-ANN
ELISIO	LUCIA.	
ELLIOT	MARY	CLARE
ELSTE	DILLON	JEREMY
ENGELHARDT	LINDA	ANNE
ENJERGHOLI	SIROON.	

Last name	First name	Middle name/initials
ERDMANN-JONSSON	LARKEN	NOAH
ERICKSON	TIMOTHY	NEIL
ETTER	AUDREY	RENEE GARROW
ETZKORN	WILLIAM	GEORGE
EVANS	ALICE.	
EVANS	MICHELE	MARIE
EZZ-ELARAB	OMAR	MOHAMED
FABBRI	MARTA.	
FANDINO	ANSELMO.	
FARNSWORTH	RICHARD	T.D.
FASSLER	ELISABETH	CORNELIA
FAURO-BOSSA	MARILISA.	
FEE	ERIC	PHILLIPS
FELTHAM	TAMMARA	SHERISE
FERRARO	CHRISTOPHER	PETER
FIALA	EDWARD	CHESTER
FILA	JOANNA	CAROLINE
FIORE	ANTHONY	ALBERT
FISK	MICHELE	MAUREEN
FISZBAJN	AVITAL	RANA
FITZMARTYN	CHERYL	JOANNE
FLEISCHMANN	JULIE	THERESE
FLETCHER	ROBERT	GORDON
FORCIER	STEPHANE	CLAUDE
FORD	JILL	ELIZABETH
FORD	KAREN	ANN
FORMANOY	ELIZABETH	C.E.
FORSYTHE	ALASDAIR	DAVID
FORTE	MARCUS	ALEXANDER
FRACCHIA	HELENA.	
FRANCONI	GIOVANNA.	
FRANK	LUCY	ELIZABETH
FRASER-HARRIS	AYAME	HARMONY
FRECH	KAREN	JEAN
FREDERICK	MARY	JO
FREI-HOFMANNER	KAREN	ANNE
FRIEDLICH	JANICE	CAROL
FRIEDMAN	TAMAR	KIM
FRIEDSON	WILLIAM	ANTHONY
FRITSCHI	TOBIAS	DAVID
FRITZ	PATRICK	ARTHUR
FROEHLICH	STEVEN	WALTER
FURMAN	DAVID	NOE
GADIENT-HOFMANN	ARLENE	DENISE
GAGNON	CHANTAL	ANNE
GAGNON	LYNE	CHRISTINE
GAGNON	PATRICK	MICHAEL
GAILLARD	RICHARD	JOHN
GAM	GABRIEL	SHIH YEE
GAMARD	SYLVAIN	LAURENT
GAMSGAARD	MICHAEL	PATRICK DONOVAN
GAMSGAARD	PETER	JOSEPH DONOVAN
GARCIA-VEGA	LUIS	DANIEL
GEHRING	THOMAS	CLAUDE
GEORGE	DAVID	HILLES
GEORGE	KATHRYN	ANN
GEORGE	MATTHEW	DAVID
GERATZ	THERESA	JEAN
GERMAN	GREGORY	JOHN
GIBBS	GARY	CRISTOFER
GIBSON	MARIE	LORRAINE GABRIELLE
GIDDENS	JONATHAN	LEE
GIFFORD	JAMIE	ANDREW
GIGNAC	JEROME	AARON
GILDER	FIRUZEH	ARDESHIR
GILLIS	MARY	BERNADETTE
GIOVANNETTI	JOANNE	MARIE
GLAZIER	MICHAEL	ROSS
GLEESON	SEAMAS	PROINSIAS
GLINZ	SVEN	SEBASTIAN
GMOEHLING	THOMAS	WERNER
GO	FRANKLIN	LEELIN
GO JR	FREDDIE	LEELIN
GOETZINGER	CHESTER	WARREN

Last name	First name	Middle name/initials
GOFF	BERNICE	THERESA
GOGOLA	COLLEEN	CAROLINE
GOLDSTEIN	MELVIN	EARL
GOMEZ	MARIA	ALEJANDRA
GONDER	JOHN	THOMAS BURDICK
GOOD	BONNIE	B.
GOOD	JERRY	PAUL
GOOD	MARION	E.
GOOD GINGRICH	LUANN	MARIE
GORMAN	CATHERINE	EVA E.
GORYN	MINNA.	
GOUNTCHEV	TOMISLAV	IIKOV
GRAF	JOHANNES	KARL
GRAMAGLIA	ANTOINE	DAVID
GRATWOHL EGG	STEPHANIE	ELISABETH
GRECO-VOGELBACHER	CHANEL	DESIREE
GREEN	GEORGE	DAVID ARMSTRONG
GREEN	MARY	ANNE
GREENE	JUSTIS.	
GREENSPOON	FERN	RUTH
GRENIER	JOSEPH	ROCH
GRIFFITHS	LAWRENCE	RAYMOND DAVID
GROSSMANN	SVENJA	KATHARINA SOPHIE
GROVE	CYNTHIA	LOUISE
GROVIT	FELIX	TIMUR ISMAIL
GRUBAN	PATRICK	THOMAS
GRUNER-HEGGE	NICOLAI.	
GUDAITIS	ELIZABETH	ANNE
GUDAITIS	VITALIUS	VYTAUTAS
GUDDAT-MORGEN	STEPHANIE	CHRISTINE
GUILBERT	LARRY	JOE
GUILBERT	SANDRA	MAC NEY
GUNTHER	PHYLLIS	SONDRA
GURNEY	ALICIA	FRANCES
GUTIERREZ	SERGIO.	
GWILT	RICHARD	LLOYD
GWIN	MORRIS	KENT
HABECKER	DIANA	BERLY STEINSTO
HADLEY	JACOB	SINDING
HALPERIN	ROSS	MARK
HAMMOND	KIMBERLY	GAY
HAN	JOHN	JAI-YUN
HARMAN	AIMEE	NICOLE
HARMON	JOHN	BARRY
HARTMAN	DANIEL	KARSTEN
HARTNAGEL	JULIA	LYNN
HARTONAS-GARMHAUSEN	VASILIKI.	
HATHAWAY	CAROL	ANN
HAWKSWORTH	LTA	JEAN
HAYDICKY	JOHN	PHILLIP
HAYDICKY	PHILLIP	JOSEPH
HAYES	MEGAN	EMILY
HAYHOE	RHONDA	LYNN
HAYTER	MARTHA	DEE
HAYWARD	MARY	A.
HECHTENTHAL	SARA	DAWN
HEFTI BLUM	ELIZABETH.	
HEINEN	JOCELIN	DENIS
HEINZ	AGNES.	
HELLINGA	FRISO.	
HEMINGSON	DONNA	JUNE
HENZ	LAURA	AUDREY
HERBERT	BENJAMIN	CADOC
HERBOLD	PHILLIP	ARNOLD
HERRON	BRIAN	DAVID
HETZER	STEVEN	EDWARD
HEW	SHIRLEY.	
HILL	MARLENE.	
HILTI-BAYER	FLORIN	NICO
HILTON	ALEXANDER	PHILIP
HILTON	MICHAEL	JAMES
HILTON	SAMANTHA	DAVIES
HILTZ	SARAH	CHRISTINE
HIRST	CASSIUS	ATTICUS BAT

Last name	First name	Middle name/initials
HO	CATHY	CHIN HUA
HO	MICHELLE	MUN YEE
HO	SOO	TENG
HOCHSTRASSER	SUSAN	MARGARET
HODEL	CHRISTOPHER.	
HOFF-HACKER	ELLEN	LOUISE
HOFFMAN	GABRIELLE	MIKO
HOFSTAETTER	THOMAS.	
HOGAN	CORMAC	NOEL
HOLME	MITCHELL	BRUCE
HOMMEL	JOEL	PATRICK
HORGAN	MARY	FRANCES
HORLACHER	ZOE	HUFUMIAO
HOSHINO	SAKI	KATHIE
HOSHINO	STEVEN.	
HOUSE	LORRAINE	GAIL
HOUSEMAN	DAVID	KEVIN
HOWARD	RONDA	LYN
HUANG	JEFF	LITCHEN
HUANG	ZHI	HAO
HUBER	HEIDI	LISA
HUENI	NORA	JOSETTE
HUGHES	ANDREA	KEDDIE
HUMBEL	RUDOLF	NIKLAUS
HWANG	HYUNMEE.	
IJSSELHOP-BLAAUW	CLAIRE	B.
INDERBITZIN	NIKLAUS	JOSHUA
INOUE	YOSHIKO.	
IRELAND	ALLYSON	J.
IRVINE	BRENDON	ROBERT
IRVINE	EVA.	
IRWIN	SUSAN	MAREE
ISHIKAWA	KAZUKI	KEVIN
ITEN-CANNIZZO	MARILYN	ANNA
ITHARAT	JILLIAN	L.
IYENGAR	PRAKASH	KRISHNASWAMY
JABRE	JULIA.	
JAEGER	JOLENE	MICHELLE
JAIN	ADINA	ALYCE KUMARI
JAMES	LESLIE	CAMERON
JANES	CHRISTINE	MARINA
JANSEN	MICHAEL	ALAN
JARZEBOWSKI	JERZY	MICHAL
JOHNSON	DARREN	WADE
JOHNSON	DOUGLAS	HUGH
JOHNSON	NADEAN	ANN
JOHNSON	ROBERT	LEON
JOHNSON-DEAN	CHRISTINA	BETTS
JOLY	KRISTINA	ISABEL MJELLEM
JONCKERS	MIRJAM.	
JONES	YANCY	DAMON
JORGENSEN	CATHERINE	A.
JOST	DAVID	ALFRED JOHN
JUDELSON	AVILA.	
JULIEN	CHERYL	LANE COOPER
KAISER	LINDA	DIANE
KAM	JEFFREY	MAN-KIN
KAMIYA	RYOHEI	CHRIS
KANE	JONATHAN	DAVID
KARLSEN	HAAKON.	
KATZ	ANNA	CAROLYN
KAUR	MANISHA.	
KAY	MATTHEW	RYAN
KEEGAN	KAREN	TERESE
KELLOGG	SARAH	JACKSON
KELLY	WENDY	DAWN
KEMPE	PATRICIA	HOWE
KENNERLEY	STEVEN	WAYNE
KENNETT	SHAUN	ALEXANDER
KHAN	SADAF.	
KHOURI	JOHNNY	NABIH
KILLEWALD	SUSAN	KIMBERLY
KILPELA	CARLA	IRENE
KIM	HYEWON.	

Last name	First name	Middle name/initials
KIM	IN SOOK.	
KIM	IRENE	STEPHANIE
KIM	JAY	SOO
KIM	PHILIP	YOUNG
KIM	PYONG	CHIN
KIM	SONMI.	
KIM	TAE	HOON
KINGFISHER	CATHERINE	PELISSIER
KIRKNESS	LUCY	EMMA
KLASNER	AARON	MICHAEL
KLEINENBERG	WILLEM	DOUWE
KLINE	GREGORY	ALAN
KNAPP	DONALD	MORGAN
KNAPPE	CAROLYN	HILDEGARD ANN
KNAUER	BRUCE	DOUGLAS
KNAUER	JEFFREY	DONALD
KNOTT	CHERYL	LYNN
KNOTT, JR	JASON	EDWARD
KNUTTILA	MARIA	INEZ
KO	KWANG	HYO
KOH	JARED	SIANG HAO
KOLSTER	MARITA	CLAIRE EMELY
KOMOROWSKI	ROMAN	J.
KONG	CAROLINE	SUNG-AH
KOO	VIVIAN	HUI LIN
KOTZBAUER	MICHAEL	HARALD
KOZAR, JR	DANIEL	PAUL
KREDA	JANET	LYNNE
KREMB	AYLA.	
KRETLOW	JANIS	ELAIN
KROG	BRONWYN	MARY
KRONE	JOACHIM	DIETER
KRONENTHAL	LINDA	HOPE
KRUEGER	DONALD	RAY
KRUEGER	ELAINE	SCHUMAN
KRUEGER	LISA	GOMI
KUBO	TAKEHITO.	
KUNIMOTO	BRENDEN	COREY MASAYUKI
KUNIMOTO	DANIKA	CAROLINE RYOKO
KURILECZ	KATHLEEN	E.
KWAN	HENRY	JOSEPH
KWEON	HYUCK-JUN.	
LAFUGE	MARINE.	
LAISSUE	WENDY	MICHELE
LALLI	CAROL	MARIE
LAM	CALVIN	KIN-HENG
LAPHAM CASHMAN	ROSEMARY.	
LARKIN	SEAN	PATRICK
LAU	GAM	YONG NG
LAU	TONY	TAK YIN
LAUKKANEN	TAHVO	DYLAN
LAURENT	ALEXIS	EMMANUEL
LAUXMANN	MARTIN	ALEXANDER
LAW	ANITA	JILL
LE COCQ	MARIANA	LUCIA
LE ROUX	REMI.	
LEAMING	KENNETH.	
LEBOW	PHILLIP	DAVID
LEE	CHEN	HUI
LEE	CRYSTAL	LI-YONG
LEE	DANIEL	SEUNG-KYU
LEE	GLORIA	RUNG BE
LEE	HUN.	
LEE	JONG	WOOK
LEE	KA LAM	GARY
LEE	PRISCILLA	YAN WEI
LEE	ROBERT	JOHN
LEE	SHERLYN	SHER LIN
LEE	WANDA	ANN
LELONG	DOMINIQUE	CLAUDE
LEONARD	ISAAC	EDWARD
LEONARD	SARAH	M.
LEVESQUE	PAUL	L.
LEVI	MICHAEL	ROBERT

Last name	First name	Middle name/initials
LEVINSON	JOSEPH	JAY
LEVY	SUSAN	JESSICA
LEWICKE	JUSTIN	CRYAN
LIM	MICHAEL	WARREN
LIN	CHAO-MEI.	
LIN	RICHARD	HSIOU
LINDE	TEAL.	
LINK	LISA	LAYNE
LIPTON	MITCHELL	GOODMAN
LIT	HIU	YEUNG
LIYEUNG	LEO	L.
LOEHRL	VALENTINA.	
LOESCH	LARS	JUERGEN
LOETTGEN	LUKAS.	
LOEWER	SEBASTIAN	MATTHIAS
LOGOZ	ANNETTE	CECILE
LOH	CHUNG	KIT
LOPEZ	ASHLEY	STAMLEY
LORZ	AXEL	CURT HELMUT
LU	JEAN	MARTINA
LU	MARK.	
LUBELL	JANICE	EILEEN
LUBELL	SUSAN	ELIZABETH
LUI	HO	CHUNG
LYE	CORA	KATHRYN
MACDONALD	HUNTER	BANFORD BULMER
MACKENZIE	IAN	BROUARDE
MACMARTIN	SARA.	
MACRANDER	CATHRYN	M.
MAIKLEM	ANDREA	KIRSTEN
MAJID	ARSHAD.	
MAJID	SIDRAH.	
MAJITHIA	NISHANT	RAJENDRA
MAK	CLEMENT	KA YIU
MANCILLA	BLANCA.	
MANDIC	ALBERT	JOHN
MANLEY	BRIAN	PATRICK
MANNING	KIM.	
MANOSA	MARIA	ALEXANDRA
MANSELL	JOHN	EDWARD
MARCUS	LESLIE	GLENN
MARET	NIICOLAS	LEVON
MARGOLIS	JESSIE	LAUREN
MARSHALL	ETHEL	MARIE
MARTENS	GRACE	ANN
MARTIN	JANE	THERESA
MARTIN-BEILNER	MICHELINE	CAROLA
MASLO	KARL	GEORG
MASON	GREGORY	PAUL
MASS	ANTHONY.	
MATHISEN	LAURA	JANE
MAVIN	KEITH	GORDON
MAYFIELD	KARLA	SUE
MAZET	PHILIPPE	JACQUES OLIVIER
MAZUR	JENNIFER	ELLEN
MC CLUNG	CORY	ROBERT
MC GEHEE	MARY	DARCY
MCAULEY	JOAN	FREEMAN
MCBRIDE	DONALD	EUGENE
MCCOLLUM	DIANA	MARY
MCDOWELL	DOUGLAS.	
MCLELLAN	DEBORA	ANN
MCPHERSON	KIRK	LEE
MCRAE	JILL	ELIZABETH
MCSORLEY	ELEANOR	ADELE
MEERTENS	NAOMI	MARCIA KIKI
MEHRING	CARSTEN	RALF
MEIER	DENISE	K.
MEINARDI	HERMELYN.	
MELHUS	PAMELA	CHRIS
MELLO	ANNE	E.
MENADA	CLAUDIA	P.
MERRITT	THOMAS	CHRISTOPHER
MEYER-HEINE	ANNE.	

Last name	First name	Middle name/initials
MICHALOWSKI	ALEXANDER	JAN-ZYGMUNT
MILLER	CARL	JASON
MILLER	SCOTT	GORDON
MILLS	MICHAEL	E. WHITCRAFT
MILONA	LAMBROS	JAMES
MILTON	ALEXANDRA	CECILE
MINNINGS	ATLANTIS	WINDSOR
MITCHELL	CHRISTIAN	SEGUR AKINER
MITSUMOTO	ERI	KAREN
MOHRHAUER	FRANK	OLAF
MOLINA	ANTONIO	PASCUA
MOMEN	ABDUL	A.K.
MONDAL	RADHIKA.	
MONKS	KELLY	DAVID
MOORE	RODERICK	JAMES
MORALES GIRBAU	OMAR	R.
MORAWITZ	RAYMOND	LOUIS
MORGAN	MOLLY	FELICE
MORGAN	RONNIE	ALBERT
MORGAN JONKER	CECILY	CATHARINE
MORGEN	KATRIN	ELISABETH
MOROZOVA	ELINA.	
MORRIS	JAMES	HYWEL
MOXON	FANK	HOYT
MUHLBAUER	PEGGY	ADRIANE
MUKUNTHARAO	MONEESHAU.	
MULDER	PETER	WILLIAM
MUPPANA	PRATIK	VASPRAD
MURCH	SEAN	MACLENNAN
MURPHY	TIMOTHY	LEIGH
MURRAY	CHLOE	CAMILLE MARIE
MYERS	JASON	NATHANIEL
NAGLE	SYDNEY	ROBIN
NAI	HAO RAN	ASHLEY
NAIRNE	JAMES	ANDREW JOHNSTONE
NAVARRE	PIERRE.	
NEGLIA	GERMAN	ARTURO
NEGRYCH	SHERRYL	DIANE
NELSON	PAUL	MICHAEL
NESBITT	MARK	CHRISTOPHER
NESSEL	TODD	ALLAN
NEUMAN	GREGORY	RAYMOND
NEUMANN	AVROHOM.	
NEWLAND	MARVIN	EARL
NEWMAN	MAYNARD	SIMONS
NG	XIDENG.	
NGUYEN	GEOFFREY	CHRISTOPHER
NICHOLAS	BETH	KATHLEEN
NICHOLS	CLARE	ELIZABETH
NICOLAISSEN	BJORN	OTTO
NICOLAUS	KAJA.	
NICOLAUS	MAIKA.	
NISHINO	EMIKO.	
NISHINO	KO.	
NISSEN	PEGGY	LOUISE
NIXON	NATASHA	INDIA
NOALL	JONAS	ERICH
NOLAN	EDMOND	PATRICK
NORRIS	GREGORY	BLAIR
NORTON	NATALIA	BEATRICE
NUSSBAUMER	RALPH	ERNST
NYE-COCCIARDI	DESIREE	LEE
NYMAN	GEORGE	ALFRED
OBERHOLTZER	WILLIAM	EARL
OCAMPO DESIONGCO	PATRICIA	YVETTE
OGUNYEMI	BOLUWAJI	AKHIGBE B.
OKE	CAROLYN	LOUISE
OKISHIO	TAKAO.	
OLIVER	MICHAEL	DAVID
ONG	HWEI	MIN LISA
OPELZ	HENRIK	JOHANN
OPHEL	JOHN	LEWIS
OPPERMAN	SHERRY	RUTH
OSUCH	ELIZABETH	ANN

Last name	First name	Middle name/initials
OTT	STEFANIE	DOROTHEA
OTTERLING	JACOB	KARL EDVIN
PADUA	FABRIZIO.	
PAGRATIS	VANESSA	CAROLINA
PALIOTTA	DONATELLA	SYLVIA
PALMER	MARIE.	
PANTUSO	DAVID	ALLAN
PAQUETTE	SARA	RANKIN
PARK	ANDREW	KIM
PARK	YOUNG	HO
PARKAR	SUJATA	PRABHAKAR
PATEL	HIRAL.	
PAXON	GEORGE	ALEXANDER
PEBAY	CAROLE	A.
PECKAN	LI	ELIZABETH MOWAT
PEDRETTI	ROSSANA.	
PEIRCE	MICHAEL	NORTON
PELHAM	GEORGE	SACKVILLE
PELLERIN	MARC	JOHN
PELLERIN-LORING	JENNY	DIANE
PELLETIER	FRANCIS	JEFFRY
PELZER	KRISTEN	RUTH
PENNER	KIMBRE	JAYE
PENNER	MARGARET	EDA
PERCIBALLI	SERGIO	GINO
PERONI	MARIO.	
PERPERE	HUGO	ETIENNE
PERRET	DANIEL.	
PERRY	NANCY	GARRISON
PERRY	PETER	BARTHEL
PETERS	REMCO	THEODOOR
PHILLIPS	ASHA	SUZANNE
PIAMTHIPMANUS	ATTAKRIT.	
PIERRO	SOPHIA	MARIA
PILZ	JOAN	CHUNGCHIH
PINET	RICHARD	GEORGE
PITTET	CATHERINE	NICOLE
PIVA	DARIA.	
PLACKE	REBECCA.	
PLATTNER	ALEXANDRA.	
PLENTER-VOWLES	KATHERINA	CORNELIA
POND	CAROLE	ANNE
POWELL	BARBARA	MARIE
POWER	MARK	BERNARD
PREDONZANI	LUISA.	
PRICE	KENT	ADRIAN
PRINCE	ANTHONY	ALLEN
PUNNETT	CHRISTPHER	RAYMOND
PURIBHAT	SIRILUK.	
PYFROM	JEROME	ELLIOTT
PYKE	TIMOTHY	JAMES HAYWARD
QIAN	DIANA	MENGMIAO
RACH NORREY	ALISA	KIMBERLY
RADCLIFFE	MICHAEL	DOUGLAS
RADIX	MAXENCE	BRIAN
RAGSDALE	JAMES	WEBB
RANDAZZO	PETER	RANDY
RAYMOND	EDWARD	ANTHONY
RAYNE	MAIHAA	K.
REAVELY	AMANDA	LYNN
REBECCHINI	GAETANO.	
REBETZ GHARBI	SABRINA	MARIA
REBONATI	MICHEL	JEROME
REDDY	ARUN	KATANGURU
REDENBACH	JOHN.	
REED	SHAWN	RONALD
REICHERT	DANIEL.	
REICHL	SONIA	YANNA
REIF	JONATHAN	WERNER
REILLY	MONICA	FRANCOISE
REITSMA	ELSE	CHRISTINE LOUISE
RIBAS	JUAN	MOANA
RIBAS-CADLE	DIEGO	MATEO
RIBAS-CADLE	LUISA.	

Last name	First name	Middle name/initials
RILEY	ELLIOT	DANIEL
RINGLE-HARRIS	MARCIA	JANE
RITTER	SANDRA	DIANA
ROBLES	MICHELLE	ADRIANNE
ROBSON IV	ARTHUR	W.
ROEMER	STEFAN.	
ROESLER	GRETCHEN	DORENE
ROGERS	PATRICIA	ANNE
ROGERS NANNARONE	MOLLY	ELLEN
ROOT	ANNE	CAROLINE
ROSS	PAUL	JENS PETER
ROSS	PAUL	STEPHEN
ROTHENBERGER	YTANN	ZACCARIA
ROTHFELS	ELISHA	DEONNE
ROUTLEDGE	JAN	LAWRENCE
ROUX	SERGE.	
RUCHKALL	BARBARA	LYNNE
RUDDOCK	JAMES	ANDREW
RUSHTON	NICHOLE	LYNNE
RUTLEDGE	JANA	MICHELLE
RYAN	LAURIE	MARIE
SABO	JASON	WAYNE
SADLER	SHERRI	JO
SAKAMOTO	HATSUYOSHI.	
SAKASHITA	MADELEINE	EVANS
SALABERRY	ANGELYN	DAWN
SALABERRY	PEGGY	THERESE
SALIBRA	LAWRENCE	ANTHONY TERZ0
SALSBURY JR	THOMAS	APPEL
SANDERS	EMILY	SARA
SANDOR	GARY	BRIAN
SANGHANI	JIGNESH	VINODKANT
SANGHVI	DEVIKA	DIPAL
SANHEDRAI	POPPY	SARIEL C
SANTAMATO	LORENZO	GIOVANNI
SANTI	ROBERT	LUCIEN
SARDAR	HASINA	BEGUM
SAYN-WITTGENSTEIN	CHRISTIAN	GEORG
SCARLETTS	MOREAH.	
SCHAERER	ALAN	CHRISTOPH
SCHAURTE-KUEPPERS	CAROLIN	B.H.A.
SCHILL	DANIELA	CARMEN
SCHMIDT	EVA	MARIE
SCHNEIDER	ANNE	VIRGINIA
SCHRAM	CARRIE	ANN
SCHRIBER	BARBARA	SUSANNA
SCHROEDER	MANFRED.	
SCHUMACHER	UTE..	
SCHWAB	KELLY	ANNE
SCHWEIGER	EMILY	MARGARET
SCRIVEN	JOEL	NICHOLAS HAMILTON
SEACREST	PHILIP.	
SEITZ	MURRAY	WADE
SETTE	VIVIANA	P.
SEYBOLD	CLAIRE	IRIS
SHAHANI	SOMANSH.	
SHALGI	RAN.	
SHAPIRO	MARC	J.
SHAW	CHERYL	KAY
SHAW-LUIGI	RIMA	OLGA
SHEY	LINDSEY	ELIZABETH
SHI	HUMA.	
SHILLABEER	DONNA	JEAN
SHIPTON	CHRISTINE	ANN
SIDENIUS	PETER	KELVIN
SIEBEN-KRETZERS	PATRICIA	ELIZABETH
SILVIA	ELIZABETH	MARIE
SIMMONS	DANIEL	ROBERT
SIMMONS	HELEN	MARY
SIMONI	LUCA.	
SKETCHES	DENISE	RUTH
SKOWRONSKI	ANDREW	JOSHUA
SLOT	ERIK	GUSTAAF
SMITH	HEATHER	RENAE

Last name	First name	Middle name/initials
SMITH	TIMOTHY	AARON
SOARES	JENNIFER	LYNN
SODERLING	SCOTT	DREW
SOFER	AMIT	JAMES
SOGOLO	SAMANTHA	ONORIEVARA
SOKOLOWSKI	COREY	CLARKE
SOLEM	MONICA	ANNE
SOLOMONS	THOMAS	A.
SOMMERVILLE	JULIE	MAREE
SONSTEGARD	VALERIE	LYNN
SOPCAK	JENNY	KATHERINE
SORENSEN	JAMES	COMUMBAN
SORENSEN	MAIREAD	ANNE
STAUDER	BERND.	
STEIGER	LAURA	CATHERINA
STEINKE	LINDA	MARIE
STEINMETZ VILELA	BERTHA.	
STEWART	ANNE	MARGARET
STILL	SAMUEL	HARRISON
STORTI	LETTERIO.	
STRAJA	ANDRE.	
STRAKER	PATRICIA	SUE
STRAW	ROSEMARY	ANNE
STRONG	DWAYNE	DONALD
STUBBS	MATTHEW	JAMES
STULBERG	LEV	ISAACOVICH
SUMAR	FRANCISCO	EDUARDO
SUNDICH	NICHOLAS	ALEXANDER
SUSIE	CHRISTOPHER	JOHN
SZIKMAN	GLORIA.	
TAKAHARA	ASAHI	THOMAS
TAKAHASHI	NAOTO	ANDREW
TAKAI	KENTARO.	
TAM	DENISE	HOK YUN
TAN	EDNA	L.
TAN	HWEE	SIAN
TAN	KATHERINE	LEE
TAN	YEE	LIANG
TANG	SAI	HO
TARRING	MARIE.	
TAY	SANDY	GUAT SEANG
TEFFT	MARIANNE	LOUISE
TELFORD	ROBERT	BRUCE
TEO	JEREMY.	
TESLUK	CEILIDH	MADELEINE
TETREAULT	LORRAINE	ALICE ROLLANDE MARIE
THALMANN	AMANDA	DANIELLE
THIO	CELINE	SARA
THOMAS	SHENANDOAH	WOUTER
THOMAS-FASOULIDIS	MARIA.	
THOMASSEN	NICHOLAS	ANTHONY
THOMPSON	GEOFFREY	BRYANS
THORNLEY	ASLI	PINAR
TOLLER	USCHI	KAI ANLAUF
TRACCI	HENRY	ROBERT
TREMBLAY	PHILLIP	ALAIN NATHO
TREMTHTHANMOR	CHRYS	EVNATH TRISTAN
TRIPLETT	ROY	LENNY
TRISIC	STEVAN	PETAR
TRUSCOTT	BARBARA	JEAN
TSAI	EMILY	S.
TUCKER	CATHERINE	JANE
ULLMAN	JOHN	EDWARD
URBAN	CHONG	SUK
VADHULAS	DIVYA	MURALIDHAR
VALLARINO	PEDRO	MANUEL
VAN DEN BOS	LIESBETH.	
VAN DER EERDEN	CINDY	MARGARETHA MARIA
VAN DER MEER	PHYLLIS.	
VAN DER VORST	GUILAINE	MARIA
VAN DOREN	SIMONETTE.	
VAN ETTEN	MATTHEW	JOHN
VAN NOORT	BERNARDUS	JOZEF RUDOLF
VAN OTTERLOO	MATTHEW	DAVID

Last name	First name	Middle name/initials
VAN REMUNDT	ANNA	TARA
VANDEN BRINK	JENNIFER	MARIE
VANDENDOOREN	PIERRE	JACQUES
VANHERK	ALLISON	ELISABETH
VARLAAM	CAROLINE	FRENCH
VERNON	VERONICA	RITA
VIGNET	FREDERIC	LOUIS ACHILLE
VIKEN	KAY	LOUISE
VIPPERMAN	WALTER	BRYCE
VISENTIN	VERONICA	MARY LOUISE
VISSER	DANIEL	JOHN
VISSER	JANNY	LOUISE
VISSER	MICHAEL	JACK
VOGT	SIMON	THOMAS
VON QUAST	ALEXANDER	PHILIP
WACHMANN	MARC	CONSTANTIN
WACHTERS	EUGENIA	APOLLONIA
WAGENHOFFER	MELANIE	ANNE
WAGNER	KATHERINE.	
WAKIM	ABRAHIM.	
WALLER	LUKAS	GERHARD
WALSCHOT	MICHELLE	RENEE
WALTERS	JULIAN	ROGER FORD
WANG	YU-CHUNG.	
WARNER	SCOTT	ANDREW
WATT	CHARLES	HENRY WILLIAM
WATTS	KELI	RYAN
WATTS	SUSAN	LOUISE
WEAVER	MELANIE	JEAN
WEIDER	MICHAEL	JOSEF
WEINER	MICHAEL	JOEL
WEMPLE	CLARISSA	KIM
WERT	WILLIAM	FREDERICK
WESPI	PASCALE.	
WESTLER	SHARON.	
WEYHERS	JAN-HENDRIK.	
WEYRAUCH	SUSANNE	MELANIE
WHITE	MARGARET	JANE
WHYTE	EILEEN.	
WIDJAJA	TORA.	
WIGHT	DEREK	LONERGAN
WILCKE	JONATHON	CHAD
WILHELMSEN	HANNAH	ESHETE
WILLIAMS	JARON	JOSEPH
WILLIAMS	JERROLD	DAVID
WILLIAMS	LISA	ELLEN
WILLIAMS	RICHARD	GEORGE
WILSON	BROOKE.	
WILSON	CODY	LANE
WILSON	JAMES	HENRY ST. JOHN
WILSON	JOHN	PAUL
WILSON	KENNETH	RANDALL
WILSON	RACHEL	JANE PAINE
WISKOTT	KIM	AURORA-FRANCOISE
WOLF	KAREN	LYNN
WOLF	MICHAEL	THORNTON
WOLFSBERGER	BRIGITTE	MARIE-ANGE
WONG	LILLIAS	JOSEPHINE
WONG	NATALIE	ANNE
WOOD	JUSTIN	TRENT
WOOD	RONALD	BURWELL
WOOD-OSTERWALD	ALEXANDER	JAMES GETTY
WOODS	VALEIE	TERESA
WU	MI.	
WU	YUNQI.	
YABUSHITA	FUYUKO.	
YACOWAR	MARLA	SUSAN
YAMADA	RINO	JULIA
YAMMINE	JAMES	KABALAN
YAP	MAYBELLINE.	
YAROSHEVICH	YAN	ALEXANDER
YAU	EDWIN	WAI WING
YE	GEN.	
YEO	SHERYL	ZHAO LING

Last name	First name	Middle name/initials
YIN	XIAO	DONG
YIP	DIANA.	
YOO	SU	RIM
YOON	WAE	SUK
YOONG	KIMBERLY	YU YING
YOUMANS	CRAIG	CORNELL
YOUNG	LUKE	DOUGLAS
YUE	ANSON	WEI YUE
ZACOUR	GEOFFREY	CHARLES
ZAHID	AMAL	ALI
ZAINAL	HAFSA	NASSER
ZEKVELD	LEVI	HARRISON
ZERBY	MICHAEL	VINCENT
ZHANG	XIAO	ZHU
ZHU	DEREK.	
ZILTENER	VALERIE.	
ZIMMERMAN	RENA	SHELLEY
ZINDEL	ANN.	
ZOLESIO	ROSA.	
ZOLTU	MICAH.	

Dated: May 1, 2019.

Diane Costello,

Manager Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2019–09731 Filed 5–10–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a new matching program.

SUMMARY: The Department of Veterans Affairs (VA) has an 18 month computer matching agreement (CMA) agreement with the Department of Defense (DoD) regarding Veterans who have returned to active duty and are also in receipt of compensation and pension benefits. The purpose of this CMA is to re-establish the agreement between VA, Veterans Benefits Administration (VBA) and the DoD, Defense Manpower Data Center (DMDC). DoD will disclose information about individuals who have returned to active duty. VBA will use this information as a match for recipients of Compensation and Pension benefits for adjustments of awards.

DATES: Comments on this matching program must be received no later than June 12, 2019. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to CMA VA/VBA) and DoD, DoD/DMDC. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Robinson (VBA), 202–443–6016, *eric.robinson3@va.gov.*

SUPPLEMENTARY INFORMATION: This agreement continues an arrangement for a periodic computer-matching program between the United States Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA) as the matching recipient agency and the Department of Defense (DoD), Defense Manpower Data Center (DMDC) as the matching source agency. This agreement sets forth the responsibilities of VBA and DoD with respect to information disclosed pursuant to this agreement and takes into account both agencies' responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations promulgated thereunder, including computer matching portions of a revision of OMB Circular No. A–130, 65 FR 77677 dated December 12, 2000.

Participating Agencies: The United States Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA) as the matching recipient agency and the Department of Defense (DoD), Defense Manpower Data Center (DMDC) as the matching source agency.

Authority for Conducting the Matching Program: The legal authority for conducting the matching program for use in the administration of VA's Compensation and Pension Benefits Programs is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide, pursuant to 38 U.S.C. 5106, such information as requested by VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information with respect thereto.

Purpose(s): The purpose of this matching program between VBA and DoD is to identify those veterans and VA beneficiaries who are in receipt of certain VA benefit payments and have returned to active duty. VBA has the obligation to reduce or suspend compensation and pension benefit payments to veterans who have returned to active duty. VBA will use the DoD records provided in the match to update the master records of veterans and VA beneficiaries receiving benefits and to

adjust their VA benefits, accordingly, if needed.

Categories of Individuals:

1. Veterans who have applied for compensation for service-connected disability under 38 U.S.C. Chapter 11.

2. Veterans who have applied for nonservice-connected disability under 38 U.S.C. Chapter 15.

3. Veterans entitled to burial benefits under 38 U.S.C. Chapter 23.

4. Surviving spouses and children who have claimed pensions based on nonservice-connected death of a veteran under 38 U.S.C. Chapter 15.

5. Surviving spouses and children who have claimed death compensation based on service-connected death of a veteran under 38 U.S.C. Chapter 11.

6. Surviving spouses and children who have claimed dependency and indemnity compensation for service connected death of a veteran under 38 U.S.C. Chapter 13.

7. Parents who have applied for death compensation based on service connected death of a veteran under 38 U.S.C. Chapter 11.

8. Parents who have applied for dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. Chapter 13.

9. Individuals who applied for educational assistance benefits administered by VA under title 38 of the U.S. Code.

10. Individuals who applied for educational assistance benefits maintained by the Department of Defense under title 10 of the U.S. Code that are administered by VA.

11. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77.

12. Any VA employee who generates or finalizes adjudicative actions using the Benefits Delivery Network (BDN) or the Veterans Service Network (VETSNET) computer processing systems.

13. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102–484.

14. Representatives of individuals covered by the system.

Categories of Records:

The record, or information contained in the record, may include:

1. Identifying information (*e.g.,* name, address. social security number);

2. Military service and active duty separation information (*e.g.,* name, service number, date of birth, rank, sex, total amount of active service, branch of service, character of service, pay grade, assigned separation reason, service period, whether veteran was discharged with a disability, reenlisted, received a Purple Heart or other military decoration);

3. Payment information (*e.g.,* veteran payee name, address, dollar amount of readjustment service pay, amount of disability or pension payments, number of non-pay days, any amount of indebtedness (accounts receivable) arising from title 38 U.S.C. benefits and which are owed to the VA);

4. Medical information (*e.g.,* medical and dental treatment in the Armed Forces including type of service-connected disability, medical facilities, or medical or dental treatment by VA health care personnel or received from private hospitals and health care personnel relating to a claim for VA disability benefits or medical or dental treatment);

5. Personal information (*e.g.,* marital status, name and address of dependents, occupation, amount of education of a veteran or a dependent, dependent's relationship to veteran);

6. Education benefit information (*e.g.,* information arising from utilization of training benefits such as a veteran trainee's induction, reentrance or dismissal from a program or progress and attendance in an education or training program);

7. Applications for compensation, pension, education and vocational rehabilitation benefits and training—which may contain identifying information, military service and active duty separation information, payment information, medical and dental information, personal and education benefit information relating to a veteran or beneficiary's incarceration in a penal institution (*e.g.,* name of incarcerated veteran or beneficiary, claims folder number, name and address of penal institution, date of commitment, type of offense, scheduled release date, veteran's date of birth, beneficiary relationship to veteran and whether veteran or beneficiary is in a work release or half-way house program, on parole or has been released from incarceration);

8. VA employee's BDN or VETSNET identification numbers, the number and kind of actions generated and/or finalized by each such employee, the compilation of cases returned for each employee.

System(s) of Records: Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28), published at 74 FR 29275 (June 19, 2009), last amended at 77 FR 42593 on July 19, 2012. Justice/BOP–005, published on June 7, 1984 (48 FR 2371 1), republished on May 9, 2002 (67 FR 31371), January 25, 2007 (72 FR 3410) and April 26, 2012 (77 FR 24982) and last modified on February 19, 2013 (78 FR 1 1575), routine use (i).

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs approved this document on April 5, 2019 for publication.

Dated: May 8, 2019.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

[FR Doc. 2019–09757 Filed 5–10–19; 8:45 am]

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Part II

Bureau of Consumer Financial Protection

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2019–0021]

RIN 3170–AA76

Home Mortgage Disclosure (Regulation C)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing two alternatives to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans so that institutions originating fewer than either 50 closed-end mortgage loans, or alternatively 100 closed-end mortgage loans, in either of the two preceding calendar years would not have to report such data as of January 1, 2020. The proposed rule would also adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit and setting the threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary threshold. The Bureau is also proposing to incorporate into Regulation C the interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018, and to implement further section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

DATES: Comments on the proposed rule must be received on or before June 12, 2019, except that comments on the Paperwork Reduction Act analysis in part VIII of the Supplementary Information must be received on or before July 12, 2019.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2019–0021 or RIN 3170–AA76, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2019-NPRM-HMDAThresholds@cfpb.gov.* Include Docket No. CFPB–2019–0021 or RIN 3170–AA76 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jaydee DiGiovanni or Shaakira Gold-Ramirez, Counsels; or Amanda Quester or Alexandra Reimelt, Senior Counsels, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary

Regulation C, 12 CFR part 1003, implements the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 through 2810, and includes institutional and transactional coverage thresholds that determine whether financial institutions are required to collect, record, and report any HMDA data on closed-end mortgage loans or open-end lines of credit (collectively, coverage thresholds).[1] In the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[2] Congress added partial exemptions from HMDA's requirements that exempt certain insured depository institutions and insured credit unions from reporting some but not all HMDA data for certain transactions. The proposed rule both adjusts Regulation C's institutional and transactional coverage thresholds and implements the new, separate EGRRCPA partial exemptions.[3]

Coverage thresholds adjustments: In an October 2015 final rule (2015 HMDA Rule), the Bureau established institutional and transactional coverage thresholds in Regulation C, and these thresholds affect whether a financial institution needs to report any information under HMDA for a transaction.[4] The 2015 HMDA Rule set the closed-end threshold at 25 loans in each of the two preceding calendar years, and the open-end threshold at 100 open-end lines of credit in each of the two preceding calendar years. In 2017, the Bureau temporarily increased the open-end threshold to 500 open-end lines of credit for two years (calendar years 2018 and 2019). The proposed rule provides two alternatives that would permanently raise the closed-end institutional and transactional coverage threshold to either 50 or 100 closed-end mortgage loans in each of the preceding two calendar years. The proposed rule would also extend to January 1, 2022, the current temporary threshold of 500 open-end lines of credit for open-end institutional and transactional coverage. Once that temporary extension expires, the proposed rule would set the open-end threshold permanently at 200 open-end lines of credit in each of the preceding two calendar years. The Bureau is proposing that the change to the closed-end coverage threshold and the temporary extension of the open-end coverage threshold would take effect on January 1, 2020, and the increase in the open-end coverage threshold to 200 open-end lines of credit would take effect on January 1, 2022.

Implementation of partial exemptions: The proposed rule also

[1] HMDA requires financial institutions to collect, record, and report data. To simplify review of this document, the Bureau generally refers herein to the obligation to report data instead of listing all of these obligations in each instance.

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

[3] When amending commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of regulatory text and commentary included in this document show the language of those sections if the Bureau adopts its changes as proposed. In addition, the Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is proposing to make to the regulatory text and commentary of Regulation C. This redline can be found on the Bureau's regulatory implementation page for the HMDA Rule at *https://www.consumerfinance.gov/policy-compliance/guidance/hmda-implementation/.* If any conflicts exist between the redline and the text of Regulation C or this proposal, the documents published in the **Federal Register** and the Code of Federal Regulations are the controlling documents.

[4] Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

implements the partial exemptions from HMDA's requirements that the EGRRCPA recently added to HMDA. In August 2018, the Bureau issued an interpretive and procedural rule to implement and clarify the EGRRCPA amendments to HMDA (2018 HMDA Rule).[5] The 2018 HMDA Rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and clarifies the exception to the partial exemptions for insured depository institutions with less than satisfactory examination histories under the Community Reinvestment Act of 1977 (CRA). The proposed rule incorporates into Regulation C these interpretations and procedures, with minor adjustments, by adding new § 1003.3(d) relating to the partial exemptions and making various amendments to the data compilation requirements in § 1003.4. The proposed rule further implements the EGRRCPA by addressing certain additional interpretive issues relating to the partial exemptions that the 2018 HMDA Rule did not specifically address, such as how to determine whether a partial exemption applies to a transaction after a merger or acquisition. The Bureau is proposing that the amendments implementing the EGRRCPA would take effect on January 1, 2020.

II. Background

A. HMDA and Regulation C

HMDA requires certain depository institutions and for-profit nondepository institutions to report data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations (for example, applications that are denied or withdrawn). The purposes of HMDA are to provide the public with loan data that can be used: (i) To help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[6] Prior to enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Regulation C required reporting of 22 data points and allowed for optional reporting of reasons an institution denied an application.[7]

B. Dodd-Frank Act

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and transferred HMDA rulemaking authority and other functions from the Board of Governors of the Federal Reserve System (Board) to the Bureau.[8] Among other changes, the Dodd-Frank Act expanded the scope of information relating to mortgage applications and loans that institutions must compile, maintain, and report under HMDA. Specifically, the Dodd-Frank Act amended HMDA section 304(b)(4) by adding one new data point, the age of loan applicants and mortgagors. The Dodd-Frank Act also added new HMDA section 304(b)(5) and (6), which requires the following additional new data points: Information relating to the total points and fees payable at origination (total loan costs or total points and fees); the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for all loans (rate spread); the term of any prepayment penalty; the value of real property to be pledged as collateral; the term of the loan and of any introductory interest rate on the loan; the presence of contract terms allowing non-amortizing payments; the channel through which the application was made; and the credit scores of applicants and mortgagors.[9] New HMDA section 304(b)(6) in addition authorizes the Bureau to require, ''as [it] may determine to be appropriate,'' a unique identifier that identifies the loan originator, a universal loan identifier (ULI), and the parcel number that corresponds to the real property pledged as collateral for the mortgage loan.[10] New HMDA section 304(b)(5)(D) and (6)(J) further provides the Bureau with the authority to mandate reporting of ''such other information as the Bureau may require.'' [11]

C. 2015 HMDA Rule

In October 2015, the Bureau issued the 2015 HMDA Rule implementing the Dodd-Frank Act amendments to HMDA.[12] Most of the 2015 HMDA Rule took effect on January 1, 2018.[13] The 2015 HMDA Rule implemented the new data points specified in the Dodd-Frank Act,[14] added a number of additional data points pursuant to the Bureau's discretionary authority under HMDA section 304(b)(5) and (6),[15] and made revisions to certain pre-existing data points to clarify their requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards,[16] among other changes.

The 2015 HMDA Rule requires some financial institutions to report data on certain dwelling-secured, open-end lines of credit, including home-equity lines of credit. Prior to the 2015 HMDA Rule, Regulation C allowed, but did not require, reporting of home-equity lines of credit.

The 2015 HMDA Rule also established institutional coverage thresholds based on loan volume that limit the definition of ''financial institution'' to include only those institutions that either originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or originated at least 100 open-end lines of credit in each of the two preceding calendar years.[17] The 2015

[5] Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325 (Sept. 7, 2018).

[6] 12 CFR 1003.1.

[7] As used in this proposed rule, the term ''data point'' refers to items of information that entities are required to compile and report, generally listed in separate paragraphs in Regulation C. Some data points are reported using multiple data fields.

[8] Public Law 111–203, 124 Stat. 1376, 1980, 2035–38, 2097–101 (2010).

[9] Dodd-Frank Act section 1094(3), *amending* HMDA section 304(b), 12 U.S.C. 2803(b).

[10] *Id.*

[11] *Id.*

[12] 80 FR 66128 (Oct. 28, 2015).

[13] *Id.* at 66128, 66256–58.

[14] The following 12 data points in 12 CFR 1003.4(a) implement specific provisions in HMDA section 304(b)(5)(A) through (C) or (b)(6)(A) through (I): ULI (1003.4(a)(1)(i)); property address (1003.4(a)(9)(i)); rate spread (1003.4(a)(12)); credit score (1003.4(a)(15)); total loan costs or total points and fees (1003.4(a)(17)); prepayment penalty term (1003.4(a)(22)); loan term (1003.4(a)(25)); introductory rate period (1003.4(a)(26)); non-amortizing features (1003.4(a)(27)); property value (1003.4(a)(28)); application channel (1003.4(a)(33)); and mortgage loan originator identifier (1003.4(a)(34)). *Id.*

[15] For example, the 2015 HMDA Rule added a requirement to report debt-to-income ratio in § 1003.4(a)(23). *Id.* at 66218–20.

[16] For example, the 2015 HMDA Rule replaced property type with number of total units and construction method in § 1003.4(a)(5) and (31). *Id.* at 66180–81, 66227. It also requires disaggregation of ethnicity and race information in § 1003.4(a)(10)(i). *Id.* at 66187–94.

[17] *Id.* at 66148–50, 66309 (codified at 12 CFR 1003.2(g)(1)(v)). The 2015 HMDA Rule excludes certain transactions from the definition of covered loans, and those excluded transactions do not count towards the threshold. *Id.*

HMDA Rule separately established transactional coverage thresholds that are part of the test for determining which loans are excluded from coverage and were designed to work in tandem with the institutional coverage thresholds.[18]

D. 2017 HMDA Rule and December 2017 Statement

In April 2017, the Bureau issued a notice of proposed rulemaking to address certain technical errors in the 2015 HMDA Rule, ease the burden of reporting certain data requirements, and clarify key terms to facilitate compliance with Regulation C.[19] In July 2017, the Bureau issued a notice of proposed rulemaking (July 2017 HMDA Proposal) to increase temporarily the 2015 HMDA Rule's open-end coverage threshold of 100 for both institutional and transactional coverage, so that institutions originating fewer than 500 open-end lines of credit in either of the two preceding calendar years would not have to commence collecting or reporting data on their open-end lines of credit until January 1, 2020.[20] In August 2017, the Bureau issued the 2017 HMDA Rule, which, inter alia, temporarily increased the open-end threshold to 500 open-end lines of credit for calendar years 2018 and 2019.[21] In doing so, the Bureau indicated that the two-year period would allow time for the Bureau to decide, through an additional rulemaking, whether any permanent adjustments to the open-end threshold are needed.[22]

Recognizing the significant systems and operations challenges needed to adjust to the revised regulation, the Bureau issued a statement in December 2017 (December 2017 Statement) indicating that, for HMDA data collected in 2018 and reported in 2019, the Bureau does not intend to require data resubmission unless data errors are material.[23] The December 2017 Statement also explained that the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019.[24] As explained in the statement, any supervisory examinations of 2018 HMDA data would be diagnostic to help institutions identify compliance weaknesses and would credit good-faith compliance efforts. In its December 2017 Statement, the Bureau indicated that it intended to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule, such as the institutional and transactional coverage tests and the rule's discretionary data points. The Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) released similar statements relating to their supervisory examinations.[25]

E. EGRRCPA and 2018 HMDA Rule

On May 24, 2018, the President signed into law the EGRRCPA.[26] Section 104(a) of the EGRRCPA amends HMDA section 304(i) by adding partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions.[27] New HMDA section 304(i)(1) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to closed-end mortgage loans of an insured depository institution or insured credit union if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. New HMDA section 304(i)(2) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to open-end lines of credit of an insured depository institution or insured credit union if it originated fewer than 500 open-end lines of credit in each of the two preceding calendar years. Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the CRA.[28]

On August 31, 2018, the Bureau issued an interpretive and procedural rule (2018 HMDA Rule) to implement and clarify section 104(a) of the EGRRCPA and effectuate the purposes of the EGRRCPA and HMDA.[29] The 2018 HMDA Rule clarifies that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data; clarifies that only loans and lines of credit that are otherwise HMDA reportable count toward the thresholds

[18] *Id.* at 66173, 66310, 66322 (codified at 12 CFR 1003.3(c)(11) and (12)).

[19] Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule, 82 FR 19142 (Apr. 25, 2017).

[20] Home Mortgage Disclosure (Regulation C) Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit, 82 FR 33455 (July 20, 2017).

[21] Home Mortgage Disclosure (Regulation C), 82 FR 43088 (Sept. 13, 2017).

[22] *Id.* at 43095. The 2017 HMDA Rule also, among other things, replaced ''each'' with ''either'' in § 1003.3(c)(11) and (12) to correct a drafting error and to ensure that the exclusion provided in that section mirrors the loan-volume threshold for financial institutions in § 1003.2(g). *Id.* at 43100, 43102.

[23] Bureau of Consumer Fin. Prot., ''Statement with Respect to HMDA Implementation'' (Dec. 21, 2017), *https://files.consumerfinance.gov/f/documents/cfpb_statement-with-respect-to-hmda-implementation_122017.pdf.*

[24] The statement also indicated that collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA compliance management systems for future years. *Id.*

[25] As part of its spring 2018 Call for Evidence series of Requests for Information, the Bureau issued a Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, 83 FR 12286 (Mar. 21, 2018) (RFI on Adopted Regulations) and a Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, 83 FR 12881 (Mar. 26, 2018). The RFI on Adopted Regulations did not request feedback on the 2015 HMDA Rule nor that rule's subsequent amendments because the Bureau had previously announced in the December 2017 Statement that it intended to engage in a rulemaking process to reconsider the 2015 HMDA Rule. However, as noted below in the section-by-section analysis of § 1003.2(g)(1)(v) in part IV, the Bureau received a few comments relating to HMDA in response to the RFI on Adopted Regulations. The Bureau has considered these comments as well as other input it has received from stakeholders through its efforts to monitor and support industry implementation of the 2015 HMDA Rule and the 2017 HMDA Rule in developing this proposal and the Advance Notice of Proposed Rulemaking that the Bureau released simultaneously with this proposal. The Advance Notice of Proposed Rulemaking (FR Doc. 2019–08979) published in the **Federal Register** on May 8, 2019.

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

[27] For purposes of HMDA section 104, the EGRRCPA provides that the term ''insured credit union'' has the meaning given the term in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, and the term ''insured depository institution'' has the meaning given the term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[28] 12 U.S.C. 2906(b)(2).

[29] 83 FR 45325 (Sept. 7, 2018). Prior to issuing the 2018 HMDA Rule, the Bureau, the Board, the FDIC, the NCUA, and the OCC released statements on July 5, 2018, reiterating or referring to their December 2017 compliance statements and providing information about formatting and submission of 2018 loan/application registers. *See, e.g.,* Bureau of Consumer Fin. Prot., ''Statement on the Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act Amendments to the Home Mortgage Disclosure Act'' (July 25, 2018), *https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-issues-statement-implementation-economic-growth-regulatory-relief-and-consumer-protection-act-amendments-home-mortgage-disclosure-act/.*

for the partial exemptions; clarifies which of the data points in Regulation C are covered by the partial exemptions; designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a ULI; and clarifies the exception to the partial exemptions for insured depository institutions with less than satisfactory CRA examination histories. The 2018 HMDA Rule also explains that, because the EGRRCPA does not provide a specific effective date for section 104(a) and because there are no other statutory indications that section 104(a) becomes effective upon regulatory action or some other event or condition, the best interpretation is that section 104(a) took effect when the EGRRCPA became law on May 24, 2018. In the 2018 HMDA Rule, the Bureau stated that it anticipated that, at a later date, it would initiate a notice-and-comment rulemaking to incorporate the interpretations and procedures into Regulation C and further implement the EGRRCPA. This proposal commences that rulemaking. The Bureau also issued concurrently an Advance Notice of Proposed Rulemaking to solicit comment, data, and information from the public about the data points that the 2015 HMDA Rule added to Regulation C or revised to require additional information and Regulation C's coverage of certain business- or commercial-purpose transactions. The Advance Notice of Proposed Rulemaking (FR Doc. 2019–08979) published in the **Federal Register** on May 8, 2019.

F. HMDA Coverage Under Current Regulation C

The Bureau's estimates of HMDA coverage and the sources used in deriving those estimates are explained in detail in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VI below.[30] As explained in more detail in part VI.E.3 and table 3 below, the Bureau estimates that currently there are about 4,960 financial institutions required to report their closed-end mortgage loans and applications under HMDA. The Bureau estimates that approximately 4,263 of these current reporters are depository institutions and approximately 697 are non-depository institutions. The Bureau estimates that together, these financial institutions originated about 7.0 million closed-end mortgage loans in calendar year 2017. The Bureau estimates that among those 4,960 financial institutions that are currently required to report closed-end mortgage loans under HMDA, about 3,300 insured depository institutions and insured credit unions are partially exempt for closed-end mortgage loans under the EGRRCPA and the 2018 HMDA Rule, and thus are not required to report a subset of the data points currently required by Regulation C for these transactions.

As explained in more detail in part VI.E.4 and table 4 below, under the temporary 500 open-end line of credit coverage threshold set in the 2017 HMDA Rule, the Bureau estimates that currently there are about 333 financial institutions required to report about 1.23 million open-end lines of credit under HMDA. Of these institutions, approximately 318 are depository institutions and approximately 15 are nondepository institutions. None of these 333 institutions are partially exempt.

In comparison, if the open-end coverage threshold adjusts to 100 on January 1, 2020 pursuant to the 2017 HMDA Rule, the Bureau estimates that the number of reporters would be about 1,014, who in total originate about 1.41 million open-end lines of credit. The Bureau estimates that approximately 972 of these open-end reporters would be depository institutions and approximately 42 would be nondepository institutions. The Bureau estimates that, among the 1,014 financial institutions that would be required to report open-end lines of credit under a threshold of 100, about 618 insured depository institutions and insured credit unions are partially exempt for open-end lines of credit under the EGRRCPA and the 2018 HMDA Rule, and thus would not be required to report a subset of the data points currently required by Regulation C for these transactions.

III. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under the Dodd-Frank Act and HMDA. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board.[31] The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [32] Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau's Director to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [33] Both HMDA and title X of the Dodd-Frank Act are Federal consumer financial laws.[34] Accordingly, the Bureau has authority to issue regulations to implement HMDA.

HMDA section 305(a) broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes.[35] These regulations may include classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary and proper to effectuate the purposes of [HMDA], and prevent circumvention or evasion thereof, or to facilitate compliance therewith.[36]

IV. Section-by-Section Analysis

Section 1003.2 Definitions

2(g) Financial Institution

Regulation C requires financial institutions to report HMDA data. Section 1003.2(g) defines financial institution for purposes of Regulation C and sets forth Regulation C's institutional coverage criteria for depository financial institutions and nondepository financial institutions.[37] In the 2015 HMDA Rule, the Bureau adjusted the institutional coverage criteria under Regulation C so that depository institutions and nondepository institutions are required to report HMDA data if they: (1) Originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years, and (2) meet all of the other applicable criteria for reporting. In the 2017 HMDA Rule, the Bureau amended § 1003.2(g) and related commentary to increase temporarily from 100 to 500 the number of open-end originations required to trigger reporting responsibilities.[38] For the reasons discussed below, the Bureau proposes (1) to amend §§ 1003.2(g)(1)(v)(A) and

[30] *See infra* part VI.D.1 & n.155.

[31] 12 U.S.C. 5581. Section 1094 of the Dodd-Frank Act also replaced the term ''Board'' with ''Bureau'' in most places in HMDA. 12 U.S.C. 2803 *et seq.*

[32] 12 U.S.C. 5581(a)(1)(A).

[33] 12 U.S.C. 5512(b)(1).

[34] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include HMDA).

[35] 12 U.S.C. 2804(a).

[36] *Id.*

[37] 12 CFR 1003.2(g)(1) (definition of depository financial institution); § 1003.2(g)(2) (definition of nondepository financial institution).

[38] 82 FR 43088, 43095 (Sept. 13, 2017).

(g)(2)(ii)(A) and 1003.3(c)(11) and related commentary to raise the closed-end coverage threshold to either 50 or 100 closed-end mortgage loans, and (2) to amend §§ 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B) and 1003.3(c)(12) and related commentary to extend to January 1, 2022, the current temporary open-end coverage threshold of 500 open-end lines of credit and then to set the threshold permanently at 200 open-end lines of credit beginning in calendar year 2022. The Bureau is also seeking comment on whether other closed- and open-end coverage thresholds may be appropriate. These proposed changes are discussed below in the order in which they appear in the proposed regulation text and commentary.

In the 2015 HMDA Rule, the Bureau adopted the thresholds for certain depository institutions in § 1003.2(g)(1) pursuant to its authority under section 305(a) of HMDA to provide for such adjustments and exceptions for any class of transactions that in the judgment of the Bureau are necessary and proper to effectuate the purposes of HMDA. Pursuant to section 305(a) of HMDA, for the reasons given in the 2015 HMDA Rule, the Bureau found that the exception in § 1003.2(g)(1) is necessary and proper to effectuate the purposes of and facilitate compliance with HMDA. The Bureau found that the provision, by reducing burden on financial institutions and establishing a consistent loan-volume test applicable to all financial institutions, would facilitate compliance with HMDA's requirements.[39] Additionally, as discussed in the 2015 HMDA Rule, the Bureau adopted the thresholds for certain nondepository institutions in § 1003.2(g)(2) pursuant to its interpretation of HMDA sections 303(3)(B) and 303(5), which require persons other than banks, savings associations, and credit unions that are ''engaged for profit in the business of mortgage lending'' to report HMDA data. The Bureau stated that it interprets these provisions, as the Board also did, to evince the intent to exclude from coverage institutions that make a relatively small number of mortgage loans.[40] Pursuant to its authority under HMDA section 305(a), and for the reasons discussed below, the Bureau believes that the proposed threshold changes in § 1003.2(g)(1) and (2) would be necessary and proper to effectuate the purposes of HMDA and facilitate compliance with HMDA by reducing burden and establishing a consistent loan-volume test.

2(g)(1) Depository Financial Institution

2(g)(1)(v)

2(g)(1)(v)(A)

Closed-End Mortgage Loan Threshold for Institutional Coverage of Depository Institutions

HMDA and its implementing regulation, Regulation C, require certain depository institutions (banks, savings associations, and credit unions) to report data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations (for example, applications that are denied or withdrawn). In the 2015 HMDA Rule, the Bureau added the 25 closed-end coverage threshold to the preexisting regulatory coverage scheme for depository institutions.[41] In adopting this threshold, the Bureau stated that it believed that the institutional coverage criteria should balance the burden on financial institutions of reporting HMDA data against the value of the data reported and that a threshold should be set that did not impair HMDA's ability to achieve its purposes but also did not impose burden on institutions if their data are of limited value.[42]

In the 2015 HMDA Rule, the Bureau also stated that in adopting the 25 closed-end coverage threshold, it would meaningfully reduce burden by relieving an estimated 1,400 depository institutions, or 22 percent of depository institutions that previously reported HMDA data, of their obligations to report HMDA data on closed-end mortgage loans.[43] The Bureau acknowledged that it would be possible to maintain reporting of a significant percentage of the national mortgage market with a closed-end coverage threshold set higher than 25 loans annually and that data reported by some institutions that would satisfy the 25 closed-end coverage threshold may not be as useful for statistical analysis as data reported by institutions with much higher loan volumes.[44] However, the Bureau determined that a higher closed-end coverage threshold would have a material negative impact on the availability of data about patterns and trends at the local level and the data about local communities are essential to achieve HMDA's purposes.[45] The Bureau concluded that, if it were to set the closed-end coverage threshold higher than 25, the resulting loss of data at the local level would substantially impede the public's and public officials' ability to understand access to credit in their communities.[46]

However, since issuing the 2015 HMDA Rule and 2017 HMDA Rule, the Bureau has heard concerns that lower-volume institutions continue to experience significant burden at the 25 closed-end coverage threshold.[47] Various industry stakeholders have advocated for an increase to the coverage threshold in order to reduce burden on additional lower-volume financial institutions. For example, although the 2015 HMDA Rule was outside the scope of the Bureau's 2018 Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities (RFI on Adopted Regulations),[48] several depository institutions recommended in that context that the Bureau use its exemption authority to increase the 25-loan closed-end coverage threshold and stated that the costs associated with HMDA reporting and its impact on the operations of lower-volume financial institutions do not justify the small amount of data such institutions would report. The closed-end coverage threshold should not be so high as to impair HMDA's ability to achieve its purposes; however, the threshold should not be so low that institutions bear the burden of reporting data that would be of limited value. In light of the recent concerns expressed by industry stakeholders regarding the considerable burden associated with reporting the

[39] 80 FR 66128, 66150 (Oct. 28, 2015).

[40] *Id.* at 66153.

[41] Prior to the 2015 HMDA Rule, a bank, savings association, or credit union was covered under Regulation C if: (1) On the preceding December 31, it satisfied an asset-size threshold; (2) on the preceding December 31, it had a home or branch office in a Metropolitan Statistical Area (MSA); (3) during the previous calendar year, it originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one- to four-unit dwelling; and (4) the institution is federally insured or regulated, or the mortgage loan referred to in item (3) was insured, guaranteed, or supplemented by a Federal agency or intended for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. 12 CFR 1003.2 (2016).

[42] 80 FR 66128, 66147 (Oct. 28, 2015).

[43] *Id.* at 66148, 66277.

[44] *Id.* at 66147.

[45] *Id.*

[46] *Id.* at 66148.

[47] The Bureau temporarily raised the threshold for open-end lines of credit in the 2017 HMDA Rule because of concerns that the Bureau may have underestimated in the 2015 HMDA Rule the number of institutions that would be required to report open-end lines of credit under the threshold adopted and that it also may have underestimated the cost of reporting. However, the Bureau declined to raise the threshold for closed-end mortgage loans and stated that in developing the 2015 HMDA Rule, it had robust data to make a determination about the number of transactions that would be reported at the 25 closed-end coverage threshold as well as the one-time and ongoing costs to industry. 82 FR 43088, 43095–96 (Sept. 13, 2017).

[48] 83 FR 12286, 12288 (Mar. 21, 2018).

new data points required by the 2015 HMDA Rule on closed-end mortgage loans, the Bureau is reconsidering whether the current 25-loan closed-end coverage threshold for depository institutions appropriately balances the benefits of the HMDA data reported by lower-volume depository institutions in furthering HMDA's purposes with the burden on such institutions associated with reporting closed-end data. The Bureau believes that increasing the closed-end coverage threshold may provide meaningful burden relief for lower-volume depository institutions without reducing substantially the data reported under HMDA. Accordingly, based on its evaluation of more recent available data, the Bureau is proposing two alternative increases to the closed-end coverage threshold and seeking comment on whether either of these alternatives, or some other alternative, would more appropriately balance the benefits and burdens of covering institutions based on their closed-end lending.

The Bureau recognizes that in the EGRRCPA, Congress provided a partial exemption to institutions that would be affected by this proposed increase to the threshold so that the benefit in terms of reduced burden would be less than it would have been absent the EGRRCPA. Even so, the Bureau believes that, for the depository institutions that would be relieved of all reporting obligations under either of the alternatives in this proposal, the burden reduction would be substantial and would outweigh the limited value of their data in achieving HMDA's purposes. The Bureau has also heard feedback suggesting that—consistent with its own estimates—a modest increase in the closed-end coverage threshold likely would have very little impact on the overall HMDA data, because the amount of data reported by the lower-volume depository institutions that would be excluded at such a higher threshold is insignificant as compared to the total HMDA data reported annually. The Bureau now believes a higher closed-end coverage threshold may more appropriately balance the burden on lower-volume depository institutions while at the same time maintaining sufficient reporting to achieve HMDA's purposes.

As discussed below, the Bureau is proposing two alternatives to the closed-end coverage threshold. These proposed alternatives would maintain a uniform loan-volume threshold for depository and nondepository institutions.[49] Alternative 1 proposes to set the closed-end coverage threshold at 50 while Alternative 2 proposes to set the closed-end coverage threshold at 100. The Bureau reviewed multiple data sources, including recent HMDA data[50] and Reports of Condition and Income (Call Reports) and developed estimates for each proposal as described below.[51]

Alternative 1: Threshold Set at 50

The Bureau estimates that if the closed-end coverage threshold were increased from 25 to 50 loans, approximately 3,518 out of approximately 4,263 depository institutions covered under the current rule (or approximately 83 percent) would continue to be required to report HMDA data on closed-end mortgage loans. Approximately 745 depository institutions covered under the current rule (or approximately 17 percent) would be relieved of their HMDA reporting responsibilities for closed-end mortgage loans. Further, the Bureau estimates that, with the proposed increase from 25 to 50 loans in the closed-end coverage threshold, about 99 percent of total originations of closed-end mortgage loans reported by depository institutions under the current Regulation C coverage criteria, or approximately 3.54 million closed-end mortgage loan originations under the current market conditions, would continue to be reported.

The Bureau noted in the 2015 HMDA Rule that any loan-volume threshold will affect individual markets differently, depending on the extent to which smaller creditors service individual markets and the market share of those creditors. In the 2015 HMDA Rule, the Bureau examined the extent to which varying thresholds would cause a loss of data at the census tract level. For this proposal the Bureau also reviewed estimates at varying closed-end coverage thresholds to examine the potential effect on available data at the census tract level.[52] The Bureau estimates that, with the proposed increase to the closed-end coverage threshold from 25 to 50, just under 300 out of approximately 74,000 total census tracts, or less than one-half of 1 percent of the total number of census tracts, would lose at least 20 percent of reportable HMDA data on closed-end mortgage loans relative to the current threshold.[53] With respect to low-to-moderate income census tracts, the Bureau estimates that relative to the current threshold, there would be at least a 20 percent loss of reportable HMDA data on closed-end mortgage loans in less than 1 percent of such tracts if the closed-end coverage threshold were increased from 25 to the proposed 50. In addition, the Bureau examined the effects on rural census tracts and estimates that relative to the current threshold, there would be at least a 20 percent loss of reportable HMDA data on closed-end mortgage loans in less than one-half of 1 percent of such tracts.

Ongoing cost reduction from proposed Alternative 1: Threshold set at 50. The proposed increase in the closed-end coverage threshold from 25 to 50 would relieve institutions that originate between 25 and 49 closed-end mortgage loans of the ongoing costs associated with reporting such loans that they might otherwise incur if the closed-end coverage threshold remained at the current 25. The Bureau estimates that the proposed increase in the closed-end coverage threshold to 50 would result in aggregate savings on the operational costs associated with reporting closed-end mortgage loans of approximately $2.2 million per year.[54]

Therefore, the Bureau believes that if the closed-end coverage threshold were raised from 25 to the proposed 50, the loss in data from these depository institutions and for this relatively small number of census tracts may be justified by the significant reduction in compliance costs for the approximately 745 lower-volume depository

[49] For a discussion on the proposed closed-end coverage threshold for nondepository institutions, see the section-by-section analysis of § 1003.2(g)(2)(ii)(A) below.

[50] As discussed further in the analysis under Dodd-Frank Act section 1022(b) in part VI, note 155, these estimates are based on HMDA data collected in 2016 and 2017 and other sources. The Bureau intends to review the 2018 HMDA data more closely in connection with this rulemaking once the 2018 submissions are more complete.

[51] The estimates described in each alternative proposal in this section cover only depository institutions. Estimates for nondepository institutions are described in the section-by-section analysis of § 1003.2(g)(2)(ii)(A). For estimates that are comprehensive of depository and nondepository institutions, see part VI.E.3 below.

[52] The estimates of the effect on reportable HMDA data at the census tract level comprise both depository institutions and nondepository institutions. The effect of a closed-end coverage threshold set at 100 on reportable HMDA data at the census tract level is discussed in Alternative 2 below.

[53] The Bureau estimates that at least 80 percent of reportable HMDA data would be retained in over 73,500 tracts. In certain tracts, substantially more than 80 percent of reportable HMDA data would be retained.

[54] These cost estimates reflect the combined ongoing reduction in costs for depository and nondepository institutions. These estimates also take into account the enactment of the EGRRCPA, which created partial exemptions from HMDA's requirements that certain insured depository institutions and insured credit unions may now use. See part VI.E.3 below for a more comprehensive analysis on cost estimates.

institutions that would no longer be required to report HMDA data.

Alternative 2: Threshold Set at 100

The Bureau estimates that if the closed-end coverage threshold were increased from 25 to 100 loans, approximately 2,581 out of about 4,263 depository institutions covered under the current rule (or approximately 61 percent) would continue to be required to report HMDA data on closed-end mortgage loans. Approximately 1,682 depository institutions covered under the current rule (or approximately 39 percent) would be relieved of their HMDA reporting responsibilities with respect to closed-end mortgage loans. The Bureau estimates that with this proposed increase to the closed-end coverage threshold, approximately 96 percent of total originations of closed-end mortgage loans reported by depository institutions under the current coverage criteria, or approximately 3.43 million closed-end mortgage loan originations under the current market conditions, would continue to be reported.

With respect to the potential effect on available data at the census tract level, the Bureau estimates that if the closed-end coverage threshold were increased from 25 to the proposed 100, there would be a loss of at least 20 percent of reportable HMDA data in about 1,100 out of approximately 74,000 total census tracts, or 1.5 percent of the total number of census tracts, relative to the current threshold.[55] For low-to-moderate income census tracts, the Bureau estimates that if the closed-end coverage threshold were increased from 25 to the proposed 100, there would be at least a 20 percent loss of reportable HMDA data in 3 percent of such tracts if the closed-end coverage threshold were set at the proposed 100. In addition, the Bureau examined the effects on rural census tracts and estimates that relative to the current threshold, there would be at least a 20 percent loss of reportable HMDA data in less than 3 percent of such tracts.

Ongoing cost reduction from proposed Alternative 2: Threshold set at 100. The proposed increase in the closed-end coverage threshold from 25 to 100 would relieve institutions that originate between 25 and 99 closed-end mortgage loans of the ongoing costs associated with reporting such loans that they might otherwise incur if the closed-end coverage threshold remained at the current 25. The Bureau estimates that the proposed increase in the closed-end coverage threshold to 100 would result in aggregate savings on the operational costs associated with reporting closed-end mortgage loans of approximately $8.1 million per year.[56]

Therefore, the Bureau believes that if the closed-end coverage threshold were set at the proposed 100 the loss in data from these depository institutions and for this relatively small number of census tracts, although greater than at the proposed 50 closed-end coverage threshold, may be justified by the significant reduction in compliance costs for the approximately 1,682 lower-volume depository institutions that would no longer be required to report HMDA data relative to the current threshold.

Estimates for Other Closed-End Coverage Thresholds

The Bureau also generated estimates for closed-end coverage thresholds higher than the ones in the proposed alternatives. These estimates reflect that the decrease in the number of depository institutions that would be required to report HMDA data and the resulting decrease in the HMDA data that would be reported becomes more pronounced at thresholds higher than 100. For example, if the closed-end coverage threshold were increased from 25 to 250 loans, the Bureau estimates that approximately 1,413 out of approximately 4,263 depository institutions would continue to report HMDA data and approximately 2,850 depository institutions, or approximately 67 percent of depository institutions covered under the current rule, would be relieved of their HMDA reporting responsibilities. The Bureau estimates that with an increase in the closed-end coverage threshold from 25 to 250, approximately 90 percent of total originations of closed-end mortgage loans reported by depository institutions under the current coverage criteria, or approximately 3.21 million closed-end mortgage loan originations under the current market conditions, would continue to be reported.

Further, if the closed-end coverage threshold were increased from 25 to 500 loans, the Bureau estimates that approximately 798 out of 4,263 depository institutions would continue to be required to report HMDA data and approximately 3,465 depository institutions, or approximately 81 percent of depository institutions covered under the current coverage criteria, would be relieved of their HMDA reporting responsibilities. The Bureau estimates that with an increase in the closed-end coverage threshold to 500, approximately 83 percent of total originations of closed-end mortgage loans reported by depository institutions under the current Regulation C coverage criteria, or approximately 2.97 million closed-end mortgage loan originations under the current market conditions, would continue to be reported.

The Bureau's estimates also reflect that the effect on data available at the census tract level would become more pronounced at closed-end mortgage loan coverage thresholds above 100. For example, the Bureau estimates that increasing the closed-end coverage threshold from 25 to 250 loans would result in a loss of at least 20 percent of reportable HMDA data on closed-end mortgage loans in over 4,000 out of approximately 74,000 total census tracts, or 5.4 percent of the total number census tracts. Of the approximately 4,000 census tracts where there would be a loss of at least 20 percent of reportable HMDA data on closed-end mortgage loans at such threshold, about 14 percent are rural tracts[57] and just over 8 percent are low-to-moderate income tracts. Further, the Bureau estimates that increasing the closed-end coverage threshold from 25 to 500 loans would result in a loss of at least 20 percent of reportable HMDA data on closed-end mortgage loans in approximately 11,000 out of approximately 74,000 total census tracts, or 14.9 percent of the total number of census tracts. Of the approximately 11,000 census tracts where there would be a loss of at least 20 percent of reportable HMDA data on closed-end mortgage loans at such threshold, about 32 percent are rural tracts and about 17 percent are low-to-moderate income tracts.

The Bureau is not proposing these higher thresholds because of concerns that the resulting reduction in HMDA's overall coverage of the mortgage market may affect the usefulness of the HMDA data. For example, a reduction in

[55] The Bureau estimates that at least 80 percent of reportable HMDA data would be retained in approximately 73,000 tracts. In certain tracts, substantially more than 80 percent of reportable HMDA data would be retained.

[56] These cost estimates reflect the combined ongoing reduction in costs for depository and nondepository institutions. These estimates also take into account the enactment of the EGRRCPA, which created partial exemptions from HMDA's requirements that certain insured depository institutions and insured credit unions may now use. See part VI.E.3 below for a more comprehensive analysis on cost estimates.

[57] As discussed in part VI.F.2 below, recent research suggests that financial institutions that serve rural areas are generally not HMDA reporters. HMDA data do, however, contain information about some covered loans involving properties in rural areas and these higher thresholds would thus result in decreased information on such lending activity.

HMDA data may affect bank regulators' and the public's ability to use HMDA data to evaluate a depository institution's performance under the CRA. HMDA data are also used for identifying possible discriminatory lending patterns and potential violations of antidiscrimination statutes, such as the Equal Credit Opportunity Act and Fair Housing Act, including through redlining analyses, which aim to compare lenders and their peers. As noted in the 2015 HMDA Rule, data about local communities is essential to achieve HMDA's purposes.[58] Among other things, public officials, community advocates, and researchers use HMDA data to analyze access to credit at the neighborhood level and to target programs to assist underserved communities and consumers.[59] A reduction in HMDA's overall coverage of the mortgage market could thus reduce the usefulness of HMDA data for identifying opportunities for public and private investment, and for assessing whether lenders are meeting the housing needs of their communities.[60] Therefore, the Bureau believes that if the closed-end coverage threshold were increased from 25 loans to a level above 100 loans, the more notable decrease in the number of institutions required to report HMDA data and the loss of reportable HMDA data, particularly at the local level, available to serve HMDA's purposes may not be justified by the significant reduction in compliance costs for the depository institutions that would no longer be required to report HMDA data at such higher thresholds.

Request for Feedback

For the reasons discussed above, the Bureau proposes to increase the closed-end coverage threshold for depository institutions in § 1003.2(g)(1)(v)(A) from 25 to 50 in Alternative 1 or from 25 to 100 in Alternative 2, and to make conforming amendments to comments (2)(g)–1 and –5. The Bureau seeks comment on whether the data that would be reported at thresholds of 50 or 100 closed-end mortgage loans would achieve the purposes of HMDA.[61] The Bureau also seeks comment on whether the value of the data that would be reported by institutions that originate between 25 and 50 closed-end mortgage loans, or alternatively between 25 and 100 closed-end mortgage loans, is outweighed by the burden on those institutions of reporting HMDA data and undergoing examinations to validate the accuracy of their submissions. The Bureau seeks comment on these alternative proposals as well as any other closed-end coverage threshold, including any threshold significantly above 100, that would more appropriately balance the burden of reporting with the value of the data reported to achieving the purposes of HMDA. Specifically, the Bureau seeks comment on: (1) How the proposed increase to the closed-end coverage threshold to 50, 100, or another number would affect the number of depository institutions required to report data on closed-end mortgage loans; (2) the significance of the data that would not be available for achieving HMDA's purposes as a result of the proposed increase to the closed-end coverage threshold to 50, 100, or another number, including (a) whether, and under what circumstances, the proposed increase would prevent public officials and the public from understanding if depository institutions excluded by the proposed 50, 100, or another closed-end coverage threshold are serving the needs of their community, (b) whether, and under what circumstances, the proposed increase to the closed-end coverage threshold to 50, 100, or another number would negatively impact the ability of public officials to make determinations with respect to the distribution of public sector investments in a manner designed to improve the private investment environment, and (c) whether, and under what circumstances, the proposed 50, 100, or another number for the closed-end coverage threshold would exclude data that would be valuable for identifying possible fair lending violations or enforcing antidiscrimination laws; and (3) the reduction in burden that would result from the proposed increase for institutions that would not be required to report (addressing separately the burden reduction for depository institutions that are eligible for the EGRRCPA's partial exemption for closed-end mortgage loans and the burden reduction for depository institutions that are not).

2(g)(1)(v)(B)

Background on Reporting Data Concerning Open-End Lines of Credit Under the 2015 HMDA Rule and the 2017 HMDA Rule

By its terms, the definition of ''mortgage loan'' in HMDA covers all loans secured by residential real property and home improvement loans whether open- or closed-end.[62] However, home-equity lines of credit were uncommon in the 1970s and early 1980s when Regulation C was first issued, and the Board's definition covered only closed-end loans. In 2000, in response to the increasing importance of open-end lending in the housing market, the Board proposed to revise Regulation C to require mandatory reporting of all home-equity lines of credit, which were optionally reported.[63] However, the Board's 2002 final rule left open-end reporting voluntary, as the Board determined that the benefits of mandatory reporting relative to other then proposed changes (such as collecting information about higher-priced loans) did not justify the increased burden.[64]

As discussed in the 2015 HMDA Rule, open-end mortgage lending continued to increase in the years following the Board's 2002 final rule, particularly in areas with high home-price appreciation.[65] In light of that development and the role that open-end lines of credit played in contributing to the financial crisis,[66] the Bureau decided in the 2015 HMDA Rule to require reporting of dwelling-secured, consumer purpose open-end lines of credit,[67] concluding that doing so was a

[58] 80 FR 66128, 66147 (Oct. 28, 2015). The 2015 HMDA Rule explained that public officials, community advocates, and researchers rely on HMDA data to analyze access to credit at the neighborhood level and to target programs to assist underserved communities and consumers. It explained that, for example, local and state officials have used HMDA data to identify and target relief to localities impacted by high-cost lending or discrimination. *Id.*

[59] *Id.* at 66280.

[60] *Id.* at 66276.

[61] As originally adopted, HMDA identifies its purposes as providing the public and public officials with information to help determine whether financial institutions are serving the housing needs of the communities in which they are located, and assisting public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. Following Congress's expansion of HMDA, the Board recognized a third purpose of identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

[62] HMDA section 303(2), 12 U.S.C. 2802(2).

[63] 65 FR 78656, 78659–60 (Dec. 15, 2000). In 1988, the Board had amended Regulation C to permit, but not require, financial institutions to report certain home-equity lines of credit. 53 FR 31683, 31685 (Aug. 19, 1988).

[64] 67 FR 7222, 7225 (Feb. 15, 2002).

[65] 80 FR 66128, 66160 (Oct. 28, 2015).

[66] *Id.* As the Bureau explained in the 2015 HMDA Rule, research indicated that some real estate investors used open-end, home-secured lines of credit to purchase non-owner occupied properties, which correlated with higher first-mortgage defaults and home-price depreciation during the financial crisis. *Id.* In the years leading up to the crisis, such home-equity lines of credit often were made and fully drawn more or less simultaneously with first-lien home purchase loans, essentially creating high loan-to-value home purchase transactions that were not visible in the HMDA dataset. *Id.*

[67] The Bureau also required reporting of applications for, and originations of, dwelling-

Continued

reasonable interpretation of ''mortgage loan'' in HMDA and necessary and proper to effectuate the purposes of HMDA and prevent evasions thereof.[68]

As noted in the 2015 HMDA Rule, in expanding coverage to include mandatory reporting of open-end lines of credit, the Bureau recognized that doing so would impose one-time and ongoing operational costs on reporting institutions; that the one-time costs of modifying processes and systems and training staff to begin open-end line of credit reporting likely would impose significant costs on some institutions; and that institutions' ongoing reporting costs would increase as a function of their open-end lending volume.[69] The Bureau sought to avoid imposing these costs on small institutions with limited open-end lending, where the benefits of reporting the data do not justify the costs of reporting.[70] In seeking to draw such a line, the Bureau acknowledged that it was handicapped by the lack of available data concerning open-end lending.[71] This created challenges both in estimating the distribution of open-end origination volume across financial institutions and in estimating the one-time and ongoing costs that institutions of various sizes would incur in reporting data on open-end lending.

To estimate the one-time and ongoing costs of reporting data under HMDA in the 2015 HMDA Rule, the Bureau identified seven ''dimensions'' of compliance operations and used those to define three broadly representative financial institutions according to the overall level of complexity of their compliance operations: ''tier 1'' (high-complexity); ''tier 2'' (moderate-complexity); and ''tier 3'' (low-complexity).[72] The Bureau then sought to estimate one-time and ongoing costs for a representative institution in each tier.[73]

The Bureau recognized in the 2015 HMDA Rule that the one-time cost of reporting open-end lines of credit could be substantial because most financial institutions had not reported open-end lines of credit and thus would have to develop completely new systems to begin reporting these data. As a result, there would be one-time costs to create processes and systems for open-end lines of credit.[74] However, for tier 3, low-complexity institutions, the Bureau believed that the additional one-time costs of open-end reporting would be relatively low. Because these institutions are less reliant on information technology systems for HMDA reporting and they may process open-end lines of credit on the same system and in the same business unit as closed-end mortgage loans, their one-time costs would be derived mostly from new training and procedures adopted for the overall changes in the final rule, not distinct from costs related to changes in reporting of closed-end mortgage loans.[75]

The Bureau acknowledged in the 2015 HMDA Rule that ongoing costs for open-end reporting vary by institutions due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that was impossible to capture fully.[76] At the same time, the Bureau stated it believed that the HMDA reporting process and ongoing operational cost structure for open-end reporting would be fundamentally similar to closed-end reporting.[77] Thus, using the ongoing cost estimates developed for closed-end reporting, the Bureau estimated that for a representative tier 1 institution the ongoing operational costs would be $273,000 per year; for a representative tier 2 institution $43,400 per year; and for a representative tier 3 institution $8,600 per year.[78] These translated into costs per HMDA record of approximately $9, $43, and $57 respectively.[79] The Bureau acknowledged that, precisely because no good source of publicly available data exists concerning open-end lines of credit, it was difficult to predict the accuracy of the Bureau's cost estimates but also stated its belief that these estimates were reasonably reliable.[80]

Drawing on all of these estimates, the Bureau decided in the 2015 HMDA Rule to establish an open-end coverage threshold that would require institutions that originate 100 or more open-end lines of credit in each of the two preceding calendar years to report data on such lines of credit. The Bureau estimated that this threshold would avoid imposing the burden of establishing mandatory open-end reporting on approximately 3,000 predominantly smaller-sized institutions with low-volume open-end lending[81] and would require reporting by 749 financial institutions, all but 24 of which would also report data on their closed-end mortgage lending.[82] The Bureau explained that it believed this threshold appropriately balanced the benefits and burdens of covering institutions based on their open-end mortgage lending.[83] However, as discussed in the 2017 HMDA Rule, the Bureau lacked robust data for the estimates that it used to establish the open-end threshold in the 2015 HMDA Rule.[84]

The 2017 HMDA Rule explained that, between 2013 and 2017, the number of dwelling-secured open-end lines of credit financial institutions originated had increased by 36 percent.[85] The Bureau noted that, to the extent institutions that had been originating fewer than 100 open-end lines of credit shared in that growth, the number of institutions at the margin that would be required to report under an open-end threshold of 100 lines of credit would

secured commercial-purpose lines of credit for home purchase, home improvement, or refinancing purposes. *Id.* at 66171.

[68] *Id.* at 66157–62. HMDA and Regulation C are designed to provide citizens and public officials sufficient information about mortgage lending to ensure that financial institutions are serving the housing needs of their communities, to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. The Bureau believes that collecting information about all dwelling-secured, consumer-purpose open-end lines of credit serves these purposes.

[69] 80 FR 66128, 66161 (Oct. 28, 2015).

[70] *Id.* at 66149.

[71] *Id.*

[72] *Id.* at 66261, 66269–70. In the 2015 HMDA Rule and the 2017 HMDA Rule, the Bureau assigned financial institutions to tiers by adopting cutoffs based on the estimated open-end line of credit volume. *Id.* at 66285; 82 FR 43088, 43128 (Sept. 13, 2017). Specifically, the Bureau assumed the lenders that originated fewer than 200 but more than 100 open-end lines of credit were tier 3 (low-complexity) open-end reporters; lenders that originate between 200 and 7,000 open-lines of credit were tier 2 (moderate-complexity) open-end reporters; and lenders that originated more than 7,000 open-end lines of credit were tier 1 (high-complexity) open-end reporters. 80 FR 66128, 66285 (Oct. 28, 2015); 82 FR 43088, 43128 (Sept. 13, 2017). As explained below in part VI.D.1, for purposes of this proposal, the Bureau has used a more precise methodology to assign eligible financial institutions to tiers 2 and 3 for their open-end reporting, which relies on constraints relating to the estimated numbers of impacted institutions and loan/application register records for the applicable provision.

[73] 80 FR 66128, 66264–65 (Oct. 28, 2015); *see also id.* at 66284.

[74] *Id.* at 66264; *see also id.* at 66284–85.

[75] *Id.* at 66265; *see also id.* at 66284.

[76] *Id.* at 66285.

[77] *Id.*

[78] *Id.* at 66264, 66286.

[79] *Id.*

[80] *Id.* at 66162.

[81] *Id.* The estimate of the number of institutions that would be excluded from reporting open-end lines of credit by the transactional coverage threshold was relative to the number that would have been covered under the Bureau's proposal that led to the 2015 HMDA Rule. Under that proposal, a financial institution would have been required to report its open-end lines of credit if it had originated at least 25 closed-end mortgage loans in each of the preceding two years without regard to how many open-end lines of credit the institution originated. *See* Home Mortgage Disclosure (Regulation C), 79 FR 51732 (Aug. 29, 2014).

[82] 80 FR 66128, 66281 (Oct. 28, 2015).

[83] *Id.* at 66162.

[84] 82 FR 43088, 43094 (Sept. 13, 2017).

[85] *Id.*

also increase.[86] Additionally, in the 2017 HMDA Rule, the Bureau explained that information received by the Bureau since issuing the 2015 HMDA Rule had caused the Bureau to question its assumption that certain low-complexity institutions[87] process home-equity lines of credit on the same data platforms as closed-end mortgages, on which the Bureau based its assumption that the one-time costs for these institutions would be minimal.[88] After issuing the 2015 HMDA Rule, the Bureau had heard anecdotes suggesting that one-time costs to begin reporting open-end lines of credit could be as high as $100,000 for such institutions.[89] The Bureau likewise had heard anecdotes suggesting that the ongoing costs for these institutions to report open-end lines of credit, which the Bureau estimated would be under $10,000 per year and add under $60 per line of credit, could be at least three times higher than the Bureau had estimated.[90]

Based on this information regarding one-time and ongoing costs and new data indicating that more institutions would have reporting responsibilities under the 100-loan open-end threshold than estimated in the 2015 HMDA Rule, the Bureau proposed in 2017 to increase temporarily the open-end threshold to 500 for two years, until January 1, 2020.[91] This temporary increase was intended to allow for additional data collection and assessment as to what threshold would best balance the benefits and burdens of covering institutions based on their open-end mortgage lending. The Bureau finalized the proposal after notice and comment in the 2017 HMDA Rule.[92]

Since the Bureau issued the 2017 HMDA Rule, various trade associations and smaller financial institutions have urged the Bureau to increase permanently the open-end line of credit coverage threshold in order to reduce the burden on smaller institutions. For example, some Federal credit unions suggested in response to the Bureau's March 2018 RFI on Adopted Regulations that the Bureau consider increasing both the open- and closed-end thresholds that trigger the applicability of HMDA requirements to credit unions.

Open-End Line of Credit Threshold for Institutional Coverage of Depository Institutions

As explained above, the 2015 HMDA Rule established an institutional coverage threshold in § 1003.2(g) for open-end lines of credit of at least 100 open-end lines of credit in each of the two preceding calendar years.[93] In the 2017 HMDA Rule, the Bureau amended § 1003.2(g)(1)(v)(B) and comments 2(g)–3 and –5, effective January 1, 2018, to increase temporarily the open-end threshold from 100 to 500 and, effective January 1, 2020, to restore a permanent threshold of 100.[94] For the reasons discussed below, the Bureau now proposes to amend § 1003.2(g)(1)(v)(B) and comments 2(g)–3 and –5, effective January 1, 2020, to extend until January 1, 2022, the temporary open-end institutional coverage threshold for depository institutions of 500 open-end lines of credit. When this temporary threshold expires, the Bureau is proposing to set a permanent threshold at 200 open-end lines of credit. The Bureau is also proposing conforming changes to the institutional coverage threshold for nondepository institutions in § 1003.2(g)(2)(ii)(B) and to the transactional coverage threshold in § 1003.3(c)(12), as discussed below.

Several developments since the Bureau issued the 2015 HMDA Rule have affected the Bureau's analyses of the costs and benefits associated with the open-end line of credit coverage threshold. As the 2017 HMDA Rule explained, the Bureau is concerned that, in establishing a 100-loan threshold for open-end lines of credit in the 2015 HMDA Rule, it may have underestimated the number of institutions that would be covered and the reporting burden on smaller covered institutions. In the 2017 HMDA Rule, the Bureau noted that there had been a 36 percent increase in the number of dwelling-secured open-end lines of credit originated between 2013 (the most recent data cited by the Bureau for its analysis of the 2015 HMDA Rule) and 2016.[95] The number of dwelling-secured open-end line of credit originations in 2018 was again approximately 36 percent higher than the number of such originations in 2013.[96] Table 4 in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VI.E.4 below provides the Bureau's updated coverage estimates for reporting thresholds of 100, 200, and 500 open-end lines of credit.[97] As explained in more detail in part VI.E.4, the Bureau's updated coverage estimates indicate that the total number of institutions exceeding the open-end coverage threshold of 100 open-end lines of credit in 2018 would be approximately 1,014, which is significantly higher than the estimate of 749 in the 2015 HMDA Rule that was based on 2013 data.[98]

As explained in more detail in part VI below, the estimates the Bureau used in the 2015 HMDA Rule may understate the burden that open-end reporting would impose on smaller institutions if they were required to begin reporting on January 1, 2020. For example, in developing the one-time cost estimates for open-end lines of credit in the 2015 HMDA Rule, the Bureau had envisioned that there would be cost sharing between the line of business that conducts open-end lending and the line of business that conducts closed-end lending at the corporate level, as the implementation of open-end reporting that became mandatory under the 2015 HMDA Rule would coincide with the implementation of the changes to closed-end reporting under the 2015 HMDA Rule. However, this type of cost

[86] *Id.*

[87] *See supra* notes 72–75 and accompanying text.

[88] 82 FR 43088, 43094 (Sept. 13, 2017).

[89] *Id.*

[90] *Id.*

[91] 82 FR 33455 (July 20, 2017).

[92] 82 FR 43088 (Sept. 13, 2017). Comments received on the July 2017 HMDA Proposal to change temporarily the open-end threshold are discussed in the 2017 HMDA Rule. *Id.* at 43094–95.

[93] The 2015 HMDA Rule established complementary thresholds that determine whether a financial institution is required to report data on closed-end mortgage loans or open-end lines of credit, respectively. 80 FR 66128, 66146, 66149, 66162 (Oct. 28, 2015). The 2017 HMDA Rule corrected a drafting error to ensure the institutional coverage threshold and the transactional coverage threshold were complementary. 82 FR 43088, 43100, 43102 (Sept. 13, 2017). These institutional and transactional coverage thresholds are distinct from the thresholds for the EGRRCPA partial exemptions in proposed § 1003.3(d)(2) and (3).

[94] 82 FR 43088, 43094 (Sept. 13, 2017). In the 2015 HMDA Rule and 2017 HMDA Rule, the Bureau declined to retain optional reporting of open-end lines of credit, after concluding that improved visibility into this segment of the mortgage market is critical because of the risks posed by these products to consumers and local markets and the lack of other publicly available data about these products. *Id.* at 43095; 80 FR 66128, 66160–61 (Oct. 28, 2015). However, Regulation C as amended by the 2017 HMDA Rule permits voluntary reporting by financial institutions that do not meet the open-end threshold. 12 CFR 1003.3(c)(12).

[95] 82 FR 43088, 43094 (Sept. 13, 2017) (citing July 2017 HMDA Proposal, 82 FR 33455, 33459 (July 20, 2017)).

[96] Experian-Oliver Wyman Market Intelligence Reports show that in 2013 there were 1.14 million home-equity lines of credit originated. Experian & Oliver Wyman, 2015 Q1 Experian-Oliver Wyman Market Intelligence Report: Home Equity Lines Report, at 6 fig. 1 (2015). In 2018 that number grew to 1.555 million. Experian & Oliver Wyman, 2018 Q4 Experian-Oliver Wyman Market Intelligence Report: Home Equity Lines Report, at 6 fig. 1 (2019).

[97] As discussed further in the analysis under Dodd-Frank Act section 1022(b) in part VI, in note 172 below, the Bureau's analyses in this proposal are based on HMDA data collected in 2016 and 2017 and other sources. The Bureau intends to review the 2018 HMDA data more closely in connection with this rulemaking once the 2018 submissions are more complete.

[98] 82 FR 43088, 43094 (Sept. 13, 2017).

sharing is less likely now since financial institutions have already implemented almost all of the closed-end reporting changes required under the 2015 HMDA Rule.

Another development since the Bureau finalized the 2015 HMDA Rule is the enactment of the EGRRCPA, which created partial exemptions from HMDA's requirements that certain insured depository institutions and insured credit unions may now use.[99] The partial exemption for open-end lines of credit under the EGRRCPA relieves certain insured depository institutions and insured credit unions that originated fewer than 500 open-end mortgage loans in each of the two preceding calendar years of the obligation to report many of the data points generally required by Regulation C.[100] The partial exemptions are available to the vast majority of the financial institutions that would be excluded by the proposed increases in the open-end coverage threshold.[101] The EGRRCPA has thus changed the costs and benefits associated with different possible coverage thresholds, as discussed in more detail below.

The Bureau has considered the appropriate open-end threshold in light of these developments and believes that the proposed changes to the open-end threshold would reduce one-time and ongoing costs and provide other benefits, while still providing significant market coverage. These considerations are discussed in turn below, and additional explanation of the Bureau's cost estimates is provided in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VI.E.4 below.[102]

One-time cost reduction from proposed threshold of 200. The Bureau's proposed increase of the open-end coverage threshold to 200 open-end lines of credit after the proposed temporary extension expires in 2022 would avoid imposing one-time costs of reporting open-end lines of credit on institutions originating between 100 and 199 open-end lines of credit. The Bureau estimates that setting the coverage threshold at 200 rather than 100 would exclude 401 institutions from reporting open-end lines of credit starting in 2022. According to the Bureau's estimates, about 391 of those 401 financial institutions are low-complexity tier 3 open-end reporters, about 10 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters.[103]

The Bureau recognizes that many financial institutions, especially larger and more complex institutions, process applications for open-end lines of credit in their consumer lending departments using procedures, policies, and data systems that are separate from those used for closed-end loans. Some institutions that would have to report with a threshold of 100 after the proposed extension of the temporary threshold of 500 expires in 2022 do not currently report open-end lines of credit. These institutions might have to develop completely new reporting infrastructures to comply with mandatory reporting if the threshold of 100 lines of credit were to take effect. As a result, these institutions would incur one-time costs to create processes and systems for open-end lines of credit in addition to the one-time costs to modify processes and systems used for other mortgage products. As explained in part VI below, the Bureau estimates that increasing the open-end coverage threshold from 100 to 200 starting in 2022 would result in an aggregate savings of about $3.8 million in avoided one-time costs associated with open-end lines of credit.

Ongoing cost reduction from proposed threshold of 200. The proposed increase of the open-end coverage threshold from 100 to 200 starting in 2022 would permanently relieve institutions that originate between 100 and 199 open-end lines of credit of the ongoing costs associated with reporting open-end lines of credit that they might otherwise incur if the 2017 HMDA Rule's permanent threshold of 100 were to take effect. The Bureau estimates that the proposed increase in the permanent threshold would result in aggregate savings on the operational costs associated with open-end lines of credit of about $2.1 million per year starting in 2022.

Benefits of two-year extension. The proposed two-year extension of the temporary coverage threshold of 500 open-end lines of credit would ensure that any institutions that would be required to report under the proposed threshold of 200 open-end lines of credit but that are not required to report under the current temporary threshold of 500 would have time to adapt their systems and prepare for compliance. The Bureau estimates that there are 280 institutions that fall within this category. Industry stakeholders provided feedback in connection with the 2015 HMDA Rule and the 2017 HMDA Rule indicating that they strongly prefer a long implementation period when coverage changes result in new institutions having open-end reporting obligations under HMDA. The Bureau believes that the two-year extension of the temporary threshold of 500 lines of credit would provide any newly covered institutions with sufficient time to revise and update policies and procedures, implement any necessary systems changes, and train staff before the proposed threshold of 200 lines of credit would take effect in 2022.

The proposed extension of the temporary coverage threshold would also provide the Bureau with additional time to assess how a requirement to report open-end lines of credit would affect institutions whose origination volume falls just above the proposed threshold of 200 open-end lines of credit. The Bureau is reviewing HMDA data on open-end lines of credit submitted in 2019 by financial institutions that originated 500 or more open-end lines of credit in 2016 and 2017 and invites comment on financial institutions' experiences with collecting and reporting these open-end data. The Bureau will also continue to monitor HMDA data in the future. A two-year temporary extension of the current coverage threshold would ensure the Bureau has time to consider further the open-end data submitted for 2018 and 2019 and any additional information stakeholders provide before any permanent threshold established through this rulemaking takes effect.

The proposed extension of the temporary coverage threshold would also relieve institutions that originate between 100 and 499 open-end lines of credit of ongoing costs associated with reporting open-end lines of credit over the next two years. In total, the Bureau estimates that extending the temporary open-end coverage threshold for two years would reduce operational costs for institutions by about $5.6 million per year in the years 2020 and 2021.

Effect on market coverage. While the proposed permanent and temporary threshold increases would reduce market coverage, information about a sizeable portion of the market would still be available in the next two years under the proposed temporary threshold of 500 and thereafter under the proposed threshold of 200. The Bureau has used multiple data sources, including credit union Call Reports, Call Reports for banks and thrifts, HMDA

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

[100] See the section-by-section analysis of § 1003.3(d) in part IV above.

[101] *See infra* part VI.E.4.

[102] As explained in part VI below, the Bureau derived these estimates using estimates of savings for open-end lines of credit for representative financial institutions.

[103] For an explanation of the Bureau's assumptions in assigning institutions to tiers 1, 2, and 3, see *supra* note 72 and *infra* part VI.D.1.

data, and Consumer Credit Panel data, in order to develop updated estimates for this proposal about open-end originations for institutions that are active in the market and to assess the impact of various thresholds on the numbers of institutions which report and the number of loans about which they report under various scenarios.[104] Based on this information, the Bureau estimates that, as of 2018, approximately 613 financial institutions originated at least 200 open-end lines of credit in both of the two preceding years, as compared to approximately 333 financial institutions that originated at least 500 open-end lines of credit in both of the two preceding years, and about 1,014 financial institutions that originated at least 100 open-end lines of credit in both of the two preceding years.[105] Under the temporary 500-loan open-end threshold, the Bureau estimates about 1.23 million lines of credit or approximately 78 percent of origination volume would reported by about 5 percent of all institutions in the open-end line of credit market.[106] Under a permanent 200-loan open-end threshold, the Bureau estimates about 1.34 million lines of credit or approximately 84 percent of origination volume would be reported by approximately 9 percent of all institutions in the open-end line of credit market.[107] As compared to a 100-loan threshold, the 200-loan threshold would reduce the number of institutions reporting by approximately 40 percent (from 1,014 to 613), while reducing coverage of originations by approximately 5 percentage points from approximately 89 percent to 84 percent.

Extending the temporary threshold of 500 open-end lines of credit for two years and raising the open-end threshold from 100 to 200 after the temporary threshold expires in 2022 would decrease visibility into the open-end line of credit market relative to the visibility that would be obtained if the Bureau were to allow the 100-loan threshold to take effect on January 1, 2020. However, the effect of these threshold increases would be limited, because the EGRRCPA now provides a partial exemption that exempts almost all of the institutions that the proposed increases would affect from any obligation to report many of the data points generally required by Regulation C for their open-end lines of credit. In light of the EGRRCPA's partial exemption from reporting certain data for open-end lines of credit for certain insured depository institutions and insured credit unions, increasing the open-end line of credit coverage threshold to 500 temporarily and to 200 permanently would result in a much smaller loss of data than the Bureau anticipated when it adopted a permanent threshold of 100 open-end lines of credit in the 2015 HMDA Rule or when it revisited the open-end line of credit coverage threshold in the 2017 HMDA Rule. The Bureau believes that the limited decrease in visibility occasioned by the proposed adjustments to the open-end threshold would appear to be justified by the benefits discussed above of reducing the burden on smaller institutions. This burden reduction is greater than the Bureau anticipated in the 2015 HMDA Rule, because the number of institutions affected and the costs per institution associated with reporting are higher than anticipated, as explained above and in part VI below. The Bureau now proposes to set the open-end line of credit coverage threshold at 200 after a two-year extension of the temporary increase. Using a threshold of 200 as compared to 100 loans would better balance the benefits and burdens of covering institutions based on their open-end mortgage lending. As noted above, the Bureau is particularly interested in comments on how a requirement to report open-end lines of credit would affect institutions whose origination volume falls just above the proposed threshold of 200 open-end lines of credit.

For the reasons discussed above, the Bureau proposes to amend § 1003.2(g)(1)(v)(B) and comments 2(g)–3 and –5, to set the open-end institutional coverage threshold for depository institutions at 500, effective January 1, 2020, and at 200, effective January 1, 2022. The Bureau seeks comment on whether it should extend the temporary institutional coverage threshold of 500 open-end lines of credit as proposed and, if so, for how long. The Bureau also seeks comment on whether to increase permanently the open-end institutional coverage threshold when the proposed temporary extension expires and, if so, whether a threshold of 200 or another threshold would most appropriately balance the benefits and burdens of covering institutions based on their open-end lending beginning in 2022. The Bureau also seeks comment specifically on: (1) How the proposed temporary and permanent increases would affect the number of financial institutions required to report data on open-end lines of credit; (2) the significance of the data that would not be available as a result of the proposed temporary and permanent increases (including (a) whether, and under what circumstances, the proposed temporary and permanent increases would prevent public officials and the public from understanding if financial institutions excluded by the proposed temporary and permanent increases are serving the needs of their community, (b) whether, and under what circumstances, the proposed temporary and permanent increases would negatively impact the ability of public officials to make determinations with respect to the distribution of public sector investments in a manner designed to improve the private investment environment, and (c) whether, and under what circumstances, the proposed temporary and permanent increases would exclude data that would be valuable for identifying possible fair lending violations or enforcing antidiscrimination laws); and (3) the reduction in burden that would result from the proposed temporary and permanent increases for institutions that would not be required to report their open-end lines of credit (addressing separately the burden reduction for institutions that are eligible for the EGRRCPA's partial exemption for open-end lines of credit and for institutions that are not).

2(g)(2) Nondepository Financial Institution

2(g)(2)(ii)(A)

Closed-End Mortgage Loan Threshold for Institutional Coverage of Nondepository Institutions

HMDA extends reporting responsibilities to certain nondepository institutions, defined as any person engaged for profit in the business of mortgage lending other than a bank, savings association, or credit union.[108] HMDA section 309(a) authorizes the Bureau to adopt an exemption for covered nondepository institutions that are comparable within their respective industries to banks, savings associations, and credit unions with $10

[104] Because collection of data on open-end lines of credit only became mandatory starting in 2018 under the 2015 HMDA Rule and 2017 HMDA Rule, no single data source exists as of the time of this proposal that can accurately capture the number of originations of open-end lines of credit in the entire market and by lenders. For information about the HMDA data used in updating the Bureau estimates, see *infra* note 172.

[105] *See infra* part VI.E.4 at Table 4 for estimates of coverage among all lenders that are active in the open-end line of credit market at various open-end coverage thresholds.

[106] *Id.*

[107] *Id.*

[108] HMDA section 303(5) (defining ''other lending institutions'').

million or less in assets in the previous fiscal year.[109] Regulation C implements HMDA's coverage criteria for nondepository institutions in § 1003.2(g)(2). The Bureau revised the coverage criteria for nondepository institutions in the 2015 HMDA Rule by requiring such institutions to report HMDA data if they met the statutory location test and exceeded either the closed-end or open-end line of credit coverage thresholds.[110]

HMDA sections 303(3)(B) and 303(5) require persons other than banks, savings associations, and credit unions that are ''engaged for profit in the business of mortgage lending'' to report HMDA data. As the Bureau stated in the 2015 HMDA Rule, the Bureau interpreted these provisions, as the Board also did, to evince the intent to exclude from coverage institutions that make a relatively small volume of mortgage loans.[111] In the 2015 HMDA Rule, the Bureau interpreted ''engaged for profit in the business of mortgage lending'' to include nondepository institutions that originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years. Due to the questions raised about potential risks posed to applicants and borrowers by nondepository institutions and the lack of other publicly available data sources about nondepository institutions, the Bureau believed that requiring additional nondepository institutions to report HMDA data would better effectuate HMDA's purposes. The Bureau estimated in 2015 that these changes could result in HMDA coverage for up to an additional 450 nondepository institutions. The Bureau stated in the 2015 HMDA Rule its belief that it was important to increase visibility into the lending practices of nondepository institutions because of their history of making riskier loans than depository institutions, including their role in the financial crisis and lack of available data about the mortgage lending practices of lower-volume nondepository institutions. The Bureau also stated that expanded coverage of nondepository institutions would ensure more equal visibility into the practices of nondepository institutions and depository institutions.

Since issuing the 2015 Final Rule and 2017 HMDA Rule, the Bureau has heard concerns that lower-volume institutions continue to experience significant burden at a 25 closed-end coverage threshold.[112] Various industry stakeholders have advocated for an increase to the closed-end coverage threshold in order to reduce burden on additional lower-volume financial institutions. In light of the concerns raised by industry stakeholders, the Bureau is considering whether a higher closed-end coverage threshold would more appropriately cover nondepository institutions that are ''engaged for profit in the business of mortgage lending'' and maintain sufficient visibility into the lending practices of such institutions. The Bureau believes that increasing the closed-end coverage threshold may provide meaningful burden relief for lower-volume nondepository institutions without reducing substantially the data reported under HMDA, and more appropriately exclude lower-volume mortgage lenders. Therefore, the Bureau seeks comment on whether an increase to this threshold would more appropriately balance the benefits and burdens of covering lower-volume nondepository institutions based on their closed-end lending.

As discussed below, the Bureau is proposing two alternatives to the closed-end mortgage loan coverage threshold. These proposals would maintain a uniform closed-end coverage threshold for depository and nondepository institutions.[113] Alternative 1 proposes to set the closed-end coverage threshold at 50 while Alternative 2 proposes to set the closed-end coverage threshold at 100. The Bureau reviewed multiple data sources, including recent HMDA data[114] and Call Reports and developed estimates for each proposal as described below.

Alternative 1: Threshold Set at 50

The Bureau estimates that if the closed-end coverage threshold were increased from 25 to 50 loans, approximately 683 out of about 697 nondepository institutions covered under the current rule (or approximately 98 percent) would continue to be required to report HMDA data on closed-end mortgage loans. Approximately 14 nondepository institutions covered under the current rule (or approximately 2 percent) would be relieved of their HMDA reporting responsibilities on closed-end mortgage loans. Further, the Bureau estimates that with this proposed increase to the closed-end coverage threshold, over 99 percent of total originations of closed-end mortgage loans reported by nondepository institutions under the current coverage criteria, or approximately 3.44 million closed-end mortgage loan originations under the current market conditions, would continue to be reported. The loss of data from these approximately 14 nondepository institutions would amount to an estimated 1,000 closed-end mortgage loan originations or less than one-half of 1 percent of closed-end mortgage loan originations reportable under the current market conditions.

At the census tract level the Bureau estimates that, as noted above in the section-by section analysis of § 1003.2(g)(1)(v)(A), increasing the closed-end coverage threshold from 25 to the proposed 50 loans for both depository and nondepository institutions would result in a loss of at least 20 percent of reportable HMDA data in just under 300 out of approximately 74,000 total census tracts, or less than one-half of 1 percent of the total number of census tracts.[115] With respect to low-to-moderate income census tracts, the Bureau estimates if the closed-end threshold were increased from 25 to 50 loans, there would be at least a 20 percent loss of reportable HMDA data in less than 1 percent of such tracts. In addition, the Bureau examined the effects of an increase in the closed-end threshold from 25 to 50 loans and estimates that such a change would result in at least a 20 percent loss

[109] HMDA section 309(a), 12 U.S.C. 2808(a).

[110] Prior to the 2015 HMDA Rule, for-profit nondepository institutions that met the location test only had to report if: (1) In the preceding calendar year, the institution originated home purchase loans, including refinancings of home purchase loans, that equaled either at least 10 percent of its loan-origination volume, measured in dollars, or at least $25 million; and (2) On the preceding December 31, the institution had total assets of more than $10 million, counting the assets of any parent corporation; or in the preceding calendar year, the institution originated at least 100 home purchase loans, including refinancings of home purchase loans. 12 CFR 1003.2 (2017).

[111] 80 FR 66128, 66153 (Oct. 28, 2015) (citing 54 FR 51356, 51358–59 (Dec. 15, 1989)).

[112] The Bureau temporarily raised the threshold for open-end lines of credit in the 2017 HMDA Rule because of concerns that the Bureau may have underestimated in the 2015 HMDA Rule the number of institutions that would be required to report open-end lines of credit under the threshold adopted and that it also may have underestimated the cost of reporting. However, the Bureau declined to raise the threshold for closed-end mortgage loans and stated that in developing the 2015 HMDA Rule, it had robust data to make a determination about the number of transactions that would be reported at the 25 closed-end coverage threshold as well as the one-time and ongoing costs to industry. 82 FR 43088, 43095–96 (Sept. 13, 2017).

[113] For a discussion on the proposed closed-end coverage threshold for depository institutions, see the section-by-section analysis of § 1003.2(g)(1)(v)(A) above.

[114] For further discussion of the recent HMDA data used, see *infra* note 155.

[115] The estimates of the effect on reportable HMDA data at the census tract level comprise both depository institutions and nondepository institutions. The Bureau estimates that at least 80 percent of reportable HMDA data would be retained in over 73,500 tracts. In certain tracts, substantially more than 80 percent of reportable HMDA data would be retained.

of reportable HMDA data in less than one-half of 1 percent of such tracts.

Therefore, the Bureau believes that it is reasonable to interpret ''engaged for profit in the business of mortgage lending'' to include nondepository institutions that originated at least 50 closed-end mortgage loans in each of the two preceding calendar years. The Bureau believes that the proposed increase to the closed-end coverage threshold for nondepository institutions would effectuate the purposes of HMDA by ensuring significant coverage of nondepository mortgage lending, while facilitating compliance with HMDA by reducing burden on smaller institutions and excluding nondepository institutions that are not engaged for profit in the business of mortgage lending. The Bureau believes that the reasons provided for the proposed changes to the closed-end coverage threshold for depository institutions in the section-by-section analysis of § 1003.2(g)(1)(v)(A) above apply to the threshold for nondepository institutions as well. Additionally, the proposed increase to the closed-end coverage threshold would promote consistency by subjecting nondepository institutions to the same threshold that applies to depository institutions.

Alternative 2: Threshold Set at 100

The Bureau estimates that if the closed-end mortgage loan threshold were increased from 25 to 100, approximately 661 out of about 697 nondepository institutions covered under the current rule (or approximately 95 percent) would continue to be required to report HMDA data on closed-end mortgage loans. Approximately 36 nondepository institutions covered under the current rule (or approximately 5 percent) would be relieved of their HMDA reporting responsibilities on closed-end mortgage loans. In terms of the effect on the total number of originations, the Bureau estimates that with an increase in the closed-end mortgage threshold from 25 to the proposed 100 loans, over 99 percent of total originations of closed-end mortgage loans reported by nondepository institutions under the current Regulation C coverage criteria, or approximately 3.44 million closed-end mortgage loan originations under the current market conditions, would continue to be reported. The loss of data from these approximately 36 nondepository institutions would amount to about 3,000 closed-end mortgage originations under the current market conditions, or less than 1 percent of closed-end mortgage loan originations reportable under the current market conditions.

With respect to the potential effect on available data at the census tract level and as noted above in the section-by section analysis of § 1003.2(g)(1)(v)(A), the Bureau estimates that if the closed-end coverage threshold were increased from 25 to the proposed 100, there would be a loss of at least 20 percent of reportable HMDA data in about 1,100 out of approximately 74,000 total census tracts, or 1.5 percent of the total number of census tracts.[116] For low-to-moderate income census tracts, the Bureau estimates that if the closed-end threshold were increased from 25 to 100 loans, there would be a loss of at least 20 percent of reportable HMDA data in approximately 3 percent of such tracts. In addition, the Bureau examined the effects on rural census tracts and estimates that relative to the current threshold, there would be at least a 20 percent loss of reportable HMDA data in less than 3 percent of such tracts.

Therefore, the Bureau believes that it is reasonable to interpret ''engaged for profit in the business of mortgage lending'' to include nondepository institutions that originated at least 100 closed-end mortgage loans in each of the two preceding calendar years. The Bureau believes that the proposed increase to the closed-end coverage threshold for nondepository institutions would effectuate the purposes of HMDA by ensuring significant coverage of nondepository mortgage lending, while facilitating compliance with HMDA by reducing burden on smaller institutions and excluding nondepository institutions that are not engaged for profit in the business of mortgage lending. The Bureau believes that the reasons provided for the proposed changes to the closed-end coverage threshold for depository institutions in the section-by-section analysis of § 1003.2(g)(1)(v)(A) above apply to the threshold for nondepository institutions as well. Additionally, the proposed increase to the threshold would promote consistency by subjecting nondepository institutions to the same threshold that applies to depository institutions.

Estimates for Other Closed-End Coverage Thresholds

The Bureau also generated estimates for closed-end coverage thresholds higher than those in the proposed alternatives. Similar to the estimates for depository institutions, these estimates reflect that the decrease in the number of nondepository institutions that would be required to report HMDA data becomes more pronounced at thresholds higher than 100. Moreover, such thresholds would decrease visibility into nondepository institutions relative to the coverage criteria that pre-dated the 2015 HMDA Rule.[117] For example, if the closed-end coverage threshold were increased from 25 to 250 loans, the Bureau estimates that approximately 573 out of about 697 nondepository institutions would continue to be required to report HMDA data and approximately 124 nondepository institutions, or about 18 percent of nondepository institutions covered under the current rule, would be relieved of their HMDA reporting responsibilities. The Bureau estimates that with an increase in the closed-end coverage threshold to 250, about 99 percent of total originations of closed-end mortgage loans reported by nondepository institutions under the current Regulation C coverage criteria, or approximately 3.42 million closed-end mortgage loan originations under the current market conditions, would continue to be reported.

Further, if the closed-end coverage threshold were increased from 25 to 500 loans, for example, the Bureau estimates that approximately 477 out of about 697 nondepository institutions would continue to be required to report HMDA data and approximately 220 nondepository institutions, or about 32 percent of nondepository institutions covered under the current coverage criteria, would be relieved of their HMDA reporting responsibilities. The Bureau estimates that with an increase of the closed-end coverage threshold to 500, about 98 percent of total originations of closed-end mortgage loans reported by nondepository institutions under the current Regulation C coverage criteria, or approximately 3.38 million closed-end mortgage loan originations under the current market conditions, would continue to be reported.

The Bureau's estimates also reflect that the effect on data available at the

[116] The Bureau estimates that at least 80 percent of reportable HMDA data would be retained in approximately 73,000 tracts. In certain tracts, substantially more than 80 percent of reportable HMDA data would be retained.

[117] The Bureau noted in the 2015 HMDA Rule that any closed-end reporting threshold set at 100 loans would not provide enhanced insight into lending practices of nondepository institutions and that a threshold above 100 closed-end mortgage loans would decrease visibility into nondepository institutions' practices. At the time, the Bureau explained its belief that, due to the questions raised about potential risks posed to applicants and borrowers by nondepository institutions and the lack of other publicly available data sources about nondepository institutions, requiring additional nondepository institutions to report HMDA data will better effectuate HMDA's purposes. 80 FR 66128, 66153, 66281 (Oct. 28, 2015).

census tract level would become more pronounced at closed-end mortgage loan coverage thresholds above 100. For example, the Bureau estimates that increasing the closed-end coverage threshold from 25 to 250 would result in a loss of at least 20 percent of reportable HMDA data in over 4,000 out of approximately 74,000 total census tracts, or 5.4 percent of the total number census tracts. Of the approximately 4,000 census tracts where there would be a loss of at least 20 percent of reportable HMDA data at such threshold, about 14 percent are rural tracts and just over 8 percent are low-to-moderate income tracts. Further, the Bureau estimates that increasing the closed-end coverage threshold from 25 to 500 would result in a loss of at least 20 percent of reportable HMDA data in approximately 11,000 out of approximately 74,000 total census tracts, or 14.9 percent of the total number census tracts. Of the approximately 11,000 census tracts where there would be a loss of at least 20 percent of reportable HMDA data at such threshold, about 32 percent are rural tracts and about 17 percent are low-to-moderate income tracts.

Although the estimates for these higher closed-end coverage thresholds reflect that a high percentage of total originations of closed-end mortgage loans would continue to be reported by nondepository institutions, the Bureau believes that the decrease in coverage of nondepository institutions relative to the level of coverage that pre-dated the 2015 HMDA Rule could make it more difficult for the public and public officials to analyze whether lower-volume nondepository institutions are serving the housing needs of their communities. Therefore, the Bureau believes that if the closed-end coverage threshold were increased to a level above 100 loans, the loss of visibility into nondepository lending and the loss of reportable HMDA data at the census tract level available to serve HMDA's purposes may not be justified by the significant reduction in compliance costs for the nondepository institutions that would no longer be required to report HMDA data at such higher thresholds.

Request for Feedback

For the reasons discussed above, the Bureau proposes to increase the closed-end mortgage loan-volume threshold in § 1003.2(g)(2)(ii)(A) from 25 to 50 in Alternative 1, or from 25 to 100 in Alternative 2, and to make conforming amendments to comments 2(g)–1 and –5. The Bureau requests comment on the proposed changes to the closed-end coverage threshold for institutional coverage of nondepository institutions in § 1003.2(g)(2)(ii)(A).

Specifically, the Bureau solicits feedback on the proposed increase, including comments on: (1) How the proposed increase to the closed-end coverage threshold to 50, 100, or another number, including any threshold significantly above 100, would affect the number of nondepository financial institutions required to report data on closed-end mortgage loans; (2) the significance of the data that would not be available as a result of the proposed increase to the closed-end coverage threshold to 50, 100, or another number, including (a) whether, and under what circumstances, the proposed increase would prevent public officials and the public from understanding if nondepository financial institutions excluded by the proposed 50, 100, or another closed-end coverage threshold are serving the needs of their community, (b) whether, and under what circumstances, the proposed increase to the closed-end coverage threshold to 50, 100, or another number would negatively impact the ability of public officials to make determinations with respect to the distribution of public sector investments in a manner designed to improve the private investment environment, and (c) whether, and under what circumstances, the proposed increase to the closed-end coverage threshold would exclude data that would be valuable for identifying possible fair lending violations or enforcing antidiscrimination laws; and (3) the reduction in burden that would result from the proposed increase to the closed-end coverage threshold for institutions that would not be required to report.

2(g)(2)(ii)(B)

Open-End Line of Credit Threshold for Institutional Coverage of Nondepository Institutions

The 2015 HMDA Rule established a coverage threshold of 100 open-end lines of credit in § 1003.2(g)(2)(ii)(B) as part of the definition of nondepository financial institution. As discussed in more detail in the section-by-section analysis of § 1003.2(g)(1)(v)(B) above, the 2017 HMDA Rule amended §§ 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B) and 1003.3(c)(12) and related commentary to raise temporarily the open-end coverage threshold to 500 loans for calendar years 2018 and 2019.[118] For the reasons discussed in the section-by-section analysis of § 1003.2(g)(1)(v)(B), and to ensure the thresholds are consistent for depository and nondepository institutions, the Bureau is now proposing to extend to January 1, 2022, Regulation C's temporary open-end threshold of 500 open-end lines of credit for institutional and transactional coverage of both depository and nondepository institutions and then set the threshold at 200 open-end lines of credit upon the expiration in 2022 of the proposed extension of the temporary threshold. The Bureau is therefore proposing to set the open-end line of credit threshold for institutional coverage of nondepository institutions in § 1003.2(g)(2)(ii)(B) at 500 effective January 1, 2020, and then at 200 effective January 1, 2022. These changes would conform to the changes that the Bureau is proposing with respect to the open-end threshold for institutional coverage for depository institutions in § 1003.2(g)(1)(v)(B) and the open-threshold for transactional coverage in § 1003.3(c)(12).

The Bureau believes that these proposed changes to the threshold in § 1003.2(g)(2)(ii)(B) would effectuate the purposes of HMDA by ensuring significant coverage of nondepository mortgage lending, while facilitating compliance with HMDA by reducing burden on smaller institutions and excluding nondepository institutions that are not engaged for profit in the business of mortgage lending. The Bureau believes that the reasons provided for the proposed changes to the open-end threshold for depository institutions in the section-by-section analysis of § 1003.2(g)(1)(v)(B) above apply to the threshold for nondepository institutions as well. Additionally, the proposed changes to the threshold in § 1003.2(g)(2)(ii)(B) would promote consistency by subjecting nondepository institutions to the same threshold that applies to the depository institutions that make up the bulk of the open-end line of credit market. According to the Bureau's estimates, nondepository institutions account for only a small percentage of the institutions and loans in the open-end line of credit market.[119] Table 4 in the Bureau's analysis under Dodd-Frank Act section 1022(b) in part VI.E.4 below provides coverage estimates for nondepository institutions at the current temporary threshold of 500 open-end lines of credit that the Bureau proposes to extend and at the proposed threshold of 200 open-end lines of credit that would take effect when the temporary threshold expires.

[118] 82 FR 43088, 43095 (Sept. 13, 2017).

[119] See *infra* part VI.E.4 at Table 4.

The Bureau requests comment on the proposed changes to the open-end line of credit threshold for institutional coverage of nondepository institutions in § 1003.2(g)(2)(ii)(B).

Section 1003.3 Exempt Institutions and Excluded and Partially Exempt Transactions

3(c) Excluded Transactions

3(c)(11)

As adopted in the 2015 HMDA Rule, § 1003.3(c)(11) provides an exclusion from the requirement to report closed-end mortgage loans for institutions that did not originate at least 25 closed-end mortgage loans in each of the two preceding calendar years. This transactional coverage threshold was intended to complement a closed-end mortgage loan reporting threshold included in the definition of financial institution in § 1003.2(g). The 2017 HMDA Rule replaced ''each'' with ''either'' in § 1003.3(c)(11) to correct a drafting error and to ensure that the exclusion provided in that section mirrors the loan-volume threshold for financial institutions in § 1003.2(g).[120] For the reasons discussed in the section-by-section analysis of § 1003.2(g), the Bureau is now proposing to increase Regulation C's closed-end threshold for institutional and transactional coverage from 25 to 50 under Alternative 1 and from 25 to 100 under Alternative 2. Therefore, the Bureau proposes to increase the closed-end threshold for transactional coverage from 25 to 50 under Alternative 1 in § 1003.3(c)(11) and comments 3(c)(11)–1 and –2, and from 25 to 100 under Alternative 2 in § 1003.3(c)(11) and comments 3(c)(11)–1 and –2. This proposed change would conform to the related changes the Bureau is proposing with respect to the closed-end threshold for institutional coverage in § 1003.2(g).

3(c)(12)

As adopted in the 2015 HMDA Rule, § 1003.3(c)(12) provides an exclusion from the requirement to report open-end lines of credit for institutions that did not originate at least 100 such loans in each of the two preceding calendar years. This transactional coverage threshold was intended to complement an open-end reporting threshold included in the definition of financial institution in § 1003.2(g), which sets forth Regulation C's institutional coverage. The 2017 HMDA Rule replaced ''each'' with ''either'' in § 1003.3(c)(12) to correct a drafting error and to ensure that the exclusions provided in that section mirror the loan-volume thresholds for financial institutions in § 1003.2(g).[121] As discussed in more detail in the section-by-section analysis of § 1003.2(g), in the 2017 HMDA Rule the Bureau also amended §§ 1003.2(g) and 1003.3(c)(12) and related commentary to raise temporarily the open-end threshold in those provisions to 500 loans for calendar years 2018 and 2019.[122] For the reasons discussed in the section-by-section analysis of § 1003.2(g), the Bureau is now proposing to extend to January 1, 2022, Regulation C's current temporary open-end threshold for institutional and transactional coverage of 500 open-end lines of credit and then to set the threshold at 200 open-end lines of credit upon the expiration of the proposed extension of the temporary threshold. The Bureau therefore proposes to adjust the open-end line of credit threshold for transactional coverage in § 1003.3(c)(12) and comments 3(c)(12)–1 and –2 to 500 effective January 1, 2020, and to 200 effective January 1, 2022.[123] These changes would conform to the changes that the Bureau is proposing with respect to the open-end threshold for institutional coverage in § 1003.2(g).

3(d) Partially Exempt Transactions

Section 104(a) of the EGRRCPA amended HMDA section 304(i) by adding partial exemptions from HMDA's requirements that apply to certain transactions of eligible insured depository institutions and insured credit unions. In the 2018 HMDA Rule, the Bureau implemented and clarified HMDA section 304(i) by addressing a set of interpretive and procedural questions relating to the partial exemptions. Proposed § 1003.3(d) and related commentary would incorporate the partial exemptions and the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement HMDA section 304(i) by addressing additional questions that have arisen with respect to the partial exemptions.[124]

Proposed § 1003.3(d)(1) sets forth definitions relating to the partial exemptions, including a definition of optional data that delineates which data points are covered by the partial exemptions. Proposed § 1003.3(d)(2) and (3) provides the general tests for when the partial exemptions apply for closed-end mortgage loans and open-end lines of credit, respectively. Proposed § 1003.3(d)(4) addresses voluntary reporting of data that are covered by a partial exemption for a partially exempt transaction. Proposed § 1003.3(d)(5) relates to the non-universal loan identifier that financial institutions must report for a partially exempt transaction if a ULI is not provided. Proposed § 1003.3(d)(6) implements the statutory exception to the partial exemptions for insured depository institutions with certain less than satisfactory examination histories under the CRA. Each of these paragraphs and related commentary are discussed in more detail below.

The loan thresholds added by the EGRRCPA to HMDA section 304(i) resemble in many respects the loan thresholds that determine institutional and transactional coverage in Regulation C. For example, both sets of thresholds relate to originations (rather than applications or purchases) and apply separately to closed-end mortgage loans and open-end lines of credit. In light of these similarities, the Bureau has used the institutional and transactional coverage thresholds in existing Regulation C as a model in interpreting certain aspects of the partial exemption thresholds in both the 2018 HMDA Rule and this proposed rule. The Bureau recognizes that there are advantages to industry stakeholders and others from using consistent language to describe similar requirements and therefore has used language in the proposed rule that parallels language in existing Regulation C wherever appropriate.

Proposed comments 3(d)–1 through –5 address certain issues relating to the partial exemptions that the 2018 HMDA Rule does not specifically discuss. Proposed comments 3(d)–1 through –3 explain how to determine whether a partial exemption applies to a transaction after a merger or acquisition. Proposed comment 3(d)–1 describes the application of the partial exemption thresholds to a surviving or newly formed institution. Proposed comment 3(d)–2 describes how CRA examination history is handled in the event of a

[120] 82 FR 43088, 43100 (Sept. 13, 2017).

[121] 82 FR 43088, 43102 (Sept. 13, 2017).

[122] *Id.* at 43095.

[123] The proposal would also make minor changes to an example in comment 3(c)(12)–1 effective January 1, 2020, to conform to the proposed change to the closed-end coverage threshold that is discussed in the section-by-section analysis of § 1003.2(g)(1)(v)(A) above.

[124] This proposed rule includes related amendments in § 1003.4 and its commentary referencing § 1003.3(d) that are discussed in the section-by-section analysis of § 1003.4. The Filing Instructions Guide for HMDA Data Collected in 2019 (2019 FIG) provides guidance to financial institutions on how to indicate in their HMDA submissions if they are invoking a partial exemption. *See* Fed. Fin. Insts. Examination Council (FFIEC), ''Filing Instructions Guide for HMDA Data Collected in 2019,'' at 21–54 (Oct. 2018), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2019-hmda-fig.pdf.*

merger or acquisition for purposes of proposed § 1003.3(d)(6), which implements the exception to the partial exemptions for certain less than satisfactory CRA examination histories in HMDA section 304(i)(3). Proposed comment 3(d)–3 describes the applicability of partial exemptions during the calendar year of a merger or acquisition and provides various examples. These proposed comments are modeled closely on existing comments 2(g)–3 and –4, which explain how to determine whether an institution satisfies the definition of financial institution in § 1003.2(g) after a merger or acquisition.

Proposed comment 3(d)–4 relates to whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of the partial exemption loan thresholds. Given the similarities between the coverage thresholds currently in Regulation C [125] and the partial exemption thresholds under the EGRRCPA, the Bureau believes that the same guidance for determining whether activities constitute an origination that applies for purposes of the coverage thresholds in Regulation C's definition of financial institution should apply with respect to the partial exemption thresholds. Consistent with the approach taken in existing comment 2(g)–5 for the definition of financial institution, proposed comment 3(d)–4 refers to comments 4(a)–2 through –4 for guidance on this issue in the context of the partial exemptions.

Proposed comment 3(d)–5 addresses questions about whether a financial institution that does not itself meet the requirements for a partial exemption can claim an exemption if an affiliate or parent company meets the requirements. It clarifies that a financial institution that is not itself an insured credit union or an insured depository institution [126] is not eligible for a partial exemption under § 1003.3(d)(2) and (3), even if it is owned by or affiliated with an insured credit union or an insured depository institution. This approach is consistent with HMDA section 304(i)(1) and (2), which by its terms applies ''[w]ith respect to an insured depository institution or insured credit union'' as defined in HMDA section 304(o). To clarify further the EGRRCPA's partial exemptions, the proposed comment also provides an example describing when a subsidiary of an insured credit union or insured depository institution could claim a partial exemption under § 1003.3(d) for its closed-end mortgage loans.

The Bureau requests comment on these proposed additions and the other proposed provisions of § 1003.3(d) that are discussed below, including whether these amendments appropriately implement section 104(a) of the EGRRCPA and whether there are any additional issues under the EGRRCPA that the Bureau should address in Regulation C.

3(d)(1)

Proposed § 1003.3(d)(1) and proposed comment 3(d)(1)(iii)–1 define terms related to the partial exemptions for purposes of proposed § 1003.3(d). Proposed § 1003.3(d)(1)(i) defines the term ''insured credit union'' to mean an insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and proposed § 1003.3(d)(1)(ii) defines the term ''insured depository institution'' to mean an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813). These definitions are consistent with the way HMDA section 304(o) defines the two terms for purposes of HMDA section 304.

Proposed § 1003.3(d)(1)(iii) and proposed comment 3(d)(1)(iii)–1 define the term ''optional data'' for purposes of proposed § 1003.3(d). For the reasons discussed below, proposed § 1003.3(d)(1)(iii) generally defines optional data as the data identified in § 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15) through (30), and (32) through (38). Proposed comment 3(d)(1)(iii)–1 explains that the definition of optional data in § 1003.3(d)(1)(iii) identifies the data that are covered by the partial exemptions for certain transactions of insured depository institutions and insured credit unions under § 1003.3(d). It also clarifies that, if a transaction is not partially exempt under § 1003.3(d)(2) or (3), a financial institution must collect, record, and report optional data as otherwise required under part 1003.

The EGRRCPA added partial exemptions to HMDA section 304(i), and the definition of optional data in proposed § 1003.3(d)(1)(iii) specifies the data points covered by the partial exemptions. As the 2018 HMDA Rule explains, if a transaction qualifies for one of the EGRRCPA's partial exemptions, HMDA section 304(i) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply. In the 2018 HMDA Rule, the Bureau interpreted the requirements of HMDA section 304(b)(5) and (6) to include the 26 data points listed in Table 1 in the 2018 HMDA Rule, which are found in § 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15) through (30), and (32) through (38).

The Dodd-Frank Act added HMDA section 304(b)(5) and (6), which requires reporting of certain data points and provides the Bureau discretion to require additional data points.[127] In the 2015 HMDA Rule, the Bureau implemented the new data points specified in the Dodd-Frank Act (including those added in HMDA section 304(b)(5) and (6)), added a number of additional data points pursuant to the Bureau's discretionary authority, and made revisions to certain pre-existing data points to clarify their requirements, provide greater specificity in reporting, and align certain data points more closely with industry data standards.

As explained in the 2018 HMDA Rule, the Bureau interprets the requirements

[125] *See* 12 CFR 1003.2(g)(1)(v) and (g)(2)(ii) and 1003.3(c)(11) and (12).

[126] For purposes of this proposed comment, insured credit union and insured depository institution are defined in proposed § 1003.3(d)(1)(i) and (ii), which, as explained below, mirrors how those terms are defined in HMDA section 304(o).

[127] HMDA section 304(b)(5) requires disclosure of the number and dollar amount of mortgage loans grouped according to measurements of:

- The total points and fees payable at origination in connection with the mortgage as determined by the Bureau;
- The difference between the APR associated with the loan and a benchmark rate or rates for all loans;
- The term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and
- Such other information as the Bureau may require.

HMDA section 304(b)(6) requires disclosure of the number and dollar amount of mortgage loans and completed applications grouped according to measurements of:

- The value of the real property pledged or proposed to be pledged as collateral;
- The actual or proposed term in months of any introductory period after which the rate of interest may change;
- The presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;
- The actual or proposed term in months of the mortgage loan;
- The channel through which application was made;
- As the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 5102 of this title;
- As the Bureau may determine to be appropriate, a universal loan identifier;
- As the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;
- The credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and
- Such other information as the Bureau may require.

of HMDA section 304(b)(5) and (6) for purposes of HMDA section 304(i) to include the 12 data points that the Bureau added to Regulation C in the 2015 HMDA Rule to implement data points specifically identified in HMDA section 304(b)(5)(A) through (C) or (b)(6)(A) through (I), which are the following: ULI; property address; rate spread; credit score; total loan costs or total points and fees; prepayment penalty term; loan term; introductory rate period; non-amortizing features; property value; application channel; and mortgage loan originator identifier.[128] As the 2018 HMDA Rule explains, the Bureau also interprets the requirements of HMDA section 304(b)(5) and (6) to include the 14 data points that were not found in Regulation C prior to the Dodd-Frank Act and that the Bureau required in the 2015 HMDA Rule citing its discretionary authority under HMDA section 304(b)(5)(D) and (b)(6)(J). Specifically, these data points are the following: The total origination charges associated with the loan; the total points paid to the lender to reduce the interest rate of the loan (discount points); the amount of lender credits; the interest rate applicable at closing or account opening; the debt-to-income ratio; the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio); for transactions involving manufactured homes, whether the loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land (manufactured home secured property type); the land property interest for loans or applications related to manufactured housing (manufactured home land property interest); the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs (multifamily affordable units); information related to the automated underwriting system used in evaluating an application and the result generated by the automated underwriting system; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit; whether the loan is primarily for a business or commercial purpose; and the reasons for denial of a loan application, which were optionally reported under the Board's rule but became mandatory in the 2015 HMDA Rule.[129] The 2018 HMDA Rule indicates that insured depository institutions and insured credit unions need not report these 26 data points for transactions that qualify for a partial exemption, unless otherwise required by their regulator.[130]

As the 2018 HMDA Rule explains, the Bureau interprets the requirements of HMDA section 304(b)(5) and (6) not to include four other data points that are similar or identical to data points added to Regulation C by the Board and that the Bureau re-adopted in the 2015 HMDA Rule: Lien status of the subject property; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); construction method for the dwelling related to the subject property; and the total number of individual dwelling units contained in the dwelling related to the loan (number of units).[131] The 2015 HMDA Rule did not alter the pre-existing Regulation C HOEPA status and lien status data requirements.[132] Construction method and total units, together, replaced the pre-existing Regulation C property type data point; the information required by the new data points is very similar to what the Board required, but institutions now must report the precise number of units rather than categorizing dwellings into one- to four-family dwellings and multifamily dwellings.[133]

The Board adopted its versions of these data points before HMDA section 304(b)(5) and (6) was added to HMDA by the Dodd-Frank Act, pursuant to HMDA authority that pre-existed section 304(b)(5) and (6). Although the Bureau cited HMDA section 304(b)(5) and (6) as additional support for these four data points in the 2015 HMDA Rule, the Bureau relied on HMDA section 305(a), which pre-dates the Dodd-Frank Act and independently provides legal authority for their adoption.[134] Given that these data points were not newly added by the Dodd-Frank Act or the Bureau, the Bureau concluded in the 2018 HMDA Rule that the EGRRCPA's amendments to HMDA section 304 do not affect them.[135]

The requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, also do not include 17 other data points included in the 2015 HMDA Rule that are similar or identical to pre-existing Regulation C data points established by the Board and that were not required by HMDA section 304(b)(5) and (6) or promulgated by the Bureau using discretionary authority under HMDA section 304(b)(5)(D) and (b)(6)(J). These are: The Legal Entity Identifier (which replaced the pre-existing respondent identifier); application date; loan type; loan purpose; preapproval; occupancy type; loan amount; action taken; action taken date; State; county; census tract; ethnicity; race; sex; income; and type of purchaser.[136] Additionally, the requirements of HMDA section 304(b)(5) and (6), and thus the partial exemptions, do not include age because the Dodd-Frank Act added that requirement instead to HMDA section 304(b)(4).[137]

Consistent with the scope of the new partial exemptions as explained in the 2018 HMDA Rule, the proposed general definition of optional data in § 1003.3(d)(1)(iii) encompasses 26 of the 48 data points currently set forth in Regulation C.

For ease of reference throughout § 1003.3(d), proposed § 1003.3(d)(1)(iv) defines partially exempt transaction as a covered loan or application that is partially exempt under § 1003.3(d)(2) or (3).

3(d)(2)

HMDA section 304(i)(1) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to closed-end mortgage loans of an insured depository institution or insured credit union if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. Proposed § 1003.3(d)(2) and proposed comment 3(d)(2)–1 implement this provision. Proposed

[128] 12 CFR 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15), (17), (22), (25) through (28), and (33) and (34).

[129] 12 CFR 1003.4(a)(16), (18) through (21), (23) and (24), (29) and (30), (32), and (35) through (38).

[130] Financial institutions regulated by the OCC are required to report reasons for denial on their HMDA loan/application registers pursuant to 12 CFR 27.3(a)(1)(i) and 128.6. Similarly, pursuant to regulations transferred from the Office of Thrift Supervision, certain financial institutions supervised by the FDIC are required to report reasons for denial on their HMDA loan/application registers. 12 CFR 390.147.

[131] 12 CFR 1003.4(a)(5), (13) and (14), and (31).

[132] The 2015 HMDA Rule extended the requirement to report lien status to purchased loans and no longer requires reporting of information about unsecured loans. 80 FR 66128, 66201 (Oct. 28, 2015).

[133] Prior to 2018, Regulation C required reporting of property type as one- to four-family dwelling (other than manufactured housing), manufactured housing, or multifamily dwelling, whereas the current rule requires reporting of whether the dwelling is site-built or a manufactured home, together with the number of individual dwelling units.

[134] 80 FR 66128, 66180–81, 66199–201, 66227 (Oct. 28, 2015).

[135] This interpretation is consistent with the EGRRCPA's legislative history, which suggests that Congress was focused on relieving regulatory burden associated with the Dodd-Frank Act. *See, e.g.,* 164 Cong. Rec. S1423–24 (daily ed. Mar. 7, 2018) (statement of Sen. Crapo), S1529–30 (statement of Sen. McConnell), S1532–33 (statement of Sen. Cornyn), S1537–39 (statement of Sen. Lankford), S1619–20 (statement of Sen. Cornyn).

[136] 12 CFR 1003.4(a)(1)(ii), (a)(2) through (4) and (6) through (8), (a)(9)(ii), and (a)(10) and (11) and 1003.5(a)(3).

[137] Dodd-Frank Act section 1094(3)(A)(i).

§ 1003.3(d)(2) states that, except as provided in § 1003.3(d)(6), an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans that are not excluded from part 1003 pursuant to § 1003.3(c)(1) through (10) or (c)(13) is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases.

The EGRRCPA and HMDA do not define the term ''closed-end mortgage loan'' for purposes of HMDA section 304(i). They also do not specify whether the term includes loans that would otherwise not be subject to HMDA reporting under Regulation C, such as loans used primarily for agricultural purposes.[138] The Bureau explained in the 2018 HMDA Rule that the term ''closed-end mortgage loan'' as used in HMDA section 304(i) is best interpreted to include only those closed-end mortgage loans that would otherwise be reportable under HMDA. This interpretation is consistent with how loans are counted for purposes of the thresholds in Regulation C's existing institutional and transactional coverage provisions, which are independent of the new partial exemptions and unaffected by the EGRRCPA.[139] Accordingly, in the 2018 HMDA Rule, the Bureau interpreted the term ''closed-end mortgage loan'' to include any closed-end mortgage loan as defined in § 1003.2(d) that is not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (c)(13). Proposed § 1003.3(d)(2) would incorporate that interpretation into Regulation C.

Proposed comment 3(d)(2)–1 provides an illustrative example of how the closed-end partial exemption threshold works. For the reasons stated in the section-by-section analysis of § 1003.3(d) above, proposed comment 3(d)(2)–1 also provides a cross-reference to comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

3(d)(3)

HMDA section 304(i)(2) provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to open-end lines of credit of an insured depository institution or insured credit union if it originated fewer than 500 open-end lines of credit in each of the two preceding calendar years. Proposed § 1003.3(d)(3) and proposed comment 3(d)(3)–1 implement this provision. Proposed § 1003.3(d)(3) provides that, except as provided in § 1003.3(d)(6), an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from part 1003 pursuant to § 1003.3(c)(1) through (10) is not required to collect, record, report, or disclose optional data as defined in § 1003.3(d)(1)(iii) for applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases.

The EGRRCPA and HMDA do not define the term ''open-end line of credit'' for purposes of HMDA section 304(i). They also do not specify whether the term includes lines of credit that would otherwise not be subject to HMDA reporting under Regulation C, such as loans used primarily for agricultural purposes.[140] The Bureau explained in the 2018 HMDA Rule its belief that the term ''open-end line of credit'' as used in HMDA section 304(i) is best interpreted to include only those open-end lines of credit that would otherwise be reportable under HMDA. This interpretation is consistent with how lines of credit are counted for purposes of the thresholds in Regulation C's existing institutional and transactional coverage provisions, which are independent of the new partial exemptions and unaffected by the EGRRCPA. Accordingly, in the 2018 HMDA Rule, the Bureau interpreted the term ''open-end line of credit'' to include any open-end line of credit as defined in § 1003.2(o) that is not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10). Proposed § 1003.3(d)(3) would incorporate that interpretation into Regulation C.

Proposed comment 3(d)(3)–1 provides a cross-reference to § 1003.3(c)(12) and comments 3(c)(12)–1 and –2, which provide an exclusion for certain open-end lines of credit from Regulation C and permit voluntary reporting of such transactions under certain circumstances. While the temporary threshold of 500 open-end lines of credit is in place for institutional and transactional coverage, all of the open-end lines of credit that are covered by the partial exemption for open-end lines of credit in HMDA section 304(i)(2) are completely excluded from the requirements of part 1003 under current §§ 1003.2(g)(1)(v) and 1003.3(c)(12). For the reasons stated in the section-by-section analysis of § 1003.3(d) above, proposed comment 3(d)(3)–1 also provides a cross-reference to comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

3(d)(4)

Some data points required under Regulation C are reported using multiple data fields, such as the property address data point, which consists of street address, city, State, and Zip Code data fields. The 2018 HMDA Rule provides that insured depository institutions and insured credit unions covered by a partial exemption have the option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data. Proposed § 1003.3(d)(4) and proposed comments 3(d)(4)–1 to –3 and 3(d)(4)(i)–1 would incorporate this aspect of the 2018 HMDA Rule into Regulation C and provide additional clarity regarding voluntary reporting of the property address data point.

As the 2018 HMDA Rule explains, whether a partial exemption applies to an institution's lending activity for a particular calendar year depends on an institution's origination activity in each of the preceding two years and, in some cases, cannot be determined until just before data collection must begin for that particular calendar year. For example, whether a partial exemption applies to closed-end mortgage loans for which final action is taken in 2020 depends on the number of closed-end mortgage loans originated by the insured depository institution or insured credit union in 2018 and 2019. Thus, an insured depository institution or insured credit union might not know until the end of 2019 what information it needs to collect in 2020 and report in 2021. Some insured depository institutions and insured credit unions

[138] 12 CFR 1003.3(c)(9).

[139] As discussed above in the section-by-section analysis of §§ 1003.2(g) and 1003.3(c), the current definition of ''depository financial institution'' in § 1003.2(g)(1)(v) is limited to institutions that either (1) originated in each of the two preceding calendar years at least 25 closed-end mortgage loans that are not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10) or (c)(13); or (2) originated in each of the two preceding calendar years at least 500 open-end lines of credit that are not excluded from Regulation C pursuant to § 1003.3(c)(1) through (10). *See also* 12 CFR 1003.3(c)(11), (12) (excluding closed-end mortgage loans from the requirements of Regulation C if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, and excluding open-end lines of credit from the requirements of Regulation C if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years). The threshold of 500 open-end lines of credit for institutional and transactional coverage in Regulation C is temporary.

[140] *See* 12 CFR 1003.3(c)(9).

eligible for a partial exemption under the EGRRCPA may therefore find it less burdensome to report all of the data, including the exempt data points, than to separate the exempt data points from the required data points and exclude the exempt data points from their submissions.[141] Even when insured depository institutions and insured credit unions have had time to adjust their systems to implement the partial exemptions, some may still find it less burdensome to report data covered by a partial exemption, especially if their loan volumes tend to fluctuate just above or below the threshold from year to year. The Bureau concluded in the 2018 HMDA Rule that section 104(a) is best interpreted as permitting optional reporting of data covered by the EGRRCPA's partial exemptions. Section 104(a) provides that certain requirements do not apply to affected institutions but does not prohibit those affected institutions from voluntarily reporting data. This interpretation is consistent not only with the statutory text but also with the apparent congressional intent to reduce burden on certain institutions. Accordingly, the Bureau interpreted the EGRRCPA in the 2018 HMDA Rule to permit insured depository institutions and insured credit unions voluntarily to report data that are covered by the partial exemptions.

Aspects of the Bureau's current HMDA platform used for receiving HMDA submissions, including edit checks[142] performed on incoming submissions, are set up with the expectation that HMDA reporters will provide data for an entire data point when data are reported for any data field within that data point. The Bureau explained in the 2018 HMDA Rule that adjusting the HMDA platform to accept submissions in which affected institutions report some, but not all, data fields in a data point covered by a partial exemption for a specific transaction would increase operational complexity and costs associated with changing the HMDA edits in the Filing Instructions Guide for HMDA Data Collected. Doing so would result in a less efficient implementation and submission process for the Bureau, HMDA reporters, their vendors, and other key stakeholders. Accordingly, the Bureau indicated in the 2018 HMDA Rule that the HMDA platform would continue to accept submissions of a data field that is covered by a partial exemption under the EGRRCPA for a specific loan or application as long as insured depository institutions and insured credit unions that choose to voluntarily report the data include all other data fields that the data point comprises.

Proposed § 1003.3(d)(4) incorporates the voluntary reporting interpretations and procedures from the 2018 HMDA Rule into Regulation C. Since issuing the 2018 HMDA Rule, the Bureau has also received questions relating to voluntary reporting of property address under § 1003.4(a)(9)(i) because the property address data point under § 1003.4(a)(9)(i) is covered by the partial exemptions and includes State as a data field, and State is also a separate data point under § 1003.4(a)(9)(ii)(A) that is not covered by the partial exemptions. To address possible confusion, the Bureau has included additional detail in proposed § 1003.3(d)(4) and proposed comment 3(d)(4)(i)–1 about voluntary reporting of property address.

Proposed § 1003.3(d)(4) provides that a financial institution eligible for a partial exemption under § 1003.3(d)(2) or (3) may collect, record, and report optional data as defined in § 1003.3(d)(1)(iii) for a partially exempt transaction as though the institution were required to do so, provided that: (i) If the institution reports the street address, city name, or Zip Code for the property securing a covered loan, or in the case of an application, proposed to secure a covered loan pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt; and (ii) If the institution reports any data for the transaction pursuant to § 1003.4(a)(15), (16), (17), (27), (33), or (35), it reports all data that would be required by § 1003.4(a)(15), (16), (17), (27), (33), or (35), respectively, if the transaction were not partially exempt.

Proposed comment 3(d)(4)–1 provides an example of voluntary reporting that is permitted under proposed § 1003.3(d)(4). Proposed comment 3(d)(4)–2 addresses how financial institutions may handle partially exempt transactions within the same loan/application register. It explains that a financial institution may collect, record, and report optional data for some partially exempt transactions under § 1003.3(d) in the manner specified in § 1003.3(d)(4), even if it does not collect, record, and report optional data for other partially exempt transactions under § 1003.3(d).

Proposed comment 3(d)(4)–3 addresses how to handle a transaction that is partially exempt pursuant to § 1003.3(d) and for which a particular requirement to report optional data is not applicable to the transaction. The proposed comment explains that, in that circumstance, the insured depository institution or insured credit union complies with the particular requirement by reporting either that the transaction is exempt from the requirement or that the requirement is not applicable.[143] It also explains that an institution is considered as reporting data in a data field for purposes of § 1003.3(d)(4)(i) and (ii) if it reports not applicable for that data field for a partially exempt transaction. The proposed comment also provides examples.

Proposed comment 3(d)(4)(i)–1 explains that, if an institution eligible for a partial exemption under § 1003.3(d)(2) or (3) reports the street address, city name, or Zip Code for a partially exempt transaction pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt, including the State. The proposed comment also explains that an insured depository institution or insured credit union that reports the State pursuant to § 1003.4(a)(9)(ii) or comment 4(a)(9)(ii)–1 for a partially exempt transaction without reporting any other data required by § 1003.4(a)(9)(i) is not required to report the street address, city name, or Zip Code pursuant to § 1003.4(a)(9)(i). The Bureau believes that this proposed comment would help to clarify that, even though State is a property address

[141] The Bureau recognized in the 2018 HMDA Rule that this might be particularly true with respect to data submission in 2019, as collection of 2018 data was already underway when the EGRRCPA took effect, and system changes implementing the new partial exemptions may take time to complete. In the 2018 HMDA Rule, the Bureau interpreted the EGRRCPA to apply to data that are collected or reported under HMDA on or after May 24, 2018. Because data collected from January 1, 2018, to May 23, 2018, would not be reported until early 2019, the EGRRCPA relieves insured depository institutions and insured credit unions that are eligible for a partial exemption of the obligation to report certain data in 2019 that may have been collected before May 24, 2018. If optional reporting of data covered by a partial exemption were not permitted, such institutions would have had to remove exempt data previously collected before submitting their 2018 data in early 2019, a process that could have been burdensome for some institutions.

[142] The HMDA edit checks are rules to assist filers in checking the accuracy of HMDA data prior to submission. The 2019 FIG, a compendium of resources to help financial institutions file HMDA data collected in 2019 with the Bureau in 2020, explains that there are four types of edit checks: Syntactical, validity, quality, and macro quality. Table 2 (Loan/Application Register) in the 2019 FIG identifies the data fields currently associated with each data point. *See* FFIEC, ''Filing Instructions Guide for HMDA Data Collected in 2019,'' at 15–65 (Oct. 2018), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2019-hmda-fig.pdf.*

[143] As noted above, the 2019 FIG provides guidance to financial institutions on how to indicate in their HMDA submissions if they are invoking a partial exemption. *See supra* note 124.

data field under § 1003.4(a)(9)(i), reporting State does not trigger the requirement to report other property address data fields under § 1003.3(d)(4)(i), because State is also a stand-alone data point under § 1003.4(a)(9)(ii)(A) that is not covered by the partial exemptions.

3(d)(5)

Pursuant to HMDA section 304(i), insured depository institutions and insured credit unions are not required to report a ULI for partially exempt transactions.[144] To ensure that partially exempt transactions can be identified in the HMDA data, the 2018 HMDA Rule requires financial institutions to provide a non-universal loan identifier (NULI) that meets certain requirements for any partially exempt transaction for which they do not report a ULI. For the reasons that follow, proposed § 1003.3(d)(5) and proposed comments 3(d)(5)–1 and –2 would incorporate the NULI requirements from the 2018 HMDA Rule into Regulation C, with minor adjustments for clarity.

In the 2015 HMDA Rule, the Bureau interpreted ULI as used in HMDA section 304(b)(6)(G) to mean an identifier that is unique within the industry and required that the ULI include the Legal Entity Identifier of the institution that assigned the ULI. Although the EGRRCPA exempts certain transactions from the ULI requirement, loans and applications must be identifiable in the HMDA data to ensure proper HMDA submission, processing, and compliance.[145] The EGRRCPA did not change this baseline component of data reporting, which pre-dates the Dodd-Frank Act's HMDA amendments and existed under Regulation C prior to the 2015 HMDA Rule. Accordingly, while insured depository institutions and insured credit unions do not have to report a ULI for a partially exempt transaction, they must continue to provide certain information so that each loan and application they report for HMDA purposes is identifiable. The ability to identify individual loans and applications is necessary to facilitate efficient and orderly submission of HMDA data and communications between the institution, the Bureau, and other applicable regulators. For example, identification of loans and applications is necessary to ensure that it is possible to address problems identified when edit checks are done upon submission or questions that arise when HMDA submissions are otherwise reviewed by regulators.

To ensure the orderly administration of the HMDA program, proposed § 1003.3(d)(5) and proposed comments 3(d)(5)–1 and –2 would incorporate the NULI requirements of the 2018 HMDA Rule into Regulation C with minor adjustments. As the 2018 HMDA Rule explains, a NULI does not need to be unique within the industry and therefore does not need to include a Legal Entity Identifier as the ULI does. A check digit is not required as part of a NULI, as it is for a ULI under § 1003.4(a)(1)(i)(C), but may be voluntarily included in a NULI provided that the NULI, including the check digit, does not exceed 22 characters. Beyond these important differences, there are a number of similarities between the requirements for the ULI and those for the NULI. To the extent that NULI requirements resemble requirements for the ULI, the Bureau has attempted to conform proposed § 1003.3(d)(5) and its proposed commentary to the corresponding text of existing § 1003.4(a)(1)(i) and its commentary for ease of reference and consistency.

Proposed § 1003.3(d)(5) provides that, if, pursuant to § 1003.3(d)(2) or (3), a financial institution does not report a ULI pursuant to § 1003.4(a)(1)(i) for an application for a covered loan that it receives, a covered loan that it originates, or a covered loan that it purchases, the financial institution shall assign and report a NULI. It further provides that, to identify the covered loan or application, the NULI must be composed of up to 22 characters, which:

- May be letters, numerals, or a combination of letters and numerals;
- Must be unique within the annual loan/application register in which the covered loan or application is included; and
- Must not include any information that could be used to directly identify the applicant or borrower.

Proposed comment 3(d)(5)–1 explains the requirement that the NULI must be unique within the annual loan/application register in which the covered loan or application is included. Proposed comment 3(d)(5)–2 clarifies the scope of information that could be used to directly identify the applicant or borrower for purposes of § 1003.3(d)(5)(iii), using the same language that appears in comment 4(a)(1)(i)–2 with respect to the ULI.

The proposed rule's requirements for the NULI are consistent with those in the 2018 HMDA Rule. However, the 2018 HMDA Rule states that the NULI must be ''unique within the insured depository institution or credit union,'' whereas proposed § 1003.3(d)(5)(ii) states that the NULI must be ''unique within the annual loan/application register in which the covered loan or application is included.'' This adjustment and similar adjustments that appear in proposed comment 3(d)(5)–1 are intended to clarify that the NULI must be unique within a financial institution's yearly HMDA submission but the NULI does not need to be unique across reporting years. For the same reason, the proposed rule does not incorporate the portion of the 2018 HMDA Rule stating that a financial institution may not use a NULI previously reported if the institution reinstates or reconsiders an application that was reported in a prior calendar year.[146] Thus, the proposed rule would allow a financial institution to use the same NULI for a partially exempt transaction in its 2021 loan/application register that the institution used for a different partially exempt transaction in its 2020 loan/application register. Because final action on an application may be taken in a different year than the year in which a NULI is assigned (for example, for applications received late in the year), insured depository institutions and insured credit unions may opt not to reassign NULIs that they have assigned previously in order to ensure that all NULIs included in their annual loan/application register are unique within that annual loan/application register.

The Bureau recognizes that some insured depository institutions and insured credit unions may prefer to report a ULI for partially exempt transactions even if they are not required to do so. As explained in the 2018 HMDA Rule and in the section-by-section analysis of § 1003.3(d)(4) above and of § 1003.4(a)(1)(i) below, voluntary reporting of ULIs for partially exempt transactions is permissible under the EGRRCPA, and no NULI is required if a ULI is provided.

3(d)(6)

Notwithstanding the EGRRCPA's partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution shall comply with HMDA section 304(b)(5) and (6) if the insured depository institution has received a rating of ''needs to improve record of meeting community credit

[144] Prior to the passage of the Dodd-Frank Act, the Board required reporting of an identifying number for the loan or application but did not require that the identifier be universal. HMDA section 304(b)(6)(G) requires reporting of, ''as the Bureau may determine to be appropriate, a universal loan identifier.''

[145] HMDA requires that covered loans and applications be ''itemized in order to clearly and conspicuously disclose'' the applicable data for each loan or application. 12 U.S.C. 2803(a)(2).

[146] 83 FR 45325, 45330 (Sept. 7, 2018).

needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the CRA. To implement this provision, proposed § 1003.3(d)(6) provides that § 1003.3(d)(2) and (3) do not apply to an insured depository institution that, as of the preceding December 31, had received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the CRA.

As the Bureau explained in the 2018 HMDA Rule, the EGRRCPA does not specify the date as of which an insured depository institution's two most recent CRA examinations must be assessed for purposes of the exception in HMDA section 304(i)(3). In the 2018 HMDA Rule, the Bureau interpreted HMDA section 304(i)(3) to require that this assessment be made as of December 31 of the preceding calendar year. This timing is consistent with the timing for assessing Regulation C's asset-size threshold and requirement that a financial institution have a home or branch office located in a Metropolitan Statistical Area (MSA), which are both assessed as of the preceding December 31.[147] It also ensures that financial institutions can determine before they begin collecting information in any given calendar year whether they are eligible for a partial exemption for information collected for certain transactions in that year. Proposed § 1003.3(d)(6) would incorporate this interpretation into Regulation C.

Proposed comment 3(d)(6)–1 explains that the preceding December 31 means the December 31 preceding the current calendar year. It includes the same example that was provided in the 2018 HMDA Rule to illustrate how the exception works, with minor wording changes for clarity.

Section 1003.4 Compilation of Reportable Data

4(a) Data Format and Itemization

Section 1003.4(a) requires financial institutions to collect specific data about covered loans, applications for covered loans, and purchases of covered loans. The EGRRCPA provides partial exemptions from this requirement for certain transactions of insured depository institutions and insured credit unions. To conform to the EGRRCPA, the Bureau proposes to amend the introductory paragraph of § 1003.4(a) to indicate that the requirement to collect the data identified in § 1003.4(a) is applicable except as specified in proposed § 1003.3(d), which implements the new partial exemptions. The proposed rule would also make a similar change to comment 4(a)–1. The Bureau requests comment on these proposed amendments and the other proposed amendments to § 1003.4(a) relating to the partial exemptions that are discussed below, including whether these amendments would appropriately implement section 104(a) of the EGRRCPA and whether there are any additional issues under the EGRRCPA that the Bureau should address in § 1003.4(a).

4(a)(1)(i)

Section 1003.4(a)(1)(i) generally requires a financial institution to assign and report a ULI for the covered loan or application that can be used to identify and retrieve the covered loan or application file. As explained in the 2018 HMDA Rule and the section-by-section analysis of § 1003.3(d)(5) above, a financial institution is not required to assign and report a ULI for a partially exempt transaction if it instead assigns and reports a NULI. The Bureau therefore proposes to amend § 1003.4(a)(1)(i) to indicate that, for a partially exempt transaction under § 1003.3(d), the data collected shall include either a ULI or a NULI as described in § 1003.3(d)(5), and that a financial institution does not need to assign and report a ULI for a partially exempt transaction for which a NULI is assigned and reported under § 1003.3(d).

The Bureau also proposes to amend comment 4(a)(1)(i)–3 to indicate that the requirement to report the same ULI that was previously assigned or reported for purchased covered loans does not apply if the purchase of the covered loan is a partially exempt transaction under § 1003.3(d). Because the partial exemptions are only available to insured depository institutions that are not disqualified by their CRA examination histories and insured credit unions for certain transactions as set forth in § 1003.3(d), it is possible that a financial institution's purchase of a covered loan that was partially exempt when originated would not be a partially exempt transaction and that the purchasing financial institution would therefore need to assign a ULI. Comment 4(a)(1)(i)–3 would therefore clarify that a financial institution that purchases a covered loan and is ineligible for a partial exemption with respect to the purchased covered loan must assign a ULI and record and submit it in its loan/application register pursuant to § 1003.5(a)(1) if the financial institution that originated the loan did not assign a ULI. Consistent with the 2018 HMDA Rule, the proposed amendment to comment 4(a)(1)(i)–3 would clarify that this may occur, for example, if the loan was assigned a NULI under § 1003.3(d)(5) rather than a ULI by the loan originator.

The Bureau also proposes to amend comment 4(a)(1)(i)–4 to clarify the example provided in that comment of how ULIs are assigned if a financial institution reconsiders an application that was reported in a prior calendar year. The amendments clarify that the example assumes that the financial institution reported a ULI rather than a NULI in 2020 for the initial denied application and that the financial institution then made an origination that is not partially exempt when it reconsidered in 2021 the previously denied application.

The Bureau also proposes to add a new comment 4(a)(1)(i)–6 explaining that, for a partially exempt transaction under § 1003.3(d), a financial institution may report a ULI or a NULI. The proposed comment cross-references § 1003.3(d)(5) and comments 3(d)(5)–1 and –2 for guidance on the NULI. The Bureau believes that these proposed changes would help clarify financial institutions' responsibilities in assigning identifiers to partially exempt transactions.

4(a)(1)(ii)

Section 1003.4(a)(1)(ii) generally requires financial institutions to collect the date the application was received or the date shown on the application form. Comment 4(a)(1)(ii)–3 explains that, if, within the same calendar year, an applicant asks a financial institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction using the same ULI or as a new transaction with a new ULI. The Bureau believes that it is appropriate to apply the same approach with respect to NULIs. The Bureau is therefore proposing to amend comment 4(a)(1)(ii)–3 to reference both ULIs and NULIs.

4(a)(9)

Section 1003.4(a)(9) generally requires a financial institution to report the

[147] 12 CFR 1003.2(g)(1)(i) and (ii) and (g)(2)(i); comment 2(g)–1.

property address of the location of the property securing a covered loan or, in the case of an application, proposed to secure a covered loan (property address), as well as the State, the county, and in some cases the census tract of the property if the property is located in an MSA or Metropolitan Division (MD) in which the financial institution has a home or branch office, or if the institution is subject to § 1003.4(e). Comment 4(a)(9)–2 addresses situations involving multiple properties with more than one property taken as security. The comment explains that, if an institution is required to report specific information about the property identified in § 1003.4(a)(9) by another section of Regulation C such as, for example, § 1003.4(a)(29) or (30), the institution reports the information that relates to the property identified in § 1003.4(a)(9). The Bureau proposes to amend comment 4(a)(9)–2 to clarify that, in this circumstance, if the transaction is partially exempt under § 1003.3(d) and no data are reported pursuant to § 1003.4(a)(9), the institution reports the information that relates to the property that the institution would have identified in § 1003.4(a)(9) if the transaction were not partially exempt. This would mean that, for a partially exempt transaction in which more than one property is taken as security and no data are reported under § 1003.4(a)(9), a financial institution should choose one of the properties taken as a security that contains a dwelling and provide information about that property if the institution is required to report specific information about the property identified in § 1003.4(a)(9) by one or more other sections of Regulation C. The Bureau believes that this proposed amendment would assist financial institutions in applying comment 4(a)(9)–2 to partially exempt transactions.

4(a)(9)(i)

Section 1003.4(a)(9)(i) generally requires a financial institution to report the property address. To implement the EGRRCPA's partial exemptions, the Bureau proposes to amend comment 4(a)(9)(i)–1 to clarify that the requirement to report property address does not apply to partially exempt transactions under § 1003.3(d).

4(a)(12)

Section 1003.4(a)(12) generally requires a financial institution to report the rate spread for covered loans and applications that are approved but not accepted, and that are subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(12)–7 to provide that § 1003.4(a)(12) does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(15)

Section 1003.4(a)(15) generally requires financial institutions to report the credit score or scores relied on in making the credit decision and information about the scoring model used to generate each score. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(15)–1 to clarify that the requirement to report the credit score or scores relied on in making the credit decision and information about the scoring model used to generate each score does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(16)

Section 1003.4(a)(16) generally requires financial institutions to report the principal reason(s) for denial of an application. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(16)–4 to clarify that the requirement to report the principal reason(s) for denial of an application does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(17)

Section 1003.4(a)(17) generally requires that, for covered loans subject to Regulation Z § 1026.43(c), a financial institution shall report the amount of total loan costs if a disclosure is provided for the covered loan pursuant to Regulation Z § 1026.19(f), or the total points and fees charged in connection with the covered loan if the covered loan is not subject to the disclosure requirements in Regulation Z § 1026.19(f). To implement the EGRRCPA's partial exemptions, the proposed rule would amend comments 4(a)(17)(i)–1 and (ii)–1 to clarify that the requirement to report total loan costs or total points and fees, as applicable, does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(18)

Section 1003.4(a)(18) generally requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total of all borrower-paid origination charges. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(18)–1 to clarify that the requirement to report borrower-paid origination charges does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(19)

Section 1003.4(a)(19) generally requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the points paid to the creditor to reduce the interest rate. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(19)–1 to clarify that the requirement to report discount points does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(20)

Section 1003.4(a)(20) generally requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the amount of lender credits. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(20)–1 to clarify that the requirement to report lender credits does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(21)

Section 1003.4(a)(21) generally requires financial institutions to report the interest rate applicable to the approved application or to the covered loan at closing or account opening. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(21)–1 to clarify that the requirement to report interest rate does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(22)

Section 1003.4(a)(22) generally requires financial institutions to report the term in months of any prepayment penalty for covered loans or applications subject to Regulation Z, 12 CFR part 1026. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(22)–1 to clarify that the requirement to report the term of any prepayment penalty does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(23)

Section 1003.4(a)(23) generally requires financial institutions to report

the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision (debt-to-income ratio). To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(23)–1 to clarify that the requirement to report the debt-to-income ratio does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(24)

Section 1003.4(a)(24) generally requires financial institutions to report the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision (combined loan-to-value ratio). To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(24)–1 to clarify that the requirement to report the combined loan-to-value ratio does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(25)

Section 1003.4(a)(25) generally requires financial institutions to report the scheduled number of months after which the legal obligation will mature or terminate or would have matured or terminated (loan term). To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(25)–5 to clarify that the requirement to report loan term does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(26)

Section 1003.4(a)(26) generally requires financial institutions to report the number of months, or proposed number of months in the case of an application, from the closing or account opening until the first date the interest rate may change. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(26)–1 to clarify that the requirement to report the number of months, or proposed number of months in the case of an application, from closing or account opening until the first date the interest rate may change does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(27)

Section 1003.4(a)(27) generally requires financial institutions to report contractual features that would allow payments other than fully amortizing payments. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(27)–1 to clarify that the requirement to report contractual features that would allow payments other than fully amortizing payments does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(28)

Section 1003.4(a)(28) generally requires financial institutions to report the value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(28)–1 to clarify that the requirement to report the property value relied on in making the credit decision does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(29)

Section 1003.4(a)(29) generally requires financial institutions to report whether a covered loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(29)–4 to clarify that the requirement to report whether a covered loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(30)

Section 1003.4(a)(30) generally requires financial institutions to report whether the applicant or borrower owns the land on which a manufactured home is or will be located through a direct or indirect ownership interest or leases the land through a paid or unpaid leasehold interest. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(30)–6 to clarify that the requirement to report ownership or leasing information on the manufactured home land property interest does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(32)

Section 1003.4(a)(32) generally requires financial institutions to report information on the number of individual dwelling units in multifamily dwellings that are income-restricted pursuant to Federal, State, or local affordable housing programs. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(32)–6 to clarify that the requirement to report information on the number of individual dwelling units in multifamily dwellings that are income-restricted pursuant to Federal, State, or local affordable housing programs does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(33)

Section 1003.4(a)(33) generally requires financial institutions to report whether the applicant or borrower submitted the application for the covered loan directly to the financial institution and whether the obligation arising from the covered loan was, or in the case of an application, would have been initially payable to the financial institution. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comments 4(a)(33)(i)–1 and 4(a)(33)(ii)–1 to clarify that the requirement for financial institutions to report whether the applicant or borrower submitted the application for the covered loan directly to the financial institution and whether the obligation arising from the covered loan was, or in the case of an application, would have been initially payable to the financial institution, does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(34)

Section 1003.4(a)(34) generally requires financial institutions to report the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR ID) for the mortgage loan originator. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(34)–1 to clarify that the requirement for financial institutions to report the NMLSR ID does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(35)

Section 1003.4(a)(35) generally requires financial institutions to report the name of the automated underwriting system (AUS) used by the financial institution to evaluate the application and the result generated by that AUS. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(35)–1 to clarify that the requirement for financial institutions to report the name of the AUS used to evaluate the application and the result generated by that AUS does not apply to transactions that are

partially exempt under proposed § 1003.3(d).

4(a)(37)

Section 1003.4(a)(37) requires financial institutions to identify whether the covered loan or the application is for an open-end line of credit. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(37)–1 to clarify that the requirement for financial institutions to identify whether the covered loan or the application is for an open-end line of credit does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(a)(38)

Section 1003.4(a)(38) requires financial institutions to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose. To implement the EGRRCPA's partial exemptions, the proposed rule would amend comment 4(a)(38)–1 to clarify that the requirement for financial institutions to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose does not apply to transactions that are partially exempt under proposed § 1003.3(d).

4(e) Data Reporting for Banks and Savings Associations That Are Required To Report Data on Small Business, Small Farm, and Community Development Lending Under CRA

Section 1003.4(e) provides that banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the CRA shall also collect the information required by § 1003.4(a)(9) for property located outside MSAs and MDs in which the institution has a home or branch office, or outside any MSA. Section 1003.4(e) requires collection only of the information required by § 1003.4(a)(9)(ii) regarding the location of the property by State, county, and census tract because § 1003.4(a)(9)(i) itself requires collection of property address regardless of whether the property is located in an MSA or MD.[148] The proposed rule would amend § 1003.4(e) by changing the cross-reference from § 1003.4(a)(9) to § 1003.4(a)(9)(ii) in order to clarify that § 1003.4(e) only relates to the information required by § 1003.4(a)(9)(ii) without making any substantive changes. The Bureau believes that this proposed clarification of § 1003.4(e) would assist financial institutions and other stakeholders by making it clear that § 1003.4(e) does not require reporting of property address information required by § 1003.4(a)(9)(i) when a partial exemption applies.

V. Effective Dates for Proposed Rule

The Bureau proposes that the amendments included in this proposal take effect in stages, as provided in the proposed amendatory instructions below. The Bureau proposes that the proposed amendments that incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA take effect on January 1, 2020. This would allow stakeholders to benefit without significant delay from the additional certainty and clarity that the Regulation C amendments will provide regarding the EGRRCPA partial exemptions that are already in effect.[149]

The Bureau proposes that the proposed adjustment to the closed-end threshold for institutional and transactional coverage take effect on January 1, 2020. Making this adjustment at the beginning of the calendar year would assist lenders in complying with data collection requirements, and making this adjustment at the beginning of 2020 would result in a decrease sooner in the significant compliance burden associated with data reporting for closed-end mortgage loans than if the adjustment were to be made in 2021 or later years. The Bureau proposes that the proposed temporary threshold of 500 open-end lines of credit for institutional and transactional coverage take effect on January 1, 2020. This effective date corresponds to the date when the initial temporary open-end coverage threshold established in the 2017 HMDA Rule is otherwise set to expire. The Bureau proposes that the threshold of 200 open-end lines of credit for institutional and transactional coverage take effect when the proposed temporary threshold expires on January 1, 2022, to allow affected institutions time to prepare to begin reporting and to provide the Bureau with additional time to assess how a requirement to report open-end lines of credit would affect institutions whose origination volume falls just above the proposed threshold of 200 open-end lines of credit.

The Bureau solicits comment on the proposed effective dates.

VI. Dodd-Frank Act Section 1022(b) Analysis of Proposed Rule

The Bureau is considering the potential benefits, costs, and impacts of this proposed rule.[150] The Bureau requests comment on the preliminary discussion presented below as well as submissions of additional data that could inform the Bureau's consideration of the benefits, costs, and impacts of this proposed rule. In developing this proposed rule, the Bureau has consulted with or offered to consult with the prudential regulators (the Board, the FDIC, the NCUA, and the OCC), the Department of Agriculture, the Department of Housing and Urban Development (HUD), the Department of Justice, the Department of the Treasury, the Department of Veterans Affairs, the Federal Housing Finance Agency, the Federal Trade Commission, and the Securities and Exchange Commission regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

As discussed in greater detail elsewhere throughout this supplementary information, in this proposed rulemaking the Bureau is proposing to incorporate into Regulation C, which implements HMDA, the interpretations and procedures from the 2018 HMDA Rule and to implement further section 104(a) of the EGRRCPA. The Bureau is also proposing to amend Regulation C, effective January 1, 2020, to increase the threshold for reporting data about closed-end mortgage loans to either 50 or 100 originated closed-end mortgage loans in each of the two preceding years. The Bureau in addition is proposing to amend Regulation C to extend for a period of two additional years the current data reporting threshold of 500 open-end lines of credit and then to set that threshold at 200 open-end lines of credit beginning in calendar year 2022. As a result, financial institutions originating fewer

[148] When the Board added § 1003.4(e) to Regulation C, the property address information that is now specified in § 1003.4(a)(9)(i) was not yet required. *See* 80 FR 66128, 66186 (Oct. 28, 2015) (noting that § 1003.4(e) predates the 2015 HMDA Rule, which added the property address requirement now in § 1003.4(a)(9)(i)).

[149] As noted, many of the proposed amendments would merely incorporate into Regulation C provisions of the EGRRCPA and the 2018 HMDA Rule that are already in effect. If the proposed rule is finalized, compliance with such amendments prior to the proposed rule's effective date would not violate Regulation C.

[150] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

than 500 open-end lines of credit in either of the preceding two years but at least 200 open-end lines of credit in each of the two preceding years would not be required to collect such data until calendar year 2022 and financial institutions originating fewer than 200 open-end lines of credit in either of the preceding two years would be excluded from reporting data on open-end lines of credit.

A. Provisions To Be Analyzed

The proposal contains regulatory or commentary language (proposed provisions). The discussion below considers the benefits, costs, and impacts of the following major proposed provisions to:

1. Incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions;
2. Increase the threshold for reporting data about closed-end mortgage loans from 25 to 50 or 100 originations in each of the two preceding calendar years; and
3. Extend for a period of two years, specifically calendar years 2020 and 2021, the current data reporting threshold of 500 open-end lines of credit in each of the two preceding calendar years and permanently set the threshold for reporting data about open-end lines of credit at 200 open-end lines of credit in each of the two preceding calendar years starting in calendar year 2022.

With respect to each major proposed provision, the discussion considers the benefits, costs, and impacts to consumers and covered persons. The discussion also addresses certain alternative provisions that were considered by the Bureau in the development of this proposed rule. The Bureau requests comment on the consideration of the potential benefits, costs, and impacts of this proposed rule.

B. Baselines for Consideration of Costs and Benefits

The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline. Each of the three sets of provisions included in this proposed rule are distinct from the others and hence the Bureau has chosen a different baseline for each of the three provisions: (1) To avoid double counting the impacts assessed for each of the three sets of provisions, and (2) to provide the clearest exposition of the effects of the Bureau's actions in this proposed rule and in implementing the EGRRCPA in the 2018 HMDA Rule. However, summed together, the impact estimates for each of the three sets of provisions as analyzed in this part form the total estimated impact for the proposed rule corresponding to a baseline where the 2015 HMDA Rule and the 2017 HMDA Rule were in effect but prior to the EGRRCPA.

The first set of provisions under consideration would incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions. In the analysis under section 1022(b) of the Dodd-Frank Act in the 2018 HMDA Rule, the Bureau adopted a post-statute baseline to assess the impact of the 2018 HMDA Rule because that rule merely interprets and provides guidance regarding what Congress required in section 104(a) of the EGRRCPA and provides procedures related to applying those requirements.[151] By contrast, the Bureau is proposing in this rulemaking to use its legislative rulemaking authority to amend Regulation C to implement the statutory provisions. For the consideration of benefits and costs of the first set of provisions in this proposed rule, the Bureau is therefore using a pre-statute baseline, *i.e.,* evaluating the benefits, costs, and impacts of the provisions implementing the EGRRCPA as compared to the state of the world prior to when the EGRRCPA took effect. The Bureau believes such a pre-statute baseline provides the public and the Bureau a more complete picture of the impacts of the EGRRCPA changes that were implemented by the Bureau's 2018 HMDA Rule and would be further implemented by the relevant provisions in this proposed rule.

The second set of provisions in this proposed rule would increase the closed-end loan coverage threshold from 25 originations to either 50 or 100 originations in each of the two preceding calendar years. Because the EGRRCPA predates this proposed provision, and the burden reduction from this provision, if adopted, would be in addition to, and would not replace the burden reduction for financial institutions already implemented under the EGRRCPA, the Bureau believes the appropriate baseline for this provision is a post-EGRRCPA world in which eligible financial institutions under the EGRRCPA are already partially exempt from the reporting of certain data points for closed-end mortgages.

The third set of provisions in this proposed rule would extend for two years, until January 1, 2022, the current temporary threshold for reporting data about open-end lines of credit of 500 open-end lines of credit in each of the two preceding calendar years, and set the permanent threshold for reporting data about open-end lines of credit at 200 open-end lines of credit in each of the two preceding calendar years when the temporary threshold expires. In the 2017 HMDA Rule, the Bureau granted two-year temporary relief (specifically, for 2018 and 2019) for financial institutions that originate fewer than 500 open-end lines of credit in either of the two preceding calendar years. The 2017 HMDA Rule provides that, absent any future rulemaking, the open-end coverage threshold will revert to 100 open-end lines of credit, as in the 2015 HMDA Rule, starting in 2020. This proposed rule proposes to extend the current temporary coverage threshold for open-end lines of credit of 500 for two more years (specifically, 2020 and 2021) and then set the coverage threshold for open-end lines of credit at 200 permanently.

Meanwhile, the EGRRCPA's partial exemption for open-end lines of credit of eligible insured depository institutions and insured credit unions took effect on May 24, 2018. Because the temporary increase in the open-end coverage threshold adopted in the 2017 HMDA Rule would automatically expire without this or other rulemaking effort and some insured depository institutions and insured credit unions are now eligible for a partial exemption for open-end lines of credit, for the consideration of benefits and costs of this provision the Bureau is adopting a baseline in which the open-end coverage threshold starting in year 2020 is reset at 100 open-end lines of credit in each of the two preceding calendar years with some depository institutions and credit unions partially exempt under the EGRRCPA.

C. Coverage of the Proposed Rule

Each set of proposed provisions applies to certain financial institutions and relieves these financial institutions from HMDA's requirements for either all or certain data points regarding closed-

[151] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline. In the 2018 HMDA Rule, the Bureau noted that it anticipated an upcoming notice-and-comment rulemaking and expected that the accompanying analysis under Dodd-Frank Act section 1022(b) would assess the benefits, costs, and impacts of the statute as well as the implementing regulation. 83 FR 45325, 45332 n.57 (Sept. 7, 2018).

end mortgage loans or open-end lines of credit that they originate or purchase, or for which they receive applications, as described further in each section below. In short, the implementation of the EGRRCPA would affect certain insured depository institutions and insured credit unions with origination volumes below certain thresholds, while the rest of the proposed rule would affect all financial institutions below certain thresholds and not just insured depository institutions and insured credit unions.

D. Basic Approach of the Bureau's Consideration of Benefits and Costs and Data Limitations

This discussion relies on data that the Bureau has obtained from industry, other regulatory agencies, and publicly available sources. However, as discussed further below, the Bureau's ability to fully quantify the potential costs, benefits, and impacts of this proposed rule is limited in some instances by a scarcity of necessary data.

1. Benefits to Covered Persons

This proposed rule relates to which financial institutions, transactions, and data points are exempted or excluded from HMDA's reporting requirements. All three sets of provisions in this proposed rule are designed to reduce the regulatory burdens on covered persons while maintaining sufficient HMDA data to serve the statute's purposes. Therefore, the benefits of these proposed provisions to covered persons are mainly the reduction of the costs to covered persons relative to the compliance costs the covered persons would have to incur under each baseline scenario. The costs to covered persons and others derive from the diminished availability of data to address the statutory purposes of HMDA.

The Bureau's 2015 HMDA Rule, as well as the 2014 proposed rule for the 2015 HMDA Rule and the material provided to the Small Business Review Panel leading to the 2015 HMDA Rule, presented a basic framework of analyzing compliance costs for HMDA reporting, including ongoing costs and one-time costs of financial institutions. Based on the Bureau's study of the HMDA compliance process and costs, with the help of additional information gathered and verified through the Small Business Review Panel process, the Bureau classified the operational activities that financial institutions use for HMDA data collection and reporting into 18 discrete compliance ''tasks'' which can be grouped into four ''primary tasks.'' [152] Recognizing that the cost per loan of complying with HMDA's requirements differs by financial institution, the Bureau further identified seven key dimensions of compliance operations that were significant drivers of compliance costs, including the reporting system used, the degree of system integration, the degree of system automation, the compliance program, and the tools for geocoding, performing completeness checks, and editing. The Bureau found that financial institutions tended to have similar levels of complexity in compliance operations across all seven dimensions. For example, if a given financial institution had less system integration, then it tended to use less automation and less complex tools for geocoding. Financial institutions generally did not use less complex approaches on one dimension and more complex approaches on another. The small entity representatives validated this perspective during the Small Business Review Panel meeting convened under the Small Business Regulatory Enforcement Fairness Act.[153]

The Bureau realizes that costs vary by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully represent. To consider costs in a practical and meaningful way, in the 2015 HMDA Rule the Bureau adopted an approach that focused on three representative tiers of financial institutions. In particular, to capture the relationships between operational complexity and compliance cost, the Bureau used these seven dimensions to define three broadly representative financial institutions according to the overall level of complexity of their compliance operations. Tier 1 denotes a representative financial institution with the highest level of complexity, tier 2 denotes a representative financial institution with a moderate level of complexity, and tier 3 denotes a representative financial institution with the lowest level of complexity. For each tier, the Bureau developed a separate set of assumptions and cost estimates.

Table 1 below provides an overview of all three representative tiers across the seven dimensions of compliance operations: [154]

TABLE 1—TYPES OF HMDA REPORTERS [1]

	Tier 3 FIs tend to . . .	Tier 2 FIs tend to . . .	Tier 1 FIs tend to . . .
Systems	Enter data in Excel LAR Formatting Tool.	Use LOS and HMS; Submit data via the HMDA Platform.	Use multiple LOS, central SoR, HMS; Submit data via the HMDA Platform.
Integration	(None)	Have forward integration (LOS to HMS).	Have backward and forward integration; Integration with public HMDA APIs.
Automation	Manually enter data into LAR Formatting Tool; review and verify edits in the HMDA Platform.	LAR file produced by HMS; review edits in HMS and HMDA platform; verify edits via HMDA Platform.	LAR file produced by HMS; high automation compiling file and reviewing edits; verify edits via the HMDA platform.

[152] These tasks include: (1) Data collection: Transcribing data, resolving reportability questions, and transferring data to HMDA Management System (HMS); (2) Reporting and resubmission: Geocoding, standard annual edit and internal checks, researching questions, resolving question responses, checking post-submission edits, filing post-submission documents, creating modified loan/application register, distributing modified loan/application register, distributing disclosure statement, and using vendor HMS software; (3) Compliance and internal audits: Training, internal audits, and external audits; and (4) HMDA-related exams: Examination preparation and examination assistance.

[153] *See* Bureau of Consumer Fin. Prot., ''Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking'' 22, 37 (Apr. 24, 2014), *http://files.consumerfinance.gov/f/201407_cfpb_report_hmda_sbrefa.pdf.*

[154] The Bureau notes this description has taken into account the operational improvements the Bureau has implemented regarding HMDA reporting since issuing the 2015 HMDA Rule and differs slightly from the original taxonomy in the 2015 HMDA Rule that reflected the technology at the time of the study.

TABLE 1—TYPES OF HMDA REPORTERS [1]—Continued

	Tier 3 FIs tend to . . .	Tier 2 FIs tend to . . .	Tier 1 FIs tend to . . .
Geocoding	Use FFIEC tool (manual)	Use batch processing	Use batch processing with multiple sources.
Completeness Checks	Check in HMDA Platform only	Use LOS, which includes completeness checks.	Use multiple stages of checks.
Edits	Use FFIEC Edits only	Use FFIEC and customized edits	Use FFIEC and customized edits run multiple times.
Compliance Program	Have a joint compliance and audit office.	Have basic internal and external accuracy audit.	Have in-depth accuracy and fair lending audit.

[1] FI is ''financial institution''; LOS is ''Loan Origination System''; HMS is ''HMDA Data Management Software''; SoR is ''System of Record.''

For a representative institution in each tier, in the 2015 HMDA Rule, the Bureau produced a series of estimates of the costs of compliance, including the ongoing costs that financial institutions incurred prior to the implementation of the 2015 HMDA Rule, and the changes to the ongoing costs due to the 2015 HMDA Rule. The Bureau further provided the breakdown of the changes to the ongoing costs due to each major provision in the 2015 HMDA Rule, which includes the changes to the scope of the institutional coverage, the change to the scope of the transactional coverage, the revisions to the existing data points (as before the 2015 HMDA Rule) and the addition of new data points by the 2015 HMDA Rule.

For the impact analysis in this proposed rule, the Bureau is utilizing the cost estimates provided in the 2015 HMDA Rule for the representative financial institution in each of the three tiers, with some updates, mainly to reflect the inflation rate, and in the case of the set of provisions implementing the partial exemptions under the EGRRCPA, to align the partially exempt data points (and data fields used to report these data points) with the cost impact analyses discussed in the impact analyses for the 2015 HMDA Rule. The Bureau's analyses below also take into account the operational improvements that have been implemented by the Bureau regarding HMDA reporting since the issuance of the 2015 HMDA Rule. The details of such analyses are contained in the following sections addressing all three major sets of provisions of this proposed rule. The Bureau emphasizes that through the issuance of this proposal it is soliciting information relating to the costs financial institutions incurred in collecting and reporting 2018 data in compliance with the 2015 HMDA Rule and that such information may be valuable in estimating costs in the Dodd-Frank Act section 1022(b) analysis issued with the final rule.

The next step of the Bureau's consideration of the reduction of costs for covered persons involved aggregating the institution-level estimates of the cost reduction under each set of proposed provisions up to the market-level. This aggregation required estimates of the total number of potentially impacted financial institutions and the total number of loan/application register records by those potentially impacted institutions. The Bureau used a wide range of data in conducting this task, including recent HMDA data,[155] Call Reports, and Consumer Credit Panel data. These analyses were challenging, because no single data source provided complete coverage of all the financial institutions that could be impacted and because there is varying data quality among the different sources.

To perform the aggregation, the Bureau mapped the potentially impacted financial institutions to the three tiers described above. For each of the three major proposed provisions analyzed, the Bureau assumed none of the proposed changes would affect the high-complexity tier 1 reporters. The Bureau then assigned the potentially impacted financial institutions to either tier 2 or tier 3. In doing so, the Bureau relied on two constraints: (1) The estimated number of impacted institutions in tiers 2 and 3, combined, must equal the estimated number of impacted institutions for the applicable provision, and (2) the number of loan/application register records submitted annually by the impacted financial institutions in tiers 2 and 3, combined, must equal the estimated number of loan/application register records for the applicable provision. As in the 2015 HMDA Rule, the Bureau assumed for closed-end reporting that a representative low-complexity, tier 3 financial institution has 50 closed-end mortgage loan HMDA loan/application register records per year and a representative tier 2 financial institution has 1,000 closed-end mortgage loan HMDA loan/application register records per year. Similarly, the Bureau assumed for open-end reporting that a representative low-complexity, tier 3 financial institution has 150 open-end HMDA loan/application register records per year and a representative tier 2 financial institution has 1,000 open-end HMDA loan/application register records per year. Constraining the total number of impacted institutions and the number of impacted loan/application register records across tier 2 and tier 3 to the aggregate estimates thus enables the Bureau to calculate the approximate numbers of impacted institutions in tiers 2 and 3 for each set of provisions.[156]

Multiplying the impact estimates for representative financial institutions in each tier by the estimated number of impacted institutions, the Bureau arrived at the market-level estimates.

2. Costs to Covered Persons

In general all three sets of provisions in this proposed rule, if adopted, would reduce the ongoing costs associated with HMDA reporting for the affected covered persons. The set of provisions relating to the open-end thresholds would also delay for two additional years the one-time costs that excluded

[155] The majority of the analyses in this section were conducted prior to the official submission deadline of the 2018 HMDA data on March 1, 2019. As of the date of the issuance of this proposed rule, the modified HMDA aggregate file is not ready for public release, as the Bureau is still processing the 2018 HMDA loan/application register submissions and checking data quality. Some financial institutions are continuing to revise and resubmit their 2018 HMDA data, and the modified loan/application register for 2018, which was first made public on March 29, 2019, will be updated on a rolling basis for resubmissions and subject to change. The Bureau intends to review the 2018 HMDA data more closely in connection with this rulemaking once the 2018 submissions are more complete. The most recent year of HMDA data the Bureau has used for these analyses is from the 2017 HMDA data. The Bureau notes the market may fluctuate from year to year and the Bureau's rulemaking is not geared towards such transitory changes on an annual basis. The Bureau does not expect large differences from these estimates had the 2018 HMDA data been used for this cost-benefit analysis, because the Bureau has considered past years' data and taken into account other market data in its estimates.

[156] *See supra* note 72.

institutions would otherwise incur if the 500 open-end coverage threshold were restored to 100 open-end lines of credit in 2020 absent this proposed rule. Those proposed provisions would also ultimately remove the one-time costs for excluded institutions that originated fewer than 200 open-end lines of credit but more than 100 open-end lines of credit in either of the two preceding calendar years starting in 2022. In the interim, it is possible that to adapt to the rule, covered persons may incur certain one-time costs. Such one-time costs are mostly related to training and system changes in covered persons' HMDA reporting/loan origination systems. Based on the Bureau's outreach to industry, however, the Bureau believes that such one-time costs are fairly small.

3. Benefits to Consumers

Having generated estimates of the changes in ongoing costs and one-time costs to covered financial institutions, the Bureau then can attempt to estimate the potential pass-through of such cost reduction from these institutions to consumers, which could benefit consumers. According to economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, *i.e.,* variable, cost savings per application or origination, and absorb the one-time and increased fixed costs of complying with the rule. The Bureau estimated in the 2015 HMDA Rule the impacts on the variable costs of the representative financial institutions in each tier due to various provisions of that rule. Similarly, the estimates of the pass-through effect from covered persons to consumers due to the provisions under this proposed rule are based on the relevant estimates of the changes to the variable costs in the 2015 HMDA Rule with some updates. The Bureau notes that the market structure in the consumer mortgage lending markets may differ from that of a perfectly competitive market in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption. The Bureau seeks additional comments on the potential pass-through from financial institutions to consumers due to the reduction in reporting costs.

4. Cost to Consumers

HMDA is a sunshine statute. The purposes of HMDA are to provide the public with loan data that can be used: (i) To help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[157] The provisions in this proposed rule, if adopted, would lessen the reporting requirements for eligible financial institutions by either completely relieving them of the obligation to report all data points related to closed-end mortgage loans or open-end lines of credit or by implementing the partial exemptions from reporting certain data points for certain transactions for some covered persons as provided by the EGRRCPA. As a sunshine statute regarding data reporting and disclosure, most of the benefits of HMDA are realized indirectly. With less data required to be collected and reported under HMDA, the HMDA data available to serve HMDA's statutory purposes would decline.[158] However, to quantify the reduction of such benefits to consumers presents substantial challenges. The Bureau seeks comment on the magnitude of the loss of HMDA benefits from these changes to the available data and/or methodologies for measuring these effects.

Because quantifying and monetizing benefits of HMDA to consumers would require identifying all possible uses of HMDA data, establishing causal links to the resulting public benefits, and then quantifying the magnitude of these benefits, the Bureau mostly presented qualitative analyses regarding HMDA benefits in the 2015 HMDA Rule. For instance, quantification would require measuring the impact of increased transparency on financial institution behavior, the need for public and private investment, the housing needs of communities, the number of financial institutions potentially engaging in discriminatory or predatory behavior, and the number of consumers currently being unfairly disadvantaged and the level of quantifiable damage from such disadvantage. Similarly for the impact analyses of this proposed rule, the Bureau is unable to readily quantify the loss of some of the HMDA benefits to consumers with precision, both because the Bureau does not have the data to quantify all HMDA benefits and because the Bureau is not able to assess completely how this proposed rule will reduce those benefits.

In light of these data limitations, the discussion below generally provides a qualitative consideration of the costs, *i.e.,* the potential loss of HMDA benefits to consumers from the proposed rule. The Bureau seeks comment on the appropriateness of the approach described above, including additional data relevant to the benefits and costs to consumers and covered persons.

E. Potential Benefits and Costs to Consumers and Covered Persons

1. Overall Summary

In this section, the Bureau presents a concise, high-level table summarizing the benefits and costs considered in the remainder of the discussion. This table is not intended to capture all details and nuances that are provided both in the rest of the analysis and in the section-by-section discussion above, but rather to provide an overview of the major benefits and costs of the proposed rule, including the provisions to be analyzed, the baseline chosen for each set of provisions, the sub-provisions to be analyzed, the actual or proposed implementation dates of the sub-provisions, the annual savings on the operational costs of covered persons due to the sub-provision, the changes to the one-time costs of covered persons due to the sub-provision, and generally how the proposed provisions affect HMDA's benefits.

[157] 12 CFR 1003.1(b).

[158] The changes in this proposal would generally either relieve financial institutions from their reporting requirements under Regulation C or implement the reduction in the data fields required to be reported for certain transactions of certain financial institutions as provided by the EGRRCPA. The data fields covered by the EGRRCPA include information about the type of loans and the types of borrowers applying for and being granted credit, which can help determine whether financial institutions are serving the housing needs of their communities and assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. Similarly, raising the reporting thresholds so that fewer institutions report data would reduce the public information regarding whether financial institutions are serving the needs of their communities. To the extent that these data are used for other purposes, the loss of data could result in other costs.

Table 2

Provisions to Be Analyzed	Baseline	Sub-Provision	Implementation Date	Savings on Annual Operational Costs	Changes on One Time Costs	Loss of Data Coverage
Implementation of EGRRCPA	2015 and 2017 HMDA Rules	Partial Exemption for Closed-end Mortgages	Effective May 24, 2018	$13.9 M	Negligible	Partial reporting of approximately 3,300 reporters with about 531 thousand closed-end loans.
		Partial Exemption for Open-end Lines of Credit	Effective, May 24, 2018 but has no impact while temporary coverage threshold of 500 is in place	$3.6 M	Negligible	Partial reporting of approximately 595 reporters with about 131 thousand open-end lines of credit.
Increasing Closed-end Mortgage Coverage Threshold	2015 and 2017 HMDA Rules, EGRRPCA	Alternative 1: Increase to 50	January, 2020	$2.2 M	Negligible	Approximately 760 reporters with 37 thousand closed-end mortgages excluded.
		Alternative 1: Increase to 100	January, 2020	$8.1 M	Negligible	Approximately 1,718 reporters with 147 thousand closed-end mortgages excluded.
Increasing Open-end Loan Coverage Threshold	2015 and 2017 HMDA Rules, EGRRPCA	Increase to 500 for 2020 and 2021	January, 2020	$5.6 M	Negligible	Approximately 681 reporters with 177 thousand open-end lines of credit excluded for 2020 and 2021.
		Increase to 200 starting in 2022	January, 2022	$1.8 M	Savings of $3.8M	Approximately 400 reporters with 69 thousand open-end lines of credit excluded starting in 2022.

2. Provisions To Implement the EGRRCPA

Scope of the Provisions

The proposed rule would incorporate the 2018 HMDA Rule into Regulation C and further implement the EGRRCPA provision that adds partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions.[159] With respect to closed-end mortgage loans, HMDA section 304(i)(1) as amended by the EGRRCPA provides that, if an insured depository institution or insured credit union originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years, the insured depository institution or insured credit union is generally exempt from reporting certain data points on the closed-end mortgage loans that it would have otherwise reported under HMDA. Similarly, with respect to open-end lines of credit, HMDA section 304(i)(1) as amended by the EGRRCPA provides that, if an insured depository institution or insured credit union originated fewer than 500 open-end lines of credit in each of the two preceding calendar years, the insured depository institution or insured credit union is generally exempt from reporting certain data points on the open-end lines of credit that it would have otherwise reported under HMDA.[160]

For the closed-end mortgage loans, after applying all current HMDA reporting requirements, including Regulation C's existing complete exclusion for institutions that originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, the Bureau estimates that section 104(a) of the EGRRCPA, as implemented by the 2018 HMDA Rule and further implemented by this proposed rule, provides a partial exemption with respect to collection, recording, and reporting of 2018 HMDA data to approximately 3,300 institutions.[161] As a point of reference, 5,852 institutions reported 2017 HMDA data. The Bureau estimates that the insured depository institutions and insured credit unions that are eligible for a partial exemption for some or all of their covered loans and applications consist of about 56 percent of all reporting institutions, and 63 percent of all depository institutions and credit unions that reported HMDA data for 2017. The Bureau estimates that the total number of closed-end mortgage loans originated by these partially

[159] For purposes of HMDA section 104, the EGRRCPA provides that the term ''insured credit union'' has the meaning given the term in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, and the term ''insured depository institution'' has the meaning given the term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

[160] Notwithstanding the new partial exemptions, new HMDA section 304(i)(3) provides that an insured depository institution must comply with HMDA section 304(b)(5) and (6) if it has received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the CRA.

[161] To generate this estimate, the Bureau first identified all depository institutions (including credit unions) that met all reporting requirements and reported 2017 HMDA data in 2018. From this set of depository institutions, the Bureau then excluded all depository institutions that do not have to report 2018 HMDA data in 2019 because they originated fewer than 25 closed-end mortgage loans in either 2016 or 2017. Of the remaining depository institutions, approximately 3,300 originated fewer than 500 closed-end mortgage loans in each of 2016 and 2017. For purposes of this estimate, the Bureau assumes that these institutions are insured, do not have a less than satisfactory CRA examination history, and thus estimates that they are partially exempt.

exempt institutions would be about 531,000 per year.

For the open-end lines of credit, the 2017 HMDA Rule grants a complete exclusion for two years (specifically, 2018 and 2019) for open-end lines of credit for all institutions that originated fewer than 500 open-end lines of credit in either of the two preceding calendar years. As such, insured depository institutions or insured credit unions that originated fewer than 500 open-end lines of credit in each of the two preceding calendar years and are partially exempt under the EGRRCPA are already completely excluded from HMDA's requirements for open-end lines of credit during 2018 and 2019 under the 2017 HMDA Rule. In other words, for the years 2018 to 2019, the partial exemption regarding open-end lines of credit under the EGRRCPA would have no immediate effects given the 2017 HMDA Rule.

The 2017 HMDA Rule provides that, absent any future rulemaking, the open-end coverage threshold will revert to 100 open-end lines of credit as established in the 2015 HMDA Rule, starting in 2020. Therefore, with the 2017 HMDA Rule and pre-EGRRCPA as the baseline, the effects of the EGRRCPA on open-end reporting would manifest starting in 2020. The Bureau estimates that, by 2020, about 595 insured depository institutions or credit unions would have been required to report open-end lines of credit at the 100 open-end coverage threshold and are eligible for a partial exemption under the EGRRCPA. This is before this proposed rule's proposal to extend the coverage threshold for open-end lines of credit at 500 for calendar years 2020 and 2021 and set the coverage threshold for open-end lines of credit at 200 starting in 2022, which is analyzed separately in another section.

Benefits to Covered Persons

Partial Exemption for Closed-End Mortgage Loans

The partial exemption for closed-end mortgage loans in the EGRRCPA that would be implemented by this proposed rule conveys a direct benefit to the covered persons who are eligible for such exemption by reducing the ongoing costs of having to report certain data points that were previously required.

The Bureau's 2015 HMDA Rule and 2017 HMDA Rule, which define the rules under the baseline for the analyses of this set of provisions, require financial institutions to report a total of 48 data points beginning with the data collected in 2018 and reported in 2019. These data points contain 110 data fields.[162] The EGRRCPA grants partial exemptions for certain transactions of eligible financial institutions from reporting 26 of the 48 data points, which consist of 54 of the 110 data fields. Because this proposed rule would require insured depository institutions and insured credit unions to provide a NULI if they opt not to report a ULI for a partially exempt transaction, the actual reduction in the number of data fields that financial institutions need to report for partially exempt transactions would be 53. In addition, even though property address is a partially exempt data point, financial institutions must still report the State in which the property that secures the covered loan (or, in the case of an application, is proposed to secure the loan) is located for partially exempt transactions, because State is an individual data point that is not exempt under the EGRRCPA in addition to being one of the data fields associated with property address, which is exempt under the EGRRCPA. Therefore the total number of data fields that the eligible covered person must report for a partially exempt transaction would be reduced by 52.

With the exception of denial reasons (which were previously optionally reported prior to the 2015 HMDA Rule, except that certain financial institutions supervised by the OCC and the FDIC were required to report denial reasons) and rate spread, all of the data points (and data fields) that are partially exempt under the EGRRCPA as implemented by the 2018 HMDA Rule and this proposal correspond to data points (and data fields) that the Bureau added to the HMDA reporting as mandated by the Dodd-Frank Act or with the Bureau's discretionary authority granted under the Dodd-Frank Act.[163]

The analysis under section 1022(b) of the Dodd-Frank Act in the 2015 HMDA Rule noted that the Bureau was adding 50 new data fields with new data points that previously did not exist under Regulation C. To estimate the costs that financial institutions would incur in collecting and reporting these data, the Bureau used a cost-accounting, case-study methodology which involved an extensive set of interviews with financial institutions and their vendors through which the Bureau identified 18 component tasks involved in collecting and reporting HMDA data and estimated the number of person-hours required and the costs of each task for institutions of various levels of complexity. The Bureau augmented this information through the Small Business Review Panel process and through notice and comment on its proposed cost estimates, as well as through a review of academic literature and public data. Based on the information gathered in this process, the Bureau estimated that the impact of the additional 50 data fields on annual operational costs of covered person for closed-end reporting would be approximately $2,100, $10,900, and $31,000 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively, after accounting for the operational improvements that the Bureau was planning to implement regarding how the Bureau receives and processes submitted data.[164] Since issuing the 2015 HMDA Rule, the Bureau has modernized the HMDA submission system, improved its regulatory HMDA help functions, and made other operational changes that were initially discussed in the impact analyses of the 2015 HMDA Rule. The Bureau has not obtained new information with respect to the component tasks or costs set forth in the 2015 HMDA Rule. Therefore, it is reasonable to adopt these cost estimates, which reflect the operational improvements described in the 2015 HMDA Rule, with certain adjustments that reflect the newly proposed rule. To do so, the Bureau takes the 2015 estimates on the annual ongoing costs associated with the new additional data points added in the 2015 HMDA Rule, prorates the amount to account for the reduced number of data fields required due to the EGRRCPA partial exemptions, adjusts those for inflation, and arrives at a set of estimates for the savings on the operational costs due to the partial exemptions for representative firms in each of the three tiers.[165]

[162] *See* FFIEC, ''Filing Instructions Guide for HMDA Data Collected in 2019,'' at 13–65 (Oct. 2018), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2019-hmda-fig.pdf.*

[163] On the other hand, as explained in the section-by-section analysis of § 1003(d)(1)(i) in part IV above, age and number of units are not partially exempt under the EGRRCPA even though they were added to Regulation C in the 2015 HMDA Rule.

[164] For example, the Bureau planned to create a web-based submission tool with automated edit checks and to otherwise streamline the submission and editing process to make it more efficient for filers. In addition, the Bureau planned to consolidate the outlets for assistance, provide implementation support, and improve points of contact processes for help inquiries. These changes were implemented in 2018 for the 2017 filing year. The Bureau has received feedback from reporting entities on the new systems, which generally indicate substantial costs savings.

[165] The Bureau used a wage rate of $33 per hour in its 2015 HMDA Rule impact analyses, which is the national average wage for compliance officers based on the National Compensation Survey from the Bureau of Labor Statistics in May 2014. The

Specifically the Bureau estimates that the savings on annual operational costs from not reporting the 52 data fields for closed-end mortgage loans that are exempt under the EGRRCPA and this proposed rule would be approximately $2,300, $11,900, and $33,900 per year for representative tier 3, tier 2, and tier 1 financial institutions that are eligible for the partial exemption. The Bureau specifically requests information relating to the costs financial institutions incurred in collecting and reporting 2018 data in compliance with the 2015 HMDA Rule that may be valuable in estimating costs in the Dodd-Frank Act section 1022(b) analysis issued with the final rule.

In the 2015 HMDA Rule, the Bureau assumed a representative low-complexity, tier 3 financial institution that reports closed-end mortgage loans had 50 HMDA loan/application register records per year, a representative medium-complexity, tier 2 financial institution had 1,000 HMDA loan/application register records per year, while a high-complexity, tier 1 financial institution had 50,000 HMDA loan/application register records per year. The partial exemption for closed-end mortgage loans granted under the EGRRCPA and implemented by this proposed rule only applies to insured depository institutions and insured credit unions that originated less than 500 closed-end mortgage loans in each of the two preceding calendar years prior to the HMDA collection year. Given that and the Bureau's characterization of representative financial institutions in the three tiers, the Bureau believes that none of the tier 1 institutions are partially exempt for closed-end reporting. Some of the estimated 3,300 partially exempt covered persons would be low-complexity/tier 3 institutions, while some would belong to tier 2. The Bureau estimates that approximately 2,640 institutions eligible for the partial exemption from closed-end reporting are similar to the representative tier 3 financial institutions and approximately 660 eligible institutions belong to tier 2. Based on these counts, the Bureau estimates that the aggregate savings in ongoing costs for covered persons due to the EGRRCPA's partial exemption from closed-end reporting would be approximately $13.9 million annually.

May 2017 National Compensation Survey reported an average wage rate for compliance officers of $34.39. The Bureau has used a wage rate of $34 for the impact analyses for the proposed rule.

Partial Exemption for Open-End Lines of Credit

Starting in 2020,[166] absent the changes to the open-end coverage threshold in this proposal, which will be analyzed separately, the partial exemption for open-end lines of credit in the EGRRCPA that would be implemented by this proposed rule would convey a direct benefit to covered persons who are eligible for such exemption by reducing the ongoing costs of having to report certain data points that were previously required.

In the impact analysis of the 2015 HMDA Rule, the Bureau estimated that, accounting for the Bureau's planned operational improvements, the estimated impact of the 2015 HMDA Rule on ongoing operational costs on open-end reporters would be approximately $8,600, $43,400, and $273,000 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively. The Bureau takes such 2015 estimates on the annual ongoing costs associated with open-end reporting, prorates the amount to account for the reduced number of data fields required due to the EGRRCPA partial exemption, adjusts those for inflation, and arrives at a set of estimates for the savings on the operational costs of reporting information on open-end lines of credit due to the partial exemption for representative firms in each of the three tiers. Specifically the Bureau estimates that the impact on the savings on annual operational costs from not reporting the 52 data fields for open-end mortgage loans that are exempt under the EGRRCPA would be approximately $4,500, $22,800, and $144,000 per year for representative tier 3, tier 2, and tier 1 open-end reporting financial institutions that are eligible for the partial exemption.

The Bureau estimates that, absent the changes to the open-end coverage in this proposal, about 595 financial institutions would be partially exempt from reporting certain data points on open-end lines of credit under the EGRRCPA. According to the Bureau's estimates, about 545 of those 595 partially-exempt open-end reporters are low-complexity tier 3 open-end reporters, about 50 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. Using these estimates, the Bureau estimates that by granting a partial exemption to most insured depository institutions and insured credit unions that originate fewer than 500 open-end lines of credit in each of two preceding years, absent the proposed changes in the open-end coverage threshold in this proposal that would take effect starting in 2020, the EGRRCPA would provide an aggregate reduction in operational costs associated with open-end lines of credit for eligible financial institutions of about $3.6 million per year. The Bureau notes that these impacts would not begin until 2020, given the temporary provisions in the 2017 HMDA Rule.

[166] As noted above, for the years 2018 and 2019, the partial exemption regarding open-end lines of credit would have no immediate effects given the temporary coverage threshold of 500 open-end lines of credit established in the 2017 HMDA Rule.

Costs to Covered Persons

It is possible that, like any new regulation or revision to the existing regulations, financial institutions would incur certain one-time costs adapting to the changes of the proposed rule. Based on the Bureau's early outreach to stakeholders, the Bureau understands that most such one-time costs would result from interpreting and implementing the regulatory changes, but not from purchasing software upgrades or turning off the existing reporting functionality that the eligible institutions already built or purchased prior to the EGRRCPA taking effect.

The Bureau seeks comment on any costs to eligible financial institutions associated with the proposals relating to the incorporation of the EGRRCPA into Regulation C.

Benefits to Consumers

Having generated estimates of the reduction in ongoing costs for closed-end mortgage loans on financial institutions due to the EGRRCPA partial exemption for closed-end mortgage loans implemented in this proposed rule, the Bureau can estimate the potential pass-through of such cost reduction from these institutions to consumers,[167] which could benefit consumers. According to economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, *i.e.,* variable, cost savings per application or origination, and

[167] Note that throughout this cost-benefit analysis, the Bureau discusses such pass-through in order to present a complete picture of the benefits that are the result of the proposal. However, such pass-through from the financial institution to consumers as a result of the proposal is a direct flow from the savings to the financial institutions, and should not be interpreted as a gain in addition to the savings to the financial institutions from a general equilibrium perspective for the calculation of total social benefit.

absorb the one-time and increased fixed costs of complying with the rule.

The Bureau estimated in the 2015 HMDA Rule that the 50 data fields of the new data points required under the 2015 HMDA Rule would add variable costs per application for closed-end mortgage loans of approximately $22 for a representative tier 3 financial institution, $0.62 for a representative tier 2 financial institution, and $0.05 for a representative tier 1 financial institution.[168] As explained above, the partial exemption in the EGRRCPA and this proposed rule will reduce the number of data fields that have to be reported by 52 and almost all those partially exempt data fields correspond to data fields for new data points added by the 2015 HMDA Rule. Adjusting these figures to account for the difference in the number of the data fields that are partially exempt under the EGRRCPA and the number of data fields of new data points added by the 2015 HMDA Rule, and adjusting for inflation, the Bureau estimates that the partial exemption under the EGRRCPA and this proposed rule would reduce the variable cost per closed-end mortgage loan application for a representative tier 3 financial institution by about $24 and for a representative tier 2 financial institution by about $0.68. This potential reduction in the expense facing consumers when applying for a closed-end mortgage will be amortized over the life of the loan and represents a very small decrease in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material effect on credit access in the long or short term if financial institutions pass on these cost savings to consumers.

Similarly, having generated estimates of the reduction in ongoing costs for open-end mortgage loans on financial institutions due to the EGRRCPA partial exemption for open-end lines of credit implemented in this proposed rule, the Bureau can estimate the potential pass-through of such cost reduction from these institutions to consumers, which could benefit consumers.

The Bureau estimated in the 2015 HMDA Rule that the rule would increase variable costs by $41.50 per open-end line of credit application for representative low-complexity institutions and $6.20 per open-end line of credit application for representative moderate-complexity institutions. Accounting for the difference in the number of the data fields that are partially exempt under the EGRRCPA and the total number of data fields that comprise all data points under the 2015 HMDA Rule, and adjusting for inflation, the Bureau estimates that the partial exemption under the EGRRCPA and this proposed rule would reduce the variable cost per open-end line of credit application for a representative tier 3 financial institution by about $22 and for a representative tier 2 financial institution by about $3. These savings on the variable costs by the partially-exempt open-end reporters could potentially be passed through to consumers, under the assumption of a perfectly competitive market with profit maximizing firms. These expenses will be amortized over the life of a loan and represent a very small amount relative to the cost of a mortgage loan. The Bureau notes that the market structure in the consumer mortgage lending market may differ from that of a perfectly competitive market in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption. Therefore, the Bureau does not anticipate any material effect on credit access in the long or short term even if financial institutions pass on these reduced costs to consumers.

Costs to Consumers

The partial exemptions under the EGRRCPA and further implemented through this proposed rule remove the reporting requirements for 26 data points for certain transactions of eligible insured depository institutions and insured credit unions. As a result, regulators, public officials, and members of the public will lose some insights into the credit offered by these partially exempt institutions and overall credit in the communities they serve. The decreased insight into partially exempt financial institutions may lead to adverse outcomes for some consumers. For instance, some of the exempt data points could have helped the regulators and public officials better understand the type of funds that are flowing from lenders to consumers and the needs of consumers for mortgage credit. Additionally, some exempt data points could improve the processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. In addition, without the exempt data regarding, for example, underwriting and pricing, some lenders with low fair lending risk may be initially misidentified as high risk, potentially increasing their associated compliance burden. Finally, to the extent that some covered persons may use the information reported by other financial institutions for market research purposes, the partial exemptions may potentially lead to less vigorous competition from these institutions.

3. Provisions To Increase the Closed-End Coverage Threshold

Scope of the Provisions

This proposal would increase the thresholds for reporting data about closed-end mortgage loans so that financial institutions originating fewer than either 50 closed-end mortgage loans, or alternatively 100 closed-end mortgage loans, in either of the two preceding calendar years would be excluded from HMDA's requirements for closed-end mortgage loans starting in 2020.

The 2015 HMDA Rule requires institutions that originated at least 25 closed-end mortgage loans in each of the two preceding calendar years and meet all other reporting criteria to report their closed-end mortgage applications and loans. The EGRRCPA provides a partial exemption for insured depository institutions and insured credit unions that originated fewer than 500 closed-end mortgage loans in each of the two preceding years. This proposed rule contains provisions that incorporate the 2018 HMDA Rule into Regulation C and further implement the EGRRCPA. The previous section in this impact analysis specifically addresses the partial exemptions under the EGRRCPA. This section considers increasing the closed-end loan coverage threshold to either 50 or 100 so that only financial institutions that originated at least 50 or 100 closed-end mortgage loans in each of the two preceding years must report data on their closed-end mortgage applications and loans under HMDA.

Using data from various sources, including past HMDA submissions, Call Reports, Credit Union Call Reports, Summary of Deposits, and the National Information Center (NIC), the Bureau applied all current HMDA reporting requirements, including Regulation C's existing complete regulatory exclusion for institutions that originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years, and estimates that currently there are about 4,960 financial institutions required to report their closed-end mortgage loans and applications under HMDA. Together, these financial institutions originated about 7.0 million closed-end mortgage loans in calendar year 2017. The Bureau observes that the total number of financial institutions that were engaged in closed-mortgage lending in 2017, regardless of whether they met all HMDA reporting criteria, is

[168] 80 FR 66128, 66291 (Oct. 28, 2015).

about 12,700, and the total number of closed-end mortgage originations in 2017 was about 8.2 million. In other words, under the current 25 closed-end loan coverage threshold, about 39 percent of all mortgage lenders are required to report HMDA data, and they account for about 85.6 percent of all closed-end mortgage originations in the country. The Bureau estimates that among those 4,960 financial institutions that are currently required to report closed-end mortgage loans under HMDA, about 3,300 insured depository institutions and insured credit unions are partially exempt for closed-end mortgage loans under the EGRRCPA and the 2018 HMDA Rule, and thus are not required to report a subset of the data points currently required by Regulation C for these transactions.

Alternative 1: 50 Closed-End Coverage Threshold

The Bureau estimates that if the closed-end loan coverage threshold were increased to 50, under one of the two options proposed in this proposed rule, the total number of financial institutions that would be required to report closed-end mortgages would drop to about 4,200, a decrease of about 760 financial institutions compared to the current level. These 760 newly excluded institutions originated about 37,000 closed-end mortgage loans in 2017. There would be about 6.98 million closed-end mortgage originations reported under the 50 closed-end loan coverage threshold, which would account for about 85.1 percent of all closed-end mortgage loan originations in the entire mortgage market.

The Bureau further estimates that all but about 20 [169] of the 760 newly excluded closed-end mortgage reporters under the proposed 50 closed-end loan coverage threshold would be eligible for a partial exemption for closed-end mortgage loans as provided by the EGRRCPA and the 2018 HMDA Rule.

Alternative 2: 100 Closed-End Coverage Threshold

The Bureau estimates that if the closed-end loan coverage threshold were increased to 100, as another of the two options proposed in this proposed rule, the total number of financial institutions that would be required to report closed-end mortgages would drop to about 3,240, a decrease of about 1,720 financial institutions compared to the current level. These 1,720 newly excluded institutions originated about 147,000 closed-end mortgage loans in 2017. There would be about 6.87 million closed-end mortgage loan originations reported under the 100 closed-end loan coverage threshold, which would account for about 83.7 percent of all closed-end mortgage originations in the entire mortgage market.

The Bureau further estimates that all but about 50 of the 1,720 newly excluded closed-end mortgage loan reporters that would be excluded under the proposed 100 closed-end coverage threshold would be eligible for a partial exemption for closed-end mortgage loans as provided by the EGRRCPA and the 2018 HMDA Rule.

Table 3 below shows the Bureau's estimates of the number of closed-end reporters that would be required to report under various potential thresholds, and the number of closed-end originations reported by these financial institutions, both in total and broken down by the type of financial institution and HMDA submission agency as was done in the 2015 HMDA Rule.[170]

TABLE 3

Agency	Closed-End Reporting Threshold		
	>=25	>=50	>=100
Number of Reporting Financial Institutions by Submission Agency			
Total	4,960	4,201	3,242
CFPB	107	105	101
FDIC	1,769	1,442	1,039
FRS	441	378	298
NCUA	1,329	1,073	764
OCC	617	520	379
HUD	697	683	661
Number of Reported Loans (in 1000's) by Submission Agency			
Total	7,019	6,982	6,872
CFPB	1,693	1,693	1,669
FDIC	763	748	713
FRS	260	258	250
NCUA	562	548	519
OCC	300	295	283
HUD	3,440	3,439	3,437

[169] Those financial institutions either had a closed-end loan origination volume of 500 or more in at least one of the preceding two calendar years or are not insured depository institutions or insured credit unions, and therefore are not eligible for a partial exemption for closed-end mortgage loans as provided by the EGRRCPA and the 2018 HMDA Rule.

[170] Regulation C applies to financial institutions as defined in § 1003.2(g) and requires a financial institution to submit data to the appropriate Federal agency for the financial institution. *See* 12 CFR 1003.1(c); 1003.5(a). (Nondepository institutions generally designate HUD as their appropriate Federal agency, while depository institutions and their subsidiaries designate one of the other federal regulators as their appropriate Federal agency.) For more information about determining the appropriate Federal agency for a financial institution, *see* § 1003.5(a)(4). The numbers in tables 3 and 4 reflect the estimated number of institutions that would designate each agency as their appropriate Federal agency for data submission under Regulation C (*see* § 1003.5(a)(3)(iv)). These tables are limited to that narrow purpose and do not attempt to determine whether any of these institutions may otherwise be subject to the rulemaking, supervisory, or enforcement authorities of multiple regulators.

Benefits to Covered Persons

The complete exclusion from closed-end mortgage reporting for institutions that originated fewer than 50 or 100 closed-end mortgage loans in either of the two preceding calendar years, as proposed in this proposed rule, would convey a direct benefit to the covered persons who are eligible for such exclusion by reducing the ongoing costs of having to report closed-end mortgage loans and applications that were previously required.

In the impact analysis of the 2015 HMDA Rule, prior to the adoption of the changes in the 2015 HMDA Rule and implementation of the Bureau's operational improvements, the Bureau estimated that the annual operational costs for financial institutions of reporting under HMDA were approximately $2,500 for a representative low-complexity financial institution with a loan/application register size of 50 records; $35,600 for a representative moderate-complexity financial institution with a loan/application register size of 1,000 records; and $313,000 for a representative high-complexity financial institution with a loan/application register size of 50,000 records. The Bureau estimated that accounting for the operational improvements, the net impact of the 2015 HMDA Rule on ongoing operational costs for closed-end reporters would be approximately $1,900, $7,800, and $20,000 [171] per year, for representative low-, moderate-, and high-complexity financial institutions, respectively. This means that with all components of the 2015 HMDA Rule implemented and accounting for the Bureau's operational improvements, the estimated annual operational costs for closed-end mortgage reporting would be approximately $4,400 for a representative tier 3 reporter, $43,400 for a representative tier 2 reporter, and $333,000 for a representative tier 1 reporter. Updating these numbers with inflation, the Bureau estimates that if a financial institution is required to report under the 2015 HMDA Rule and is not partially exempt under the EGRRCPA, *i.e.,* it must report all data points specified in Regulation C for its closed-end mortgage loans, the savings on the annual operational costs from not reporting any closed-end mortgage data if it were completely excluded under one of two proposed loan thresholds, would be approximately $4,500 for a representative low-complexity tier 3 institution, $44,700 for a representative moderate-complexity tier 2 institution, and $343,000 for a representative high-complexity tier 1 institution. On the other hand, as explained in the previous section, the Bureau estimates that had a financial institution been eligible for a partial exemption on its closed-end mortgage loans under the EGRRCPA and 2018 HMDA Rule, the annual savings in the ongoing costs from the partial exemption alone would be approximately $2,300 for a representative tier 3 institution, $11,900 for a representative tier 2 institution and $33,900 for a representative tier 1 institution. Therefore, the Bureau estimates that if a financial institution is required to report under the 2015 HMDA Rule, but is partially exempt under the EGRRCPA, *i.e.,* it only needs to report a subset of all Regulation C data points for its closed-end mortgage loans, the savings in the annual operational costs from not reporting any closed-end mortgage data, if it is completely excluded, would be approximately $2,200 for a representative low-complexity tier 3 institution, $32,800 for a representative moderate-complexity tier 2 institution, and $309,000 for a representative high-complexity tier 1 institution. These estimates have already been adjusted for inflation.

Alternative 1: 50 Closed-End Coverage Threshold

Using the methodology discussed above in part VI.D.1, the Bureau estimates that with the proposed 50 closed-end coverage threshold, about 760 institutions would be completely excluded from reporting closed-end mortgage data compared to the current level. All but about 20 of these 760 institutions would be eligible for a partial exemption under the EGRRCPA and the 2018 HMDA Rule.

The Bureau estimates that, of the approximately 740 financial institutions that are (1) required to report closed-end mortgages under the 2015 HMDA Rule, (2) partially exempt under the EGRRCPA, and (3) completely excluded under the proposed 50 loan threshold, about 727 are similar to the representative low-complexity tier 3 institution and about 13 are similar to the representative moderate-complexity tier 2 institution. Of the approximately 20 remaining financial institutions that are required to report closed-end mortgages under the 2015 HMDA Rule and are not partially exempt under the EGRRCPA but would be completely excluded under the proposed 50 closed-end coverage threshold, about 19 are similar to the representative low-complexity tier 3 institution and only one is similar to the representative moderate-complexity tier 2 institution.

Based on the estimates of the savings of annual ongoing costs for closed-end reporting per representative institution, grouped by whether or not it is partially exempt for closed-end reporting under the EGRRCPA, and the estimated tier distribution of these institutions that would be excluded under the proposed 50 closed-end loan coverage threshold, the Bureau estimates that, the total savings in annual ongoing costs from HMDA reporting by fully excluded institutions that are already partially exempt under the EGRRCPA would be about $2 million, and the total savings in the annual ongoing costs from HMDA reporting by fully excluded firms that previously were not eligible for a partial exemption under the EGRRCPA would be about $140,000. Together the annual savings in the operational costs of firms excluded under the proposed 50 closed-end loan coverage threshold would be about $2.2 million.

Alternative 2: 100 Closed-End Coverage Threshold

Using methodology discussed above in part VI.D.1, the Bureau estimates that with the proposed 100 closed-end coverage threshold, about 1,720 institutions would be completely excluded from reporting closed-end mortgage data compared to the current level. All but about 50 of the 1,720 would be eligible for the partial exemption for closed-end mortgage loans under the EGRRCPA and the 2018 HMDA Rule.

The Bureau estimates that, of the approximately 1,670 institutions that are (1) required to report closed-end mortgage loans under the 2015 HMDA Rule, (2) partially exempt under the EGRRCPA, and (3) completely excluded under the proposed 100 closed-end coverage threshold, about 1,540 are similar to the representative low-complexity tier 3 institution and about 130 are similar to the representative moderate-complexity tier 2 institution. Of the approximately 50 remaining institutions that are required to report closed-end mortgage data under the 2015 HMDA Rule and are not partially exempt under the EGRRCPA but would be completely excluded under the proposed 100 closed-end coverage threshold, about 45 are similar to the representative low-complexity tier 3 institution and only five are similar to the representative moderate-complexity tier 2 institution.

[171] This does not include the costs of quarterly reporting for financial institutions that have annual origination volume greater than 60,000. Those quarterly reporters are all high-complexity tier 1 institutions, and the Bureau estimates none of the quarterly reporters would be excluded under this proposal.

Based on the estimates of the savings of annual ongoing costs for closed-end reporting per representative institution, grouped by whether or not it is partially exempt under the EGRRCPA, and the estimated tier distribution of these financial institutions that would be excluded under the proposed 100 closed-end loan coverage threshold, the Bureau estimates that, the total savings in the annual ongoing costs from HMDA reporting by excluded firms that are already partially exempt for closed-end mortgage loans under the EGRRCPA would be about $7.7 million, and the total savings in the annual ongoing costs from HMDA reporting by fully excluded firms that are not eligible for a partial exemption under the EGRRCPA would be about $400,000. Together the annual savings in the operational costs of firms newly excluded under the proposed 100 closed-end coverage threshold would be about $8.1 million.

Costs to Covered Persons

It is possible that, like any new regulation or revision to an existing regulation, financial institutions would incur certain one-time costs adapting to the changes to the regulation. Based on the Bureau's early outreach to stakeholders, the Bureau understands that most of these one-time costs consists of interpreting and implementing the regulatory changes and not from purchasing software upgrades or turning off the existing reporting functionality that the newly excluded institutions already built or purchased prior to the new changes taking effect.

The Bureau seeks comments on any costs to institutions that would be newly excluded under either of the alternative proposed increases to the closed-end coverage threshold.

Benefits to Consumers

Having generated estimates of the reduction in ongoing costs on covered financial institutions due to the proposed increase in the closed-end loan coverage threshold, the Bureau then attempts to estimate the potential pass-through of such cost reduction from these institutions to consumers, which could benefit consumers. According to economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, *i.e.,* variable, cost savings per application or origination, and absorb the one-time and increased fixed costs of complying with the rule.

The Bureau estimated in the 2015 HMDA Rule that the final rule would increase variable costs by $23 per closed-end mortgage application for representative low-complexity institutions and $0.20 per closed-end mortgage application for representative moderate-complexity institutions. The Bureau estimated that prior to the 2015 HMDA Rule, the variable costs of HMDA reporting were about $18 per closed-end mortgage application for representative low-complexity institutions, $6 per closed-end mortgage application for representative moderate-complexity institutions, and $3 per closed-end mortgage application for representative high-complexity institutions. Adjusting for inflation, the Bureau estimates the savings on the variable cost per closed-end application for a representative tier 3 financial institution that is not partially exempt under the EGRRCPA but excluded from closed-end reporting under this proposal would be about $42 per application; the savings on the variable cost per application for a representative tier 2 financial institution that is not partially exempt under the EGRRCPA but excluded from closed-end reporting under this proposal would be about $6.40 per application.

The Bureau estimates that the partial exemption for closed-end mortgage loans under the EGRRCPA for eligible insured depository institutions and insured credit unions would reduce the variable costs of HMDA reporting by approximately $24 per closed-end mortgage application for representative low-complexity institutions, $0.68 per closed-end mortgage application for representative moderate-complexity institutions, and $0.05 per closed-end mortgage application for representative high-complexity institutions. The savings on the variable cost per application for a representative tier 3 financial institution that is partially exempt under the EGRRCPA and fully excluded from closed-end reporting under this proposal would be about $18.30 per application. The savings on the variable cost per application for a representative tier 2 financial institution that is partially exempt under the EGRRCPA and fully excluded from closed-end reporting under this proposal would be about $5.70 per application. These are the cost reductions that excluded institutions under this proposed rule might pass through to their consumers and assuming the market is perfectly competitive. This potential reduction in the expense consumers face when applying for a mortgage would be amortized over the life of the loan and would represent a very small amount relative to the cost of a mortgage loan. The Bureau notes that the market structure in the consumer mortgage lending market may differ from that of a perfectly competitive market in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption. Therefore, the Bureau does not anticipate any material effect on credit access in the long or short term if financial institutions pass on these cost savings to consumers.

Costs to Consumers

The proposed increase to the closed-end coverage threshold would relieve eligible financial institutions from the reporting requirements for all closed-end mortgage loans and applications. As a result, HMDA data on these institutions' closed-end mortgage loans and applications would no longer be available to regulators, public officials, and members of the public. The decreased insight into excluded institutions may lead to adverse outcomes for some consumers. For instance, HMDA data, if reported, could help regulators and public officials better understand the type of funds that are flowing from lenders to consumers and consumers' needs for mortgage credit. The data may also help improve the processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes.

The Bureau recognizes that the costs to consumers would be higher if the closed-end coverage threshold were increased to 100 loans rather than if it were increased to 50 loans, but currently lacks sufficient data to quantify such loss other than the estimated numbers of covered loans and covered institutions under the two alternative proposed thresholds, as reported in Table 3. The Bureau seeks comment on the costs to consumers associated with the proposed alternative increases to the closed-end coverage threshold.

4. Provisions To Increase the Open-End Coverage Threshold

Scope of the Provisions

The proposed rule would extend the temporary open-end coverage threshold of 500 open-end lines of credit for two additional years (2020 and 2021), and permanently set the threshold for reporting data about open-end lines of credit at 200 open-end lines of credit in each of the preceding two calendar years starting in 2022.

The 2015 HMDA Rule generally requires financial institutions that originated at least 100 open-end lines of

credit in each of the two preceding years to report data about their open-end lines of credit and applications. The 2017 HMDA Rule temporarily increased the open-end coverage threshold to 500 for two years, meaning only financial institutions that originated at least 500 open-end lines of credit in each of the two preceding years are subject to HMDA's requirements for their open-end lines of credit for 2018 and 2019. The EGRRCPA generally provides a partial exemption for insured depository institutions and insured credit unions that originated less than 500 open-end lines of credit in each of the two preceding years. However, for 2018 and 2019, all insured depository institutions and insured credit unions that are granted a partial exemption for open-end lines of credit by the EGRRCPA are fully excluded from HMDA's requirements for their open-end lines of credit by the 2017 HMDA Rule. Absent any further changes via a rulemaking process, according to the 2015 HMDA Rule and the 2017 HMDA Rule, starting in 2020 the open-end coverage threshold will adjust to 100, and institutions that exceed the coverage threshold of 100 open-end lines of credit will be able to use the EGRRCPA's open-end partial exemption if they originated less than 500 open-end lines of credit in each of the two preceding years. Thus, the appropriate baseline for the consideration of benefits and costs of the proposed changes to the open-end coverage threshold, including the two-year extension of the temporary threshold of 500 open-end lines of credit and then setting the permanent threshold at 200 starting in 2022, is a situation starting in 2020 in which the open-end coverage threshold is set at 100 for each of two preceding years and the partial exemption with a threshold of 500 open-end lines of credit applies.

Because collection of data on open-end lines of credit only became mandatory starting in 2018 under the 2015 HMDA Rule and 2017 HMDA Rule, no single data source exists as of the time of this proposal that can accurately report the number of originations of open-end lines of credit in the entire market and by lender.[172] The Bureau therefore has used multiple data sources, including credit union Call Reports, Call Reports for banks and thrifts, HMDA data, and Consumer Credit Panel data, to develop estimates about open-end originations for lenders that offer open-end lines of credit and assess the impact of various thresholds on the numbers of reporters and market coverage under various scenarios.[173] The Table below provides estimates of coverage among all lenders that are active in the open-end line of credit market at various open-end coverage thresholds broken down by submission agency as was done in the 2015 HMDA Rule.[174]

[172] As discussed *supra* note 155, the most recent year of HMDA data the Bureau has used for these analyses is the 2017 HMDA data. The Bureau intends to review the 2018 HMDA data more closely in connection with this rulemaking once the 2018 submissions are more complete. The 2018 HMDA data is the first year where open-end lines of credit were required to be reported, unlike in previous years when open-end lines of credit were reported only voluntarily. Even so, the Bureau does not expect large differences from these estimates had the 2018 HMDA data been used for this cost-benefit analysis, because the Bureau has taken into account other market data in its estimates.

[173] In general, credit union Call Reports provide the number of originations of open-end lines of credit secured by real estate but exclude lines of credit in the first-lien status. Call Reports for banks and thrifts report only the balance of the home-equity lines of credit at the end of the reporting period but not the number of originations in the period.

[174] *See supra* note 170.

Table 4

Open-end Lines of Credit	Universe	Reporting Threshold		
		100	200	500
# of Loans (in 1000's)				
All	1,590	1,410	1,341	1,233
Market Coverage		88.7%	84.4%	77.6%
Type				
Banks & Thrifts	880	814	787	753
Credit Unions	653	545	506	437
Non-DIs	57	51	48	44
Agency				
OCC	34	22	18	10
Fed	34	24	17	9
FDIC	96	59	43	29
NCUA	563	484	446	378
HUD	57	51	48	44
CFPB	766	766	765	761
# of Institutions				
All	6,615	1,014	613	333
Type				
Banks & Thrifts	3,819	391	212	113
Credit Unions	2,578	581	376	205
Non-DIs	218	42	25	15
Agency				
OCC	624	65	37	12
Fed	433	72	32	9
FDIC	1,842	173	68	29
NCUA	1,650	561	365	197
HUD	218	42	25	15
CFPB	99	86	80	68

The Bureau estimates that there were about 1.59 million open-end lines of credit originated in 2017 by about 6,615 lenders. Under the temporary 500 open-end line of credit coverage threshold set in the 2017 HMDA Rule, there would be about 1.23 million open-end lines of credit reported by about 333 financial institutions. This would represent about 77.4 percent of all originations and 5 percent of all lenders in the open-end line of credit market. In comparison, if the open-end coverage threshold were set at 100, the Bureau estimates that the number of reporters would be about 1,014, who in total originate about 1.41 million open-end lines of credit, representing about 88.7 percent of all originations and 15.3 percent of all lenders in the market. In other words, if the coverage threshold is increased to 500 for another two years (in 2020 and 2021) as proposed by this proposed rule, in comparison to the default baseline where the threshold is set at 100 in 2020, the Bureau estimates that the number of institutions affected would be about 681, who in total originated about 177,000 open-end lines of credit. Among those 681 open-end lines of credit lenders, the Bureau estimates that about 618 already qualify for a partial exemption for their open-end lines of credit under the EGRRCPA and in total they originate about 136,000 open-end lines of credit.

If the permanent open-end line of credit coverage threshold is set at 200, for 2022 and beyond, as proposed, the Bureau estimates there would be about 1.34 million open-end lines of credit reported by about 613 reporters. In terms of market coverage, this would represent about 84.2 percent of all originations and 9.2 percent of all lenders in the open-end line of credit market. In other words, if the coverage threshold is increased to 200 for year

2022 and beyond as proposed, in comparison to a baseline threshold set at 100, the Bureau estimates that 401 reporters, who in total originated about 69,000 open-end lines of credit, would be affected. Among the 401 institutions that the 200 loan threshold would completely exclude, the Bureau estimates that about 378 already qualify for a partial exemption for their open-end lines of credit under the EGRRCPA and in total they originate about 61,000 open-end lines of credit.

Benefits to Covered Persons

The proposed extension of the temporary open-end coverage threshold of 500 for two additional years, as compared to having the threshold adjust to 100, conveys a direct benefit to covered persons that originated fewer than 500 open-end lines of credit in either of the two preceding years but originated no less than 100 open-end lines of credit in each of the two preceding years in reducing the ongoing costs associated with open-end lines of credit during 2020 and 2021.

In the impact analysis of the 2015 HMDA Rule, the Bureau estimated that, accounting for Bureau's planned operational improvements, the ongoing operational costs on open-end reporters for all data points required under the 2015 HMDA Rule would be approximately $8,600, $43,400, and $273,000 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively. Adjusting for inflation, this is equivalent to approximately $8,800, $44,700, and $281,100 per year currently. On the other hand, accounting for the reduced number of required data points and inflation, the Bureau now estimates that the ongoing costs of open-end reporting would be about $4,300, $21,900, and $138,000 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively that are eligible for a partial exemption for open-end lines of credit under the EGRRCPA.

The Bureau estimates that, with the proposed coverage threshold increased to 500 as compared to reverting to 100 for 2020 and 2021, about 681 financial institutions would be excluded from reporting open-end lines of credit during the two years. About 618 of those 681 financial institutions would be eligible for the partial exemption for open-end lines of credit under the EGRRCPA and further implemented by the 2018 HMDA Rule and this proposed rule if adopted, and about 63 of them would not have been eligible for the partial exemption for open-end lines of credit because in one of the preceding two years their open-end origination volume exceeded 500. Of the 618 institutions that are already eligible for a partial exemption under the EGRRCPA but would be fully excluded for two additional years from open-end reporting by this proposed rule, the Bureau estimates that about 567 are low-complexity tier 3 open-end reporters, about 51 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. In addition, of the 63 institutions that are not eligible for the partial exemption under the EGRRCPA but would be fully excluded for two additional years from open-end reporting by this proposed rule, the Bureau estimates that about 26 are low-complexity tier 3 open-end reporters, about 37 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. Using the estimates of savings on ongoing costs for open-end lines of credit for representative financial institutions, grouped by whether the lender is already eligible for the partial exemption under the EGRRCPA, as described above, the Bureau estimates that by extending the temporary 500 open-end coverage threshold for two years, the eligible financial institutions that are already partially exempt under the EGRRCPA would receive an aggregate reduction in operational cost associated with open-end lines of credit of about $3.5 million per year in the years 2020 and 2021, while the eligible financial institutions that are not already partially exempt under the EGRRCPA would receive an aggregate reduction in operational cost associated with open-end lines of credit of about $2.1 million per year in the years 2020 and 2021. In total extending the 500 loan threshold for two additional years would result in operational cost savings of about $5.6 million per year in the years 2020 and 2021.

The proposed increase of the permanent open-end coverage threshold to 200 open-end lines of credit in each of the two preceding calendar years starting in 2022, as compared to having the threshold adjust to 100, conveys a direct benefit to covered persons that originated fewer than 200 open-end lines of credit in either of the two preceding years but originated no less than 100 open-end lines of credit in each of the two preceding years in reducing the ongoing costs of having to report their open-end lines of credit.

The Bureau estimates that, with the proposed coverage threshold increased to 200 as compared to reverting to 100 starting in 2022, about 401 financial institutions would be excluded from reporting open-end lines of credit starting in 2022. About 378 of those 401 financial institutions are eligible for the partial exemption for open-end lines of credit under the EGRRCPA, and about 23 of them are not eligible for the partial exemption for open-end lines of credit because in one of the preceding two years its open-end origination volume exceeded 500. Of the 378 institutions that are already partially exempt under the EGRRCPA but would be fully excluded from open-end reporting starting in 2022 under the proposal, the Bureau estimates that about 373 are low-complexity tier 3 open-end reporters, about five are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. In addition, of the 23 institutions that are not eligible for the partial exemption under the EGRRCPA but would be fully excluded from open-end reporting starting in 2022 by this proposed rule, the Bureau estimates that about 18 are low-complexity tier 3 open-end reporters, about five are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. Using the estimates of savings on ongoing costs for open-end lines of credit for representative financial institutions, grouped by whether the lender is already eligible for the partial exemption under the EGRRCPA, as described above, the Bureau estimates that by raising the open-end coverage threshold to 200 open-end lines of credit starting in 2022, the eligible financial institutions that are already partially exempt under the EGRRCPA would receive an aggregate reduction in operational cost associated with open-end lines of credit of about $1.7 million per year starting in 2022, while the eligible financial institutions that are not already partially exempt under the EGRRCPA would receive an aggregate reduction in operational cost associated with open-end lines of credit of about $38,000 per year starting in 2022. In total, increasing the open-end threshold from 100 to 200 would result in savings on the operational costs associated with open-end lines of credit of about $2.1 million per year starting in 2022.

The proposed increase of the open-end coverage threshold to 200 starting in calendar year 2022, as compared to having the threshold adjust to 100, would also convey a direct benefit to covered persons that originated fewer than 200 open-end lines of credit in either of the two preceding years but originated no less than 100 open-end lines of credit in each of the two preceding years in removing the one-time costs of having to report their open-end lines of credit, had the

reporting threshold adjusted to 100 according to the 2017 HMDA Rule.

It is the Bureau's understanding that most of the financial institutions that were temporarily excluded for 2018 and 2019 under the 2017 HMDA rule have not fully prepared for open-end reporting because they are waiting for the Bureau to decide on the open-end reporting threshold that would apply after the temporary threshold of 500 loans expires in 2020. Under the baseline in this impact analysis, absent this proposed rule, those financial institutions would have to start reporting their open-end lines of credit starting in 2020, and hence incur one-time costs to create processes and systems for open-end lines of credit. The proposed extension of the 500 open-end coverage threshold for 2020 and 2021 in this proposal would delay incurrence of such one-time costs for two more years. If the second proposal to increase the open-end threshold to 200 starting in 2022 is not finalized, financial institutions that originated fewer than 200 open-end lines of credit in either of the two preceding years but originated no less than 100 open-end lines of credit in each of the two preceding years would eventually incur one-time costs of having to report their open-end lines of credit, once the reporting threshold reverted to the permanent threshold of 100.

As noted in the 2015 HMDA Rule, the Bureau recognizes that many financial institutions, especially larger and more complex institutions, process applications for open-end lines of credit in their consumer lending departments using procedures, policies, and data systems separate from those used for closed-end loans.

In the 2015 HMDA Rule, the Bureau assumed that the one-time costs for reporting information on open-end lines of credit required under the Rule would be roughly equal to 50 percent of the one-time costs of reporting information on closed-end mortgages. This translates to one-time costs of about $400,000 and $125,000 for open-end reporting for representative high- and moderate-complexity financial institutions, respectively, that will be required to report open-end lines of credit while also reporting closed-end mortgage loans. This assumption accounted for the fact that reporting open-end lines of credit will require some new systems, extra start-up training, and new compliance procedures and manuals, while recognizing that some fixed, one-time costs would need to be incurred anyway in making systemic changes to bring institutions into compliance with Regulation C and could be shared with closed-end lines of business. The assumption was consistent with the Bureau's estimate that an overwhelming majority of open-end reporters would also be reporting simultaneously closed-end mortgage loans and applications. In the 2015 HMDA Rule, the Bureau also assumed that the additional one-time costs of open-end reporting would be relatively low for low-complexity financial institutions because they are less reliant on information technology systems for HMDA reporting and may process open-end lines of credit on the same system and in the same business unit as closed-end mortgage loans. Therefore, for low-complexity financial institutions, the Bureau had assumed that the additional one-time cost created by open-end reporting is minimal and is derived mostly from new training and procedures adopted for the overall changes in the 2015 HMDA Rule.

In the proposal leading to the 2015 HMDA Rule, the Bureau had asked for public comments and specific data regarding the one-time cost of reporting open-end lines of credit. Although some commenters provided generic feedback on the additional burden of reporting data on these products, very few provided specific estimates of the potential one-time costs of reporting open-end lines of credit. Since issuing the 2015 HMDA Rule, the Bureau has heard anecdotal reports that one-time costs to begin reporting information on open-end lines of credit could be higher than the Bureau's estimates in the 2015 HMDA Rule. The Bureau has reviewed the 2015 estimates and believes that the one-time cost estimates for open-end lines of credit provided in 2015, if applied to this proposed rule, would most likely be underestimates, for two reasons.

First, in developing the one-time cost estimates for open-end lines of credit in the 2015 HMDA Rule, the Bureau had envisioned that there would be cost sharing between the line of business that conducts open-end lending and the line of business that conducts closed-end lending at the corporate level, as the implementation of open-end reporting that became mandatory under the 2015 HMDA Rule would coincide with the implementation of the changes to closed-end reporting under the 2015 HMDA Rule. For instance, the resources of the corporate compliance department and information technology department could be shared and utilized simultaneously across different lines of business within the same lender in its efforts to set up processes and systems adapting to the 2015 HMDA Rule. Therefore the Bureau assumed the one-time cost due to open-end reporting would be about one-half of the one-time costs due to closed-end reporting, in order to both reasonably count for the costs for open-end lines of credit and avoid double counting. However, the circumstances have somewhat changed due to the 2017 HMDA Rule and would be changed further under this proposed rule. The 2017 HMDA Rule temporarily increased the open-end lines of credit threshold from 100 to 500 for two years. This proposal would further extend the temporary threshold of 500 for two additional years. Thus, there would be a considerable lag between the implementation of closed-end reporting changes under the 2015 HMDA Rule and the implementation of mandatory open-end reporting for those open-end lenders that have been temporarily excluded under the 2017 HMDA Rule and would be excluded for two more years under the proposal, but would be required to comply with HMDA's requirements for their open-end lines of credit starting in 2022 with the proposed 200 origination threshold taking effect. As a result, the efficiency gain from one-time cost sharing between the closed-end and open-end reporting that was envisioned in the cost-benefit analysis of the 2015 HMDA Rule likely would not be applicable, if some of the temporarily excluded open-end reporters under the 2017 HMDA Rule and the proposal were to start preparing for open-end reporting several years after the implementation of closed-end changes. Therefore the Bureau now believes the one-time costs of starting reporting information on open-end lines of credit, if the financial institution is to start reporting open-end lines of credit in 2022 and beyond, would be higher than the Bureau's initial estimates of one-time costs of open-end reporting provided in the HMDA 2015 Rule. For this impact analysis, hence the Bureau assumes for a representative tier 2 open-end reporters, the one-time costs of starting open-end reporting in 2022 would be approximately equal to the one-time cost estimate for closed-end reporting that Bureau estimated in the 2015 HMDA Rule, instead of being about one half of the one-time cost estimate for closed-end reporting. This translates to about $250,000 per representative tier 2 open-end reporter, instead of $125,000 as the Bureau estimated in the 2015 HMDA Rule regarding the one-time costs of open-end reporting. This is the case regardless whether the open-end reporters also report closed-end mortgage loans under HMDA. The Bureau notes that the tier 2 financial institutions that would be permanently

excluded from open-end reporting under this proposal would no longer have to incur such one-time costs, if it is adopted.

Secondly, the delay in open-end reporting for those tier 3 financial institutions that originated between 100 and 499 open-end lines of credit in either of the two preceding years as the result of the 2017 HMDA Rule would mean that, those institution would have to restart the training process for staff directly responsible for open-end data collection reporting and update compliance procedures and manuals, if the open-end threshold is set to 100 starting in 2020, and incur a one-time cost. In the 2015 HMDA Rule, the Bureau estimated the total one-time cost estimate for low-complexity financial institutions would be approximately $3,000 regardless of whether the financial institution reports open-end lines of credit. Under this proposal, the Bureau assumes that the low-complexity financial institutions that would be completely excluded from open-end reporting hence would be able to avoid incurring a one-time cost of about $3,000.

The Bureau estimates that, with the proposed coverage threshold increased to 200 starting in 2022 as compared to reverting to 100, about 401 more institutions would be excluded from reporting open-end lines of credit starting in 2022. About 391 of those 401 institutions are low-complexity tier 3 open-end reporters, about 10 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. Using the estimates of savings on one-time costs for open-end lines of credit for representative financial institutions discussed above, the Bureau estimates that with the proposed increase in the open-end coverage threshold to 200 starting in 2022, the eligible institutions would receive an aggregate savings in avoided one-time cost associated with open-end lines of credit of about $3.8 million.

Costs To Covered Persons

It is possible that, like any new regulation or revision to the existing regulations, financial institutions may incur certain one-time costs adapting to the changes to the regulation. Based on the Bureau's early outreach to stakeholders, the Bureau understands that most of such one-time costs would result from interpreting and implementing the regulatory changes, but not from purchasing software upgrades or turning off the existing reporting functionality that the eligible institutions already built or purchased prior to the new changes taking its effect.

The Bureau seeks comment on the costs and benefits to institutions that would be excluded pursuant to the proposed increases to the open-end coverage threshold.

Benefits to Consumers

Having generated estimates of the reduction in ongoing costs on covered financial institutions due to the proposed temporary increase in the open-end coverage threshold, the Bureau then attempts to estimate the potential pass-through of such cost reduction from the lenders to consumers, which could benefit consumers. According to economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, *i.e.* variable, cost savings per application or origination, and absorb the one-time and increased fixed costs of complying with the rule.

The Bureau estimated in the 2015 HMDA Rule that the rule would increase variable costs by $41.50 per open-end line of credit application for representative low-complexity institutions and $6.20 per open-end line of credit application for representative moderate-complexity institutions. These savings on variable costs by the excluded open-end reporters could potentially be passed through to the consumers, if the market is perfectly competitive. These expenses will be amortized over the life of a loan and represent a negligible reduction in the cost of a mortgage loan. The Bureau notes that the market structure in the consumer mortgage lending market may differ from that of a perfectly competitive market in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption. Therefore, the Bureau does not anticipate any material effect on credit access in the long or short term even if financial institutions pass on these reduced costs to consumers.

Costs to Consumers

The proposed extension of the temporary coverage threshold of 500 for open-end lines of credit for 2020 and 2021 and setting the proposed permanent open-end threshold at 200 starting in 2022 would reduce the open-end data submitted under HMDA. As a result, HMDA data on these institutions' open-end loans and applications would no longer be available to regulators, public officials, and members of the public. The decreased oversight over affected financial institutions may lead to adverse outcomes for some consumers. For instance, reporting data on open-end line of credit applications and originations and on certain demographic characteristics of applicants and borrowers could help the regulators and public officials better understand the type of funds that are flowing from lenders to consumers and consumers' need for mortgage credit. Open-end line of credit data that may be relevant to underwriting decisions may also help improve the processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes.

F. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

As discussed above, the proposed rule would incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions; increase the threshold for reporting data about closed-end mortgage loans from 25 to either 50 or 100 originations in both of the preceding two calendar years; and extend for a period of two years the current temporary threshold for reporting data about open-end lines of credit of 500 open-end lines of credit and increase the permanent threshold for reporting data about open-end lines of credit from 100 to 200 open-end lines of credit in both of the preceding two calendar years starting in 2022.

All three sets of proposed provisions focus on burden reduction for smaller institutions. Therefore, the Bureau believes that the benefits of this proposed rule to depository institutions and credit unions with $10 billion or less in total assets will be similar to the benefit to creditors as a whole, as discussed above.

Specifically the Bureau estimates that the reduction in annual operational costs from the partial exemption for closed-end reporting under the EGRRCPA and further implemented by the 2018 HMDA Rule and this proposed rule if adopted would be approximately $2,300, $11,900, and $33,900 per year for representative tier 3, tier 2, and tier 1 depository institutions and credit unions with $10 billion or less in total assets that are eligible for the partial exemptions of closed-end reporting. The Bureau estimates that all but about eight

of the approximately 3,300 institutions that are eligible for the partial exemption from closed-end reporting are small depository institutions or credit unions with assets at or below $10 billion. About 2,672 of the partially-exempt closed-end reporting small depository institutions or credit unions are low-complexity tier 3 closed-end reporters, with the rest being moderate-complexity tier 2 closed-end reporters, and none are high-complexity tier 1 reporters. Based on these calculations, the Bureau estimates that the aggregate savings on ongoing costs for these institutions would be approximately $13.5 million annually.

The Bureau estimates that the reduction in annual operational costs starting in calendar year 2020 from the partial exemption from open-end reporting under the EGRRCPA, absent the proposed open-end threshold changes, would be approximately $4,500, $22,800, and $144,000 per year for representative tier 3, tier 2, and tier 1 depository institutions and credit unions with $10 billion or less in total assets that are eligible for the partial exemptions of open-end reporting. The Bureau estimates that about 578 out of the 595 financial institutions that would be partially exempt from reporting certain data points on open-end lines of credit under the EGRRCPA are small depository institutions or credit unions with assets at or below $10 billion. According to the Bureau's estimates, about 531 of those 578 partially-exempt small depository institutions or credit union are low-complexity tier 3 open-end reporters, about 47 are moderate-complexity tier 2 open-end reporters, and none are high-complexity tier 1 reporters. Based on these counts, the Bureau estimates that the aggregate savings on ongoing costs for these small depository institutions or credit unions due to the partial exemption from open-end reporting would be approximately $3.5 million annually, starting in calendar year 2020.

For the closed-end coverage threshold proposed provision, the Bureau estimates that for depository institutions and credit unions with $10 billion in assets or less that would have been required to report under the 2015 HMDA Rule, and are not partially exempt under the EGRRCPA, the savings on the annual operational costs from being excluded from closed-end reporting under the proposal would be approximately $4,500 for a representative low-complexity tier 3 institution, $44,700 for a representative moderate-complexity tier 2 institution, and $343,000 for a representative high-complexity tier 1 institution that fall below the proposed coverage threshold of either 50 or 100, whichever is adopted in the final rule. For depository institutions and credit unions with $10 billion in assets or less that would have been required to report under the 2015 HMDA Rule, but are partially exempt under the EGRRCPA, the savings on the annual operational costs from not reporting any closed-end mortgage data under the proposal, would be approximately $2,200 for a representative low-complexity tier 3 institution, $32,800 for a representative moderate-complexity tier 2 institution, and $309,000 for a representative high-complexity tier 1 institution. The Bureau estimates that about 738 of the approximately 760 institutions that would be excluded from the proposed 50 loan closed-end reporting threshold are small depository institutions or credit unions with assets at or below $10 billion, and all but one of them are already partially exempt under the EGRRCPA and 2018 HMDA Rule. About 724 of them are similar to representative low-complexity tier 3 institution, with the rest being moderate-complexity tier 2 institutions. Combined, the annual saving on operational costs for depository institutions and credit unions with $10 billion or less in assets newly excluded under the proposed 50 closed-end threshold would be about $1.9 million. Similarly, the Bureau estimates that about 1,666 of the approximately 1,720 institutions that would be excluded from the proposed alternative 100 loan closed-end reporting threshold are small depository institutions or credit unions with assets at or below $10 billion, and all but two of them are already partially exempt under the EGRRCPA and 2018 HMDA Rule. About 1,573 of them are similar to representative low-complexity tier 3 institution, with the rest being moderate-complexity tier 2 institutions. Combined, the annual saving on operational costs for depository institutions and credit unions with $10 billion or less in assets newly excluded under the proposed 100 closed-end threshold would be about $4.8 million.

For the proposed open-end coverage threshold provision, the Bureau estimates that for depository institutions and credit unions with $10 billion in assets or less that would not have to report open-end lines of credit under the proposal, the reduction in annual ongoing operational costs for the excluded institutions not eligible for the partial exemption for open-end lines of credit under the EGRRCPA would be approximately $8,800, $44,700, and $28,100 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively, and the reduction in annual ongoing operational costs for excluded institutions already partially exempt for open-end lines of credit under the EGRRCPA would be approximately $4,300, $21,900, and $138,000 annually, for representative low-, moderate-, and high-complexity financial institutions, respectively. The Bureau estimates that about 633 of the approximately 681 institutions that would be temporarily excluded from open-end reporting in 2020 and 2021 under this proposed rule are small depository institutions or credit unions with assets at or below $10 billion, and about 578 of them are already partially exempt under the EGRRCPA. Combined, the Bureau estimates that the annual saving on operational costs for depository institutions and credit unions with $10 billion or less in assets receiving the temporary exclusion for open-end reporting for two additional years under the proposed rule would be about $5 million per year in the years 2020 and 2021. Similarly, the Bureau estimates that about 378 of the approximately 400 institutions that would be excluded from open-end reporting starting in 2022 under the proposal are small depository institutions or credit unions with assets at or below $10 billion, and about 372 of them are already partially exempt under the EGRRCPA. Combined, the Bureau estimates that the annual saving on operational costs for depository institutions and credit unions with $10 billion or less in assets receiving the temporary exclusion for open-end reporting for two additional years under this proposed rule would be about $1.9 million per year starting in 2022. Using the estimates of savings on one-time costs for open-end lines of credit for representative financial institutions discussed above, the Bureau further estimates that by increasing the open-end coverage threshold to 200 starting in 2022, the eligible depository institutions and credit unions with $10 billion or less in assets would receive an aggregate savings in avoided one-time cost associated with open-end lines of credit of about $3.8 million.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

The proposed provisions will not directly impact consumers in rural areas. However, as with all consumers, consumers in rural areas may be impacted indirectly. This would occur if financial institutions serving rural areas are HMDA reporters (in which case the proposal will lead to decreased information in rural areas) and if these

institutions pass on some or all of the cost reduction to consumers (in which case, some consumers could benefit).

Recent research suggests that financial institutions that primarily serve rural areas are generally not HMDA reporters.[175] The Housing Assistance Council (HAC) suggests that the current asset and geographic coverage criteria already in place disproportionately exempt small lenders operating in rural communities. For example, HAC uses 2009 Call Report data to show that approximately 700 FDIC-insured lending institutions had assets totaling less than the HMDA institutional coverage threshold and were headquartered in rural communities. These institutions, which would not be HMDA reporters, may represent one of the few sources of credit for many rural areas. Research by economists at the Board also suggests that HMDA's coverage of rural areas is limited, especially areas further from MSAs.[176] If a large portion of the rural housing market is serviced by financial institutions that are already not HMDA reporters, any indirect impact of the proposed changes on consumers in rural areas would be limited, as the proposed changes directly involve none of those financial institutions.

However, although some research suggests that HMDA currently does not cover a significant number of financial institutions serving the rural housing market, HMDA data do contain information for some covered loans involving properties in rural areas. These data can be used to estimate the number of HMDA reporters servicing rural areas, and the number of consumers in rural areas that might potentially be affected by the proposed changes to Regulation C. For this analysis, the Bureau uses non-MSA areas as a proxy for rural areas, with the understanding that portions of MSAs and non-MSAs may contain urban and rural territory and populations. In 2017, 5,207 HMDA reporters reported applications or purchased loans for property located in geographic areas outside of an MSA. In total, these 5,207 financial institutions reported 1,794,248 applications or purchased loans for properties in non-MSA areas. This number provides an upper-bound estimate of the number of consumers in rural areas that could be impacted indirectly by the proposed changes. In general, individual financial institutions report small numbers of covered loans from non-MSAs, as approximately 72 percent reported fewer than 100 covered loans from non-MSAs.

Following microeconomic principles, the Bureau believes that financial institutions will pass on reduced variable costs to future mortgage applicants, but absorb one-time costs and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive.[177] The Bureau defines variable costs as costs that depend on the number of applications received. Based on initial outreach efforts, the following five operational steps affect variable costs: Transcribing data, resolving reportability questions, transferring data to an HMS, geocoding, and researching questions. The primary impact of the proposed rule on these operational steps is a reduction in time spent per task. Overall, the Bureau estimates that the impact of the proposed rule on variable costs per application is to reduce variable costs by no more than $42 for a representative tier 3 financial institution, $6 for a representative tier 2 financial institution, and $3 for a representative tier 1 financial institution.[178] The 5,507 financial institutions that serviced rural areas could attempt to pass these reduced variable costs on to all future mortgage customers, including the estimated 1.8 million consumers from rural areas. Amortized over the life of the loan, this expense would represent a negligible reduction in the cost of a mortgage loan. The Bureau notes that the market structure in the consumer mortgage lending market may differ from that of a perfectly competitive market in which case the pass-through to the consumers would most likely be smaller than the pass-through under the perfect competition assumption. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if these financial institutions pass on these reduced costs to consumers.

Given the differences between rural and non-rural markets in structure, demand, supply, and competition level, consumers in rural areas may experience benefits and costs from the proposed rule that are different than those experienced by consumers in general. To the extent that the impacts of the proposal on creditors differ by type of creditor, this may affect the costs and benefits of the proposal on consumers in rural areas. The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results, and other factual information on the impact of the proposed rule on consumers in rural areas. For example, this would include any evidence and supporting information indicating that access to credit would increase or the cost of credit would fall.

G. Additional Analysis Being Considered and Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposed provisions and additional alternatives before finalizing the proposed rule. As noted above, there are a number of areas where additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposed rule and more fully inform the rulemaking. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act[179] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996[180] (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[181] The RFA defines a ''small business'' as a business that meets the size standard developed by

[175] *See, e.g.,* Keith Wiley, ''What Are We Missing? HMDA Asset-Excluded Filers,'' Hous. Assistance Council (2011), *http://ruralhome.org/storage/documents/smallbanklending.pdf*; Lance George & Keith Wiley, ''Improving HMDA: A Need to Better Understand Rural Mortgage Markets,'' Hous. Assistance Council (2010), *http://www.ruralhome.org/storage/documents/notehmdasm.pdf.*

[176] *See* Robert B. Avery et al., ''Opportunities and Issues in Using HMDA Data,'' 29 J. of Real Est. Res. 352 (2007).

[177] If markets are not perfectly competitive or financial institutions are not profit maximizers then what financial institutions pass on may differ. For example, they may attempt to pass on one-time costs and increases in fixed costs, or they may not be able to pass on variable costs.

[178] These cost estimates represent the highest estimates among the estimates presented in previous sections and form the upper bound of possible savings.

[179] Public Law 96–354, 94 Stat. 1164 (1980).

[180] Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

[181] 5 U.S.C. 601–612. The term '' 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].'' 5 U.S.C. 601(4). The term '' 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(5).

the Small Business Administration pursuant to the Small Business Act.[182]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[183] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[184]

As discussed above, this proposal would incorporate the interpretations and procedures from the 2018 HMDA Rule into Regulation C and further implement section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions; it would increase the threshold for reporting data about closed-end mortgage loans from 25 to 50 or 100 originations in each of the two preceding calendar years; and it would extend the temporary threshold of 500 open-end lines of credit for reporting data about open-end lines of credit for two years and then would set the permanent open-end threshold at 200 when the proposed temporary threshold expires. The section 1022(b)(2) analysis above describes how, if adopted, this proposal would reduce the costs and burdens on covered persons, including small entities. Additionally, as described in the analysis above, a small entity that is in compliance with the law at such time when this proposal might be adopted would not need to take any additional action to remain in compliance other than choosing to switch off all or parts of reporting systems and functions. Based on these considerations, the proposed rule would not have a significant economic impact on any small entities.

Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comments on this analysis and any relevant data.

[182] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the Small Business Administration and providing an opportunity for public comment. *Id.*

[183] 5 U.S.C. 601–612.

[184] 5 U.S.C. 609.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The proposed rule would amend 12 CFR part 1003 (Regulation C), which implements HMDA. The Bureau's OMB control number for Regulation C is 3170–0008. This proposed rule would revise the information collection requirements contained in Regulation C that are currently approved by OMB under that OMB control number as follows: (1) The proposed rule would adjust Regulation C's institutional and transactional coverage thresholds, and (2) implement the new, separate EGRRCPA partial exemptions that apply to some HMDA reporting requirements.

The proposed rule contains revised information collection requirements regarding:

12 CFR 1003.4 et seq. Reporting, Recordkeeping, and Disclosure Requirements

The collections of information contained in this proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to 202–395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments to the Bureau at *PRA_Comments@cfpb.gov.* The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Home Mortgage Disclosure Act (Regulation C).

OMB Control Number: 3170–0008.

Type of Review: Revision of a currently approved information collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 105.

Estimated Total Annual Burden Hours: 1,290,000.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this document will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. If applicable, the notice of final rulemaking will display the control number assigned by OMB to any information collection requirements proposed herein and adopted in the final rule.

List of Subjects in 12 CFR Part 1003

Banks, Banking, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

[The following amendments would be effective January 1, 2020, further amending the part as amended at September 13, 2017, at 82 FR 43088, effective January 1, 2020.]

■ 2. Section 1003.2 is amended by revising paragraphs (g)(1)(v) and (g)(2)(ii) to read as follows:

§ 1003.2 Definitions.

* * * * *

(g) * * *

(1) * * *

Alternative 1—Paragraphs (g)(1)(v) and (g)(2)(ii)

(v) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 50 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

(B) In each of the two preceding calendar years, originated at least 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10); and

(2) * * *

(ii) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 50 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

(B) In each of the two preceding calendar years, originated at least 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10).

Alternative 2—Paragraphs (g)(1)(v) and (g)(2)(ii)

(v) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 100 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

(B) In each of the two preceding calendar years, originated at least 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10); and

(2) * * *

(ii) Meets at least one of the following criteria:

(A) In each of the two preceding calendar years, originated at least 100 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13); or

(B) In each of the two preceding calendar years, originated at least 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10).

* * * * *

■ 3. Section 1003.3 is amended by revising the section heading and paragraphs (c)(11) and (12) and adding paragraph (d) to read as follows:

§ 1003.3 Exempt institutions and excluded and partially exempt transactions.

* * * * *

(c) * * *

Alternative 1—Paragraph (c)(11)

(11) A closed-end mortgage loan, if the financial institution originated fewer than 50 closed-end mortgage loans in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded closed-end mortgage loan as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded closed-end mortgage loan;

Alternative 2—Paragraph (c)(11)

(11) A closed-end mortgage loan, if the financial institution originated fewer than 100 closed-end mortgage loans in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded closed-end mortgage loan as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded closed-end mortgage loan;

(12) An open-end line of credit, if the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit; or

* * * * *

(d) *Partially exempt transactions.* (1) For purposes of this paragraph (d), the following definitions apply:

(i) *Insured credit union* means an insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(ii) *Insured depository institution* means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(iii) *Optional data* means the data identified in § 1003.4(a)(1)(i), (a)(9)(i), and (a)(12), (15) through (30), and (32) through (38).

(iv) *Partially exempt transaction* means a covered loan or application that is partially exempt under paragraph (d)(2) or (3) of this section.

(2) Except as provided in paragraph (d)(6) of this section, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to paragraphs (c)(1) through (10) or paragraph (c)(13) of this section is not required to collect, record, or report optional data as defined in paragraph (d)(1)(iii) of this section for applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases.

(3) Except as provided in paragraph (d)(6) of this section, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from this part pursuant to paragraphs (c)(1) through (10) of this section is not required to collect, record, or report optional data as defined in paragraph (d)(1)(iii) of this section for applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases.

(4) A financial institution eligible for a partial exemption under paragraph (d)(2) or (3) of this section may collect, record, and report optional data as defined in paragraph (d)(1)(iii) of this section for a partially exempt transaction as though the institution were required to do so, provided that:

(i) If the institution reports the street address, city name, or Zip Code for the property securing a covered loan, or in the case of an application, proposed to secure a covered loan pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt;

(ii) If the institution reports any data for the transaction pursuant to § 1003.4(a)(15), (16), (17), (27), (33), or (35), it reports all data that would be required by § 1003.4(a)(15), (16), (17), (27), (33), or (35), respectively, if the transaction were not partially exempt.

(5) If, pursuant to paragraph (d)(2) or (3) of this section, a financial institution

does not report a universal loan identifier (ULI) pursuant to § 1003.4(a)(1)(i) for an application for a covered loan that it receives, a covered loan that it originates, or a covered loan that it purchases, the financial institution shall assign and report a non-universal loan identifier (NULI). The NULI must be composed of up to 22 characters to identify the covered loan or application, which:

(i) May be letters, numerals, or a combination of letters and numerals;

(ii) Must be unique within the annual loan/application register in which the covered loan or application is included; and

(iii) Must not include any information that could be used to directly identify the applicant or borrower.

(6) Paragraphs (d)(2) and (3) of this section do not apply to an insured depository institution that, as of the preceding December 31, had received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)).

■ 4. Section 1003.4 is amended by revising paragraphs (a) introductory text, (a)(1)(i) introductory text, and (e) to read as follows:

§ 1003.4 Compilation of reportable data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for covered loans that it receives, covered loans that it originates, and covered loans that it purchases for each calendar year. A financial institution shall collect data regarding requests under a preapproval program, as defined in § 1003.2(b)(2), only if the preapproval request is denied, is approved by the financial institution but not accepted by the applicant, or results in the origination of a home purchase loan. Except as provided in § 1003.3(d), the data collected shall include the following items:

(1)(i) A universal loan identifier (ULI) or, for a partially exempt transaction under § 1003.3(d), either a ULI or a non-universal loan identifier (NULI) as described in § 1003.3(d)(5) for the covered loan or application that can be used to identify and retrieve the covered loan or application file. Except for a purchased covered loan or application described in paragraphs (a)(1)(i)(D) and (E) of this section or a partially exempt transaction for which a NULI is assigned and reported under § 1003.3(d), the financial institution shall assign and report a ULI that:

* * * * *

(e) *Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.* Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) shall also collect the information required by paragraph (a)(9)(ii) of this section for property located outside MSAs and MDs in which the institution has a home or branch office, or outside any MSA.

* * * * *

■ 5. In supplement I to part 1003:

■ a. Under *Section 1003.2—Definitions,* revise *2(g) Financial Institution.*

■ b. Revise the heading to *Section 1003.3.*

■ c. Under *Section 1003.3:*

■ i. Revise *Paragraph 3(c)(11)* and *Paragraph 3(c)(12).*

■ iii. Add *3(d) Partially exempt transactions* after *Paragraph 3(c)(13).*

■ d. Under *Section 1003.4—Compilation of Reportable Data,* revise *4(a) Data Format and Itemization.*

The revisions and addition read as follows:

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

* * * * *

2(g) Financial Institution

Alternative 1—Paragraph 2(g)–1

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2020, the preceding calendar year is 2019 and the preceding December 31 is December 31, 2019. Accordingly, in 2020, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)–2 on December 31, 2019. Likewise, in 2020, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 50 closed-end mortgage loans during either 2018 or 2019.

Alternative 2—Paragraph 2(g)–1

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2020, the preceding calendar year is 2019 and the preceding December 31 is December 31, 2019. Accordingly, in 2020, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)–2 on December 31, 2019. Likewise, in 2020, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 100 closed-end mortgage loans during either 2018 or 2019.

2. [Reserved]

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 500 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)–4 discusses a financial institution's responsibilities during the calendar year of a merger.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition.* The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For purposes of these illustrations, a ''covered institution'' means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a), and ''an institution that is not covered'' means either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and

applications handled in offices of the merged institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

Alternative 1—Paragraph 2(g)–5

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 50 closed-end mortgage loans in each of the two preceding calendar years or at least 500 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

Alternative 2—Paragraph 2(g)–5

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 100 closed-end mortgage loans in each of the two preceding calendar years or at least 500 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

6. *Branches of foreign banks—treated as banks.* A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a ''bank'' under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of § 1003.2(g).

7. *Branches and offices of foreign banks and other entities—treated as nondepository financial institutions.* A Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of ''bank'' under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under § 1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under § 1003.2(g)(2).

* * * * *

Section 1003.3—Exempt Institutions and Excluded and Partially Exempt Transactions

* * * * *

3(c) Excluded Transactions

* * * * *

Paragraph 3(c)(11)

Alternative 1—Paragraph 3(c)(11)–1

1. *General.* Section 1003.3(c)(11) provides that a closed-end mortgage loan is an excluded transaction if a financial institution originated fewer than 50 closed-end mortgage loans in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2020 under § 1003.2(g) because it originated 600 open-end lines of credit in 2018, 650 open-end lines of credit in 2019, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 30 and 45 closed-end mortgage loans in 2018 and 2019, respectively. The open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2020 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2020 are excluded transactions under § 1003.3(c)(11) and need not be reported. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

Alternative 2—Paragraph 3(c)(11)–1

1. *General.* Section 1003.3(c)(11) provides that a closed-end mortgage loan is an excluded transaction if a financial institution originated fewer than 100 closed-end mortgage loans in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2020 under § 1003.2(g) because it originated 600 open-end lines of credit in 2018, 650 open-end lines of credit in 2019, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 75 and 90 closed-end mortgage loans in 2018 and 2019, respectively. The open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2020 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2020 are excluded transactions under § 1003.3(c)(11) and need not be reported. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

Alternative 1—Paragraph 3(c)(11)–2

2. *Optional reporting.* A financial institution may report applications for, originations of, or purchases of closed-end mortgage loans that are excluded transactions because the financial institution originated fewer than 50 closed-end mortgage loans in either of the two preceding calendar years. However, a financial institution that chooses to report such excluded applications for, originations of, or purchases of closed-end mortgage loans must report all such applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i)–14.

Alternative 2—Paragraph 3(c)(11)–2

2. *Optional reporting.* A financial institution may report applications for, originations of, or purchases of closed-end mortgage loans that are excluded transactions because the financial institution originated fewer than 100 closed-end mortgage loans in either of the two preceding calendar years. However, a financial institution that chooses to report such excluded applications for, originations of, or purchases of closed-end mortgage loans must report all such applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i)–14.

Paragraph 3(c)(12)

1. *General.* Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2020 under § 1003.2(g) because it originated 100 closed-end mortgage loans in 2018, 175 closed-end mortgage loans in 2019, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 75 and 85 open-end lines of credit in 2018 and 2019, respectively. The closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2020 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2020 are excluded transactions under § 1003.3(c)(12) and need not be reported. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

2. *Optional reporting.* A financial institution may report applications for,

originations of, or purchases of open-end lines of credit that are excluded transactions because the financial institution originated fewer than 500 open-end lines of credit in either of the two preceding calendar years. However, a financial institution that chooses to report such excluded applications for, originations of, or purchases of open-end lines of credit must report all such applications for open-end lines of credit which it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i)–14.

* * * * *

3(d) Partially Exempt Transactions

1. *Merger or acquisition—application of partial exemption thresholds to surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution falls below the loan threshold described in § 1003.3(d)(2) or (3) if it, considering the combined lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, falls below the loan threshold described in § 1003.3(d)(2) or (3). For example, A and B merge. The surviving or newly formed institution falls below the loan threshold described in § 1003.3(d)(2) if the surviving or newly formed institution, A, and B originated a combined total of fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (13) in each of the two preceding calendar years. Comment 3(d)–3 discusses eligibility for partial exemptions during the calendar year of a merger.

2. *Merger or acquisition—Community Reinvestment Act examination history.* After a merger or acquisition, the surviving or newly formed institution is deemed to be ineligible for the partial exemptions pursuant to § 1003.3(d)(6) if either it or any of the merged or acquired institutions received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)). Comment 3(d)–3.iii discusses eligibility for partial exemptions during the calendar year of a merger when an institution that is eligible for a partial exemption merges with an institution that is ineligible for the partial exemption (including, for example, an institution that is ineligible for the partial exemptions pursuant to § 1003.3(d)(6)) and the surviving or newly formed institution is ineligible for the partial exemption.

3. *Merger or acquisition—applicability of partial exemptions during calendar year of merger or acquisition.* The scenarios described below illustrate the applicability of partial exemptions under § 1003.3(d) during the calendar year of a merger or acquisition. For purposes of these illustrations, ''institution'' means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a). Although the scenarios below refer to the partial exemption for closed-end mortgage loans under § 1003.3(d)(2), the same principles apply with respect to the partial exemption for open-end lines of credit under § 1003.3(d)(3).

i. Assume two institutions that are eligible for the partial exemption for closed-end mortgage loans merge and the surviving or newly formed institution meets all of the requirements for the partial exemption. The partial exemption for closed-end mortgage loans applies for the calendar year of the merger.

ii. Assume two institutions that are eligible for the partial exemption for closed-end mortgage loans merge and the surviving or newly formed institution does not meet the requirements for the partial exemption. Collection of optional data for closed-end mortgage loans is permitted but not required for the calendar year of the merger (even though the merger creates an institution that does not meet the requirements for the partial exemption for closed-end mortgage loans). When a branch office of an institution that is eligible for the partial exemption is acquired by another institution that is eligible for the partial exemption, and the acquisition results in an institution that is not eligible for the partial exemption, data collection for closed-end mortgage loans is permitted but not required for the calendar year of the acquisition.

iii. Assume an institution that is eligible for the partial exemption for closed-end mortgage loans merges with an institution that is ineligible for the partial exemption and the surviving or newly formed institution is ineligible for the partial exemption. For the calendar year of the merger, collection of optional data as defined in § 1003.3(d)(1)(iii) for closed-end mortgage loans is required for covered loans and applications handled in the offices of the merged institution that was previously ineligible for the partial exemption. For the calendar year of the merger, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled in the offices of the merged institution that was previously eligible for the partial exemption. When an institution that is ineligible for the partial exemption for closed-end mortgage loans acquires a branch office of an institution that is eligible for the partial exemption, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iv. Assume an institution that is eligible for the partial exemption for closed-end mortgage loans merges with an institution that is ineligible for the partial exemption and the surviving or newly formed institution is eligible for the partial exemption. For the calendar year of the merger, collection of optional data for closed-end mortgage loans is required for covered loans and applications handled in the offices of the previously ineligible institution that took place prior to the merger. After the merger date, collection of optional data for closed-end mortgage loans is permitted but not required for covered loans and applications handled in the offices of the institution that was previously ineligible for the partial exemption. When an institution remains eligible for the partial exemption for closed-end mortgage loans after acquiring a branch office of an institution that is ineligible for the partial exemption, collection of optional data for closed-end mortgage loans is required for transactions of the acquired branch office that take place prior to the acquisition. Collection of optional data for closed-end mortgage loans by the acquired branch office is permitted but not required for transactions taking place in the remainder of the calendar year after the acquisition.

4. *Originations.* Whether applications for covered loans that an insured depository institution or insured credit union receives, covered loans that it originates, or covered loans that it purchases are partially exempt transactions under § 1003.3(d) depends, in part, on whether the institution originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13) in each of the two preceding calendar years or fewer than 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) in each of the two preceding calendar years. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination for purposes of § 1003.3(d).

5. *Affiliates.* A financial institution that is not itself an insured credit union or an insured depository institution as defined in § 1003.3(d)(1)(i) and (ii) is not eligible for the partial exemptions under § 1003.3(d)(1) through (3), even if it is owned by or affiliated with an insured credit union or an insured depository institution. For example, an institution that is a subsidiary of an insured credit union or insured depository institution may not claim a partial exemption under § 1003.3(d) for its closed-end mortgage loans unless the subsidiary institution itself:

i. Is an insured credit union or insured depository institution,

ii. In each of the two preceding calendar years originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13), and

iii. If the subsidiary is an insured depository institution, had not received as of the preceding December 31 a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)).

Paragraph 3(d)(1)(iii)

1. *Optional data.* The definition of optional data in § 1003.3(d)(1)(iii) identifies the data that are covered by the partial exemptions for certain transactions of insured depository institutions and insured credit unions under § 1003.3(d). If a transaction is not partially exempt under § 1003.3(d)(2) or (3), a

financial institution must collect, record, and report optional data as otherwise required under this part.

Paragraph 3(d)(2)

1. *General.* Section 1003.3(d)(2) provides that, except as provided in § 1003.3(d)(6), an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13) is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases. For example, assume that an insured credit union is a financial institution in 2020 under § 1003.2(g) and originated, in 2018 and 2019 respectively, 100 and 200 closed-end mortgage loans that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) or (c)(13). The closed-end mortgage loans that the insured credit union originated or purchased, or for which it received applications, during 2020 are not excluded transactions under § 1003.3(c)(11). However, due to the partial exemption in § 1003.3(d)(2), the insured credit union is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for the closed-end mortgage loans that it originated or purchased, or for which it received applications, for which final action is taken during 2020. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

Paragraph 3(d)(3)

1. *General.* Section 1003.3(d)(3) provides that, except as provided in § 1003.3(d)(6), an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10) is not required to collect, record, or report optional data as defined in § 1003.3(d)(1)(iii) for applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases. See § 1003.3(c)(12) and comments 3(c)(12)–1 and –2, which provide an exclusion for certain open-end lines of credit from this part and permit voluntary reporting of such transactions under certain circumstances. See also comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

Paragraph 3(d)(4)

1. *General.* Section 1003.3(d)(4) provides that an insured depository institution or insured credit union may collect, record, and report optional data as defined in § 1003.3(d)(1)(iii) for a partially exempt transaction as though the institution were required to do so, provided that, if an institution voluntarily reports any data pursuant to any of the seven paragraphs identified in § 1003.3(d)(4)(i) and (ii) (§ 1003.4(a)(9)(i) and (a)(15), (16), (17), (27), (33), and (35)), it also must report all other data for the covered loan or application that would be required by that applicable paragraph if the transaction were not partially exempt. For example, an insured depository institution or insured credit union may voluntarily report the existence of a balloon payment for a partially exempt transaction pursuant to § 1003.4(a)(27), but, if it does so, it must also report all other data for the transaction that would be required by § 1003.4(a)(27) if the transaction were not partially exempt (*i.e.,* whether the transaction has interest-only payments, negative amortization, or other non-amortizing features).

2. *Partially exempt transactions within the same loan/application register.* A financial institution may collect, record, and report optional data for some partially exempt transactions under § 1003.3(d) in the manner specified in § 1003.3(d)(4), even if it does not collect, record, and report optional data for other partially exempt transactions under § 1003.3(d).

3. *Exempt or not applicable.* i. If a financial institution would otherwise report that a transaction is partially exempt pursuant to § 1003.3(d) and a particular requirement to report optional data is not applicable to the transaction, the insured depository institution or insured credit union complies with the particular requirement by reporting either that the transaction is exempt from the requirement or that the requirement is not applicable. For example, assume that an insured depository institution or insured credit union originates a partially exempt reverse mortgage. The requirement to report lender credits is not applicable to reverse mortgages, as comment 4(a)(20)–1 explains. Accordingly, the institution could report either exempt or not applicable for lender credits for the reverse mortgage transaction.

ii. An institution is considered as reporting data in a data field for purposes of § 1003.3(d)(4)(i) and (ii) when it reports not applicable for that data field for a partially exempt transaction. For example, assume an insured depository institution or insured credit union originates a covered loan that is eligible for a partial exemption and is made primarily for business or commercial purposes. The requirement to report total loan costs or total points and fees is not applicable to loans made primarily for business or commercial purposes, as comments 4(a)(17)(i)–1 and (ii)–1 explain. The institution can report not applicable for both total loan costs and total points and fees, or it can report exempt for both total loan costs and total points and fees for the loan. Pursuant to § 1003.3(d)(4)(ii), the institution is not permitted to report not applicable for total loan costs and report exempt for total points and fees for the business or commercial purpose loan.

Paragraph 3(d)(4)(i)

1. *State.* Section 1003.3(d)(4)(i) provides that if an institution eligible for a partial exemption under § 1003.3(d)(2) or (3) reports the street address, city name, or Zip Code for a partially exempt transaction pursuant to § 1003.4(a)(9)(i), it reports all data that would be required by § 1003.4(a)(9)(i) if the transaction were not partially exempt, including the State. An insured depository institution or insured credit union that reports the State pursuant to § 1003.4(a)(9)(ii) or comment 4(a)(9)(ii)–1 for a partially exempt transaction without reporting any other data required by § 1003.4(a)(9)(i) is not required to report the street address, city name, or Zip Code pursuant to § 1003.4(a)(9)(i).

Paragraph 3(d)(5)

1. *NULI—uniqueness.* For a partially exempt transaction under § 1003.3(d), a financial institution may report a ULI or a NULI. Section 1003.3(d)(5)(ii) requires an insured depository institution or insured credit union that assigns a NULI to a covered loan or application to ensure that the character sequence it assigns is unique within the institution's annual loan/application register in which it appears. A financial institution should assign only one NULI to any particular covered loan or application within each annual loan/application register, and each NULI should correspond to a single application and ensuing loan within the annual loan/application register in which the NULI appears in the case that the application is approved and a loan is originated. A financial institution may use a NULI more than once within an annual loan/application register only if the NULI refers to the same loan or application or a loan that ensues from an application referred to elsewhere in the annual loan/application register. Refinancings or applications for refinancing that are included in same annual loan/application register as the loan that is being refinanced should be assigned a different NULI than the loan that is being refinanced. An insured depository institution or insured credit union with multiple branches must ensure that its branches do not use the same NULI to refer to multiple covered loans or applications within the institution's same annual loan/application register.

2. *NULI—privacy.* Section 1003.3(d)(5)(iii) prohibits an insured depository institution or insured credit union from including information in the NULI that could be used to directly identify the applicant or borrower. Information that could be used to directly identify the applicant or borrower includes, but is not limited to, the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

Paragraph 3(d)(6)

1. *Preceding calendar year.* Section 1003.3(d)(6) refers to the preceding December 31, which means the December 31 preceding the current calendar year. For example, in 2020, the preceding December 31 is December 31, 2019. Assume that, as of December 31, 2019, an insured depository institution received ratings of ''needs to improve record of meeting community credit needs'' during its two most recent examinations under section 807(b)(2) of the Community Reinvestment Act (12 U.S.C. 2906(b)(2)) in 2018 and 2014. Accordingly, in 2020, the insured depository institution's transactions are not partially exempt pursuant to § 1003.3(d).

Section 1003.4—Compilation of Reportable Data

4(a) Data Format and Itemization

1. *General.* Except as otherwise provided in § 1003.3, § 1003.4(a) describes a financial institution's obligation to collect data on applications it received, on covered loans that it originated, and on covered loans that it purchased during the calendar year covered by the loan/application register.

i. A financial institution reports these data even if the covered loans were subsequently sold by the institution.

ii. A financial institution reports data for applications that did not result in an origination but on which actions were taken–for example, an application that the institution denied, that it approved but that was not accepted, that it closed for incompleteness, or that the applicant withdrew during the calendar year covered by the loan/application register. A financial institution is required to report data regarding requests under a preapproval program (as defined in § 1003.2(b)(2)) only if the preapproval request is denied, results in the origination of a home purchase loan, or was approved but not accepted.

iii. If a financial institution acquires covered loans in bulk from another institution (for example, from the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved, the acquiring financial institution reports the covered loans as purchased loans.

iv. A financial institution reports the data for an application on the loan/application register for the calendar year during which the application was acted upon even if the institution received the application in a previous calendar year.

2. *Originations and applications involving more than one institution.* Section 1003.4(a) requires a financial institution to collect certain information regarding applications for covered loans that it receives and regarding covered loans that it originates. The following provides guidance on how to report originations and applications involving more than one institution. The discussion below assumes that all of the parties are financial institutions as defined by § 1003.2(g). The same principles apply if any of the parties is not a financial institution. Comment 4(a)–3 provides examples of transactions involving more than one institution, and comment 4(a)–4 discusses how to report actions taken by agents.

i. Only one financial institution reports each originated covered loan as an origination. If more than one institution was involved in the origination of a covered loan, the financial institution that made the credit decision approving the application before closing or account opening reports the loan as an origination. It is not relevant whether the loan closed or, in the case of an application, would have closed in the institution's name. If more than one institution approved an application prior to closing or account opening and one of those institutions purchased the loan after closing, the institution that purchased the loan after closing reports the loan as an origination. If a financial institution reports a transaction as an origination, it reports all of the information required for originations, even if the covered loan was not initially payable to the financial institution that is reporting the covered loan as an origination.

ii. In the case of an application for a covered loan that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. It is not relevant whether the financial institution received the application from the applicant or from another institution, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

3. *Examples—originations and applications involving more than one institution.* The following scenarios illustrate how an institution reports a particular application or covered loan. The illustrations assume that all of the parties are financial institutions as defined by § 1003.2(g). However, the same principles apply if any of the parties is not a financial institution.

i. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and approved the loan prior to closing. The loan closed in Financial Institution A's name. Financial Institution B purchased the loan from Financial Institution A after closing. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, Financial Institution B reports the transaction as an origination, not as a purchase. Financial Institution A does not report the transaction.

ii. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application before the loan would have closed, but the application did not result in an origination because Financial Institution B denied the application. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision, Financial Institution B reports the application as a denial. Financial Institution A does not report the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application.

iii. Financial Institution A received an application for a covered loan from an applicant and approved the application before closing the loan in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B purchased the covered loan from Financial Institution A. Financial Institution B did not review the application before closing. Financial Institution A reports the loan as an origination. Financial Institution B reports the loan as a purchase.

iv. Financial Institution A received an application for a covered loan from an applicant. If approved, the loan would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A made the credit decision before the loan would have closed, Financial Institution A reports the application. Financial Institution B does not report the application.

v. Financial Institution A reviewed an application and made the credit decision to approve a covered loan using the underwriting criteria provided by a third party (*e.g.,* another financial institution, Fannie Mae, or Freddie Mac). The third party did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as the third party's agent. Financial Institution A reports the application or origination. If the third party purchased the loan and is subject to Regulation C, the third party reports the loan as a purchase whether or not the third party reviewed the loan after closing. Assume the same facts, except that Financial Institution A approved the application, and the applicant chose not to accept the loan from Financial Institution A. Financial Institution A reports the application as approved but not accepted and the third party, assuming the third party is subject to Regulation C, does not report the application.

vi. Financial Institution A reviewed and made the credit decision on an application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

vii. Financial Institution A received an application for a covered loan and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. The applicant did not accept the loan from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application. Financial Institution B made a credit decision, approving the application, the applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the origination. Financial Institution C made a credit decision and denied the application. Financial Institution C reports the application as denied.

4. *Agents.* If a financial institution made the credit decision on a covered loan or application through the actions of an agent, the institution reports the application or origination. State law determines whether one party is the agent of another. For example, acting as Financial Institution A's agent, Financial Institution B approved an application prior to closing and a covered loan was originated. Financial Institution A reports the loan as an origination.

5. *Purchased loans.* i. A financial institution is required to collect data

regarding covered loans it purchases. For purposes of § 1003.4(a), a purchase includes a repurchase of a covered loan, regardless of whether the institution chose to repurchase the covered loan or was required to repurchase the covered loan because of a contractual obligation and regardless of whether the repurchase occurs within the same calendar year that the covered loan was originated or in a different calendar year. For example, assume that Financial Institution A originates or purchases a covered loan and then sells it to Financial Institution B, who later requires Financial Institution A to repurchase the covered loan pursuant to the relevant contractual obligations. Financial Institution B reports the purchase from Financial Institution A, assuming it is a financial institution as defined under § 1003.2(g). Financial Institution A reports the repurchase from Financial Institution B as a purchase.

ii. In contrast, for purposes of § 1003.4(a), a purchase does not include a temporary transfer of a covered loan to an interim funder or warehouse creditor as part of an interim funding agreement under which the originating financial institution is obligated to repurchase the covered loan for sale to a subsequent investor. Such agreements, often referred to as ''repurchase agreements,'' are sometimes employed as functional equivalents of warehouse lines of credit. Under these agreements, the interim funder or warehouse creditor acquires legal title to the covered loan, subject to an obligation of the originating institution to repurchase at a future date, rather than taking a security interest in the covered loan as under the terms of a more conventional warehouse line of credit. To illustrate, assume Financial Institution A has an interim funding agreement with Financial Institution B to enable Financial Institution B to originate loans. Assume further that Financial Institution B originates a covered loan and that, pursuant to this agreement, Financial Institution A takes a temporary transfer of the covered loan until Financial Institution B arranges for the sale of the covered loan to a subsequent investor and that Financial Institution B repurchases the covered loan to enable it to complete the sale to the subsequent investor (alternatively, Financial Institution A may transfer the covered loan directly to the subsequent investor at Financial Institution B's direction, pursuant to the interim funding agreement). The subsequent investor could be, for example, a financial institution or other entity that intends to hold the loan in portfolio, a GSE or other securitizer, or a financial institution or other entity that intends to package and sell multiple loans to a GSE or other securitizer. In this example, the temporary transfer of the covered loan from Financial Institution B to Financial Institution A is not a purchase, and any subsequent transfer back to Financial Institution B for delivery to the subsequent investor is not a purchase, for purposes of § 1003.4(a). Financial Institution B reports the origination of the covered loan as well as its sale to the subsequent investor. If the subsequent investor is a financial institution under § 1003.2(g), it reports a purchase of the covered loan pursuant to § 1003.4(a), regardless of whether it acquired the covered loan from Financial Institution B or directly from Financial Institution A.

Paragraph 4(a)(1)(i)

1. *ULI—uniqueness.* Section 1003.4(a)(1)(i)(B)(*2*) requires a financial institution that assigns a universal loan identifier (ULI) to each covered loan or application (except as provided in § 1003.4(a)(1)(i)(D) and (E)) to ensure that the character sequence it assigns is unique within the institution and used only for the covered loan or application. A financial institution should assign only one ULI to any particular covered loan or application, and each ULI should correspond to a single application and ensuing loan in the case that the application is approved and a loan is originated. A financial institution may use a ULI that was reported previously to refer only to the same loan or application for which the ULI was used previously or a loan that ensues from an application for which the ULI was used previously. A financial institution may not report an application for a covered loan in 2030 using the same ULI that was reported for a covered loan that was originated in 2020. Similarly, refinancings or applications for refinancing should be assigned a different ULI than the loan that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use the same ULI to refer to multiple covered loans or applications.

2. *ULI—privacy.* Section 1003.4(a)(1)(i)(B)(*3*) prohibits a financial institution from including information that could be used to directly identify the applicant or borrower in the identifier that it assigns for the application or covered loan of the applicant or borrower. Information that could be used to directly identify the applicant or borrower includes, but is not limited to, the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

3. *ULI—purchased covered loan.* If a financial institution has previously assigned a covered loan with a ULI or reported a covered loan with a ULI under this part, a financial institution that purchases that covered loan must report the same ULI that was previously assigned or reported unless the purchase of the covered loan is a partially exempt transaction under § 1003.3(d). For example, if a financial institution that submits an annual loan/application register pursuant to § 1003.5(a)(1)(i) originates a covered loan that is purchased by a financial institution that also submits an annual loan/application register pursuant to § 1003.5(a)(1)(i), the financial institution that purchases the covered loan must report the purchase of the covered loan using the same ULI that was reported by the originating financial institution if the purchase is not a partially exempt transaction. If a financial institution that originates a covered loan has previously assigned the covered loan with a ULI under this part but has not yet reported the covered loan, a financial institution that purchases that covered loan must report the same ULI that was previously assigned if the purchase is not a partially exempt transaction. For example, if a financial institution that submits an annual loan/application register pursuant to § 1003.5(a)(1)(i) (Institution A) originates a covered loan that is purchased by a financial institution that submits a quarterly loan/application register pursuant to § 1003.5(a)(1)(ii) (Institution B) and Institution A assigned a ULI to the loan, then unless the purchase is a partially exempt transaction Institution B must report the ULI that was assigned by Institution A on Institution B's quarterly loan/application register pursuant to § 1003.5(a)(1)(ii), even though Institution A has not yet submitted its annual loan/application register pursuant to § 1003.5(a)(1)(i). A financial institution that purchases a covered loan and is ineligible for a partial exemption with respect to the purchased covered loan must assign it a ULI pursuant to § 1003.4(a)(1)(i) and report it pursuant to § 1003.5(a)(1)(i) or (ii), whichever is applicable, if the covered loan was not assigned a ULI by the financial institution that originated the loan because, for example, the loan was originated prior to January 1, 2018, the loan was originated by an institution not required to report under this part, or the loan was assigned a non-universal loan identifier (NULI) under § 1003.3(d)(5) rather than a ULI by the loan originator.

4. *ULI—reinstated or reconsidered application.* A financial institution may, at its option, report a ULI previously reported under this part if, during the same calendar year, an applicant asks the institution to reinstate a counteroffer that the applicant previously did not accept or asks the financial institution to reconsider an application that was previously denied, withdrawn, or closed for incompleteness. For example, if a financial institution reports a denied application in its second-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application, resulting in an origination in the third quarter of 2020, the financial institution may report the origination in its third-quarter 2020 data submission using the same ULI that was reported for the denied application in its second-quarter 2020 data submission, so long as the financial institution treats the origination as the same transaction for reporting. However, a financial institution may not use a ULI previously reported if it reinstates or reconsiders an application that was reported in a prior calendar year. For example, if a financial institution reports a denied application that is not partially exempt in its fourth-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application, resulting in an origination that is not partially exempt in the first quarter of 2021, the financial institution reports a denied application under the original ULI in its fourth-quarter 2020 data submission and an origination with a different ULI in its first-quarter 2021 data submission, pursuant to § 1003.5(a)(1)(ii).

5. *ULI—check digit.* Section 1003.4(a)(1)(i)(C) requires that the two right-most characters in the ULI represent the check digit. Appendix C prescribes the

requirements for generating a check digit and validating a ULI.

6. *NULI.* For a partially exempt transaction under § 1003.3(d), a financial institution may report a ULI or a NULI. See § 1003.3(d)(5) and comments 3(d)(5)–1 and –2 for guidance on the NULI.

Paragraph 4(a)(1)(ii)

1. *Application date—consistency.* Section 1003.4(a)(1)(ii) requires that, in reporting the date of application, a financial institution report the date it received the application, as defined under § 1003.2(b), or the date shown on the application form. Although a financial institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). If the financial institution chooses to report the date shown on the application form and the institution retains multiple versions of the application form, the institution reports the date shown on the first application form satisfying the application definition provided under § 1003.2(b).

2. *Application date—indirect application.* For an application that was not submitted directly to the financial institution, the institution may report the date the application was received by the party that initially received the application, the date the application was received by the institution, or the date shown on the application form. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks a financial institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction using the same ULI or NULI or as a new transaction with a new ULI or NULI. If the institution treats the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date. If the institution does not treat the request for reinstatement or reconsideration as a new transaction, it reports the original application date.

Paragraph 4(a)(2)

1. *Loan type—general.* If a covered loan is not, or in the case of an application would not have been, insured by the Federal Housing Administration, guaranteed by the Department of Veterans Affairs, or guaranteed by the Rural Housing Service or the Farm Service Agency, an institution complies with § 1003.4(a)(2) by reporting the covered loan as not insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, Rural Housing Service, or Farm Service Agency.

Paragraph 4(a)(3)

1. *Purpose—statement of applicant.* A financial institution may rely on the oral or written statement of an applicant regarding the proposed use of covered loan proceeds. For example, a lender could use a check-box or a purpose line on a loan application to determine whether the applicant intends to use covered loan proceeds for home improvement purposes. If an applicant provides no statement as to the proposed use of covered loan proceeds and the covered loan is not a home purchase loan, cash-out refinancing, or refinancing, a financial institution reports the covered loan as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing for purposes of § 1003.4(a)(3).

2. *Purpose—refinancing and cash-out refinancing.* Section 1003.4(a)(3) requires a financial institution to report whether a covered loan is, or an application is for, a refinancing or a cash-out refinancing. A financial institution reports a covered loan or an application as a cash-out refinancing if it is a refinancing as defined by § 1003.2(p) and the institution considered it to be a cash-out refinancing in processing the application or setting the terms (such as the interest rate or origination charges) under its guidelines or an investor's guidelines. For example:

i. Assume a financial institution considers an application for a loan product to be a cash-out refinancing under an investor's guidelines because of the amount of cash received by the borrower at closing or account opening. Assume also that under the investor's guidelines, the applicant qualifies for the loan product and the financial institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with the loan product. In this example, the financial institution would report the covered loan as a cash-out refinancing for purposes of § 1003.4(a)(3).

ii. Assume a financial institution does not consider an application for a covered loan to be a cash-out refinancing under its own guidelines because the amount of cash received by the borrower does not exceed a certain threshold. Assume also that the institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with its own guidelines applicable to refinancings other than cash-out refinancings. In this example, the financial institution would report the covered loan as a refinancing for purposes of § 1003.4(a)(3).

iii. Assume a financial institution does not distinguish between a cash-out refinancing and a refinancing under its own guidelines, and sets the terms of all refinancings without regard to the amount of cash received by the borrower at closing or account opening, and does not offer loan products under investor guidelines. In this example, the financial institution reports all covered loans and applications for covered loans that are defined by § 1003.2(p) as refinancings for purposes of § 1003.4(a)(3).

3. *Purpose—multiple-purpose loan.* Section 1003.4(a)(3) requires a financial institution to report the purpose of a covered loan or application. If a covered loan is a home purchase loan as well as a home improvement loan, a refinancing, or a cash-out refinancing, an institution complies with § 1003.4(a)(3) by reporting the loan as a home purchase loan. If a covered loan is a home improvement loan as well as a refinancing or cash-out refinancing, but the covered loan is not a home purchase loan, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. If a covered loan is a refinancing or cash-out refinancing as well as for another purpose, such as for the purpose of paying educational expenses, but the covered loan is not a home purchase loan, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. *See* comment 4(a)(3)–2. If a covered loan is a home improvement loan as well as for another purpose, but the covered loan is not a home purchase loan, a refinancing, or cash-out refinancing, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a home improvement loan. *See* comment 2(i)–1.

4. *Purpose—other.* If a covered loan is not, or an application is not for, a home purchase loan, a home improvement loan, a refinancing, or a cash-out refinancing, a financial institution complies with § 1003.4(a)(3) by reporting the covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing. For example, if a covered loan is for the purpose of paying educational expenses, the financial institution complies with § 1003.4(a)(3) by reporting the covered loan as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing. Section 1003.4(a)(3) also requires an institution to report a covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing if it is a refinancing but, under the terms of the agreement, the financial institution was unconditionally obligated to refinance the obligation subject to conditions within the borrower's control.

5. *Purpose—business or commercial purpose loans.* If a covered loan primarily is for a business or commercial purpose as described in § 1003.3(c)(10) and comment 3(c)(10)–2 and is a home purchase loan, home improvement loan, or a refinancing, § 1003.4(a)(3) requires the financial institution to report the applicable loan purpose. If a loan primarily is for a business or commercial purpose but is not a home purchase loan, home improvement loan, or a refinancing, the loan is an excluded transaction under § 1003.3(c)(10).

6. *Purpose—purchased loans.* For purchased covered loans where origination took place prior to January 1, 2018, a financial institution complies with § 1003.4(a)(3) by reporting that the requirement is not applicable.

Paragraph 4(a)(4)

1. *Request under a preapproval program.* Section 1003.4(a)(4) requires a financial institution to report whether an application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program as defined by § 1003.2(b)(2). If an application or covered loan did not involve a request for a

preapproval of a home purchase loan under a preapproval program as defined by § 1003.2(b)(2), a financial institution complies with § 1003.4(a)(4) by reporting that the application or covered loan did not involve such a request, regardless of whether the institution has such a program and the applicant did not apply through that program or the institution does not have a preapproval program as defined by § 1003.2(b)(2).

2. *Scope of requirement.* A financial institution reports that the application or covered loan did not involve a preapproval request for a purchased covered loan; an application or covered loan for any purpose other than a home purchase loan; an application for a home purchase loan or a covered loan that is a home purchase loan secured by a multifamily dwelling; an application or covered loan that is an open-end line of credit or a reverse mortgage; or an application that is denied, withdrawn by the applicant, or closed for incompleteness.

Paragraph 4(a)(5)

1. *Modular homes and prefabricated components.* Covered loans or applications related to modular homes should be reported with a construction method of site-built, regardless of whether they are on-frame or off-frame modular homes. Modular homes comply with local or other recognized buildings codes rather than standards established by the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 *et seq.* Modular homes are not required to have HUD Certification Labels under 24 CFR 3280.11 or data plates under 24 CFR 3280.5. Modular homes may have a certification from a State licensing agency that documents compliance with State or other applicable building codes. On-frame modular homes are constructed on permanent metal chassis similar to those used in manufactured homes. The chassis are not removed on site and are secured to the foundation. Off-frame modular homes typically have floor construction similar to the construction of other site-built homes, and the construction typically includes wooden floor joists and does not include permanent metal chassis. Dwellings built using prefabricated components assembled at the dwelling's permanent site should also be reported with a construction method of site-built.

2. *Multifamily dwelling.* For a covered loan or an application for a covered loan related to a multifamily dwelling, the financial institution should report the construction method as site-built unless the multifamily dwelling is a manufactured home community, in which case the financial institution should report the construction method as manufactured home.

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(6)

1. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

2. *Principal residence.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as a residence that the applicant or borrower physically occupies and uses, or will occupy and use, as his or her principal residence. For purposes of § 1003.4(a)(6), an applicant or borrower can have only one principal residence at a time. Thus, a vacation or other second home would not be a principal residence. However, if an applicant or borrower buys or builds a new dwelling that will become the applicant's or borrower's principal residence within a year or upon the completion of construction, the new dwelling is considered the principal residence for purposes of applying this definition to a particular transaction.

3. *Second residences.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the loan or application relates is or will be used as a second residence. For purposes of § 1003.4(a)(6), a property is a second residence of an applicant or borrower if the property is or will be occupied by the applicant or borrower for a portion of the year and is not the applicant's or borrower's principal residence. For example, if a person purchases a property, occupies the property for a portion of the year, and rents the property for the remainder of the year, the property is a second residence for purposes of § 1003.4(a)(6). Similarly, if a couple occupies a property near their place of employment on weekdays, but the couple returns to their principal residence on weekends, the property near the couple's place of employment is a second residence for purposes of § 1003.4(a)(6).

4. *Investment properties.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as an investment property. For purposes of § 1003.4(a)(6), a property is an investment property if the borrower does not, or the applicant will not, occupy the property. For example, if a person purchases a property, does not occupy the property, and generates income by renting the property, the property is an investment property for purposes of § 1003.4(a)(6). Similarly, if a person purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property, the property is an investment property for purposes of § 1003.4(a)(6). Section 1003.4(a)(6) requires a financial institution to identify a property as an investment property if the borrower or applicant does not or will not occupy the property, even if the borrower or applicant does not consider the property as owned for investment purposes. For example, if a corporation purchases a property that is a dwelling under § 1003.2(f), that it does not occupy, but that is for the long-term residential use of its employees, the property is an investment property for purposes of § 1003.4(a)(6), even if the corporation considers the property as owned for business purposes rather than investment purposes, does not generate income by renting the property, and does not intend to generate income by selling the property at some point in time. If the property is for transitory use by employees, the property would not be considered a dwelling under § 1003.2(f). *See* comment 2(f)–3.

5. *Purchased covered loans.* For purchased covered loans, a financial institution may report principal residence unless the loan documents or application indicate that the property will not be occupied as a principal residence.

Paragraph 4(a)(7)

1. *Covered loan amount—counteroffer.* If an applicant accepts a counteroffer for an amount different from the amount for which the applicant applied, the financial institution reports the covered loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the amount initially requested.

2. *Covered loan amount—application approved but not accepted or preapproval request approved but not accepted.* A financial institution reports the covered loan amount that was approved.

3. *Covered loan amount—preapproval request denied, application denied, closed for incompleteness or withdrawn.* For a preapproval request that was denied, and for an application that was denied, closed for incompleteness, or withdrawn, a financial institution reports the amount for which the applicant applied.

4. *Covered loan amount—multiple-purpose loan.* A financial institution reports the entire amount of the covered loan, even if only a part of the proceeds is intended for home purchase, home improvement, or refinancing.

5. *Covered loan amount—closed-end mortgage loan.* For a closed-end mortgage loan, other than a purchased loan, an assumption, or a reverse mortgage, a financial institution reports the amount to be repaid as disclosed on the legal obligation. For a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, a financial institution reports the unpaid principal balance at the time of purchase or assumption.

6. *Covered loan amount—open-end line of credit.* For an open-end line of credit, a financial institution reports the entire amount of credit available to the borrower under the terms of the open-end plan, including a purchased open-end line of credit and an assumption of an open-end line of credit, but not for a reverse mortgage open-end line of credit.

7. *Covered loan amount—refinancing.* For a refinancing, a financial institution reports the amount of credit extended under the terms of the new debt obligation.

8. *Covered loan amount—home improvement loan.* A financial institution reports the entire amount of a home improvement loan, even if only a part of the proceeds is intended for home improvement.

9. *Covered loan amount—non-federally insured reverse mortgage.* A financial institution reports the initial principal limit of a non-federally insured reverse mortgage as set forth in § 1003.4(a)(7)(iii).

Paragraph 4(a)(8)(i)

1. *Action taken—covered loan originated.* A financial institution reports that the covered loan was originated if the financial

institution made a credit decision approving the application before closing or account opening and that credit decision results in an extension of credit. The same is true for an application that began as a request for a preapproval that subsequently results in a covered loan being originated. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one institution is involved.

2. *Action taken—covered loan purchased.* A financial institution reports that the covered loan was purchased if the covered loan was purchased by the financial institution after closing or account opening and the financial institution did not make a credit decision on the application prior to closing or account opening, or if the financial institution did make a credit decision on the application prior to closing or account opening, but is repurchasing the loan from another entity that the loan was sold to. *See* comment 4(a)–5. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one financial institution is involved.

3. *Action taken—application approved but not accepted.* A financial institution reports application approved but not accepted if the financial institution made a credit decision approving the application before closing or account opening, subject solely to outstanding conditions that are customary commitment or closing conditions, but the applicant or the party that initially received the application fails to respond to the financial institution's approval within the specified time, or the closed-end mortgage loan was not otherwise consummated or the account was not otherwise opened. *See* comment 4(a)(8)(i)–13.

4. *Action taken—application denied.* A financial institution reports that the application was denied if it made a credit decision denying the application before an applicant withdraws the application or the file is closed for incompleteness. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one institution is involved.

5. *Action taken—application withdrawn.* A financial institution reports that the application was withdrawn when the application is expressly withdrawn by the applicant before the financial institution makes a credit decision denying the application, before the financial institution makes a credit decision approving the application, or before the file is closed for incompleteness. A financial institution also reports application withdrawn if the financial institution provides a conditional approval specifying underwriting or creditworthiness conditions, pursuant to comment 4(a)(8)(i)–13, and the application is expressly withdrawn by the applicant before the applicant satisfies all specified underwriting or creditworthiness conditions. A preapproval request that is withdrawn is not reportable under HMDA. *See* § 1003.4(a).

6. *Action taken—file closed for incompleteness.* A financial institution reports that the file was closed for incompleteness if the financial institution sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond to the request for additional information within the period of time specified in the notice before the applicant satisfies all underwriting or creditworthiness conditions. *See* comment 4(a)(8)(i)–13. If a financial institution then provides a notification of adverse action on the basis of incompleteness under Regulation B, 12 CFR 1002.9(c)(1)(i), the financial institution may report the action taken as either file closed for incompleteness or application denied. A preapproval request that is closed for incompleteness is not reportable under HMDA. *See* § 1003.4(a) and comment 4(a)–1.ii.

7. *Action taken—preapproval request denied.* A financial institution reports that the preapproval request was denied if the application was a request for a preapproval under a preapproval program as defined in § 1003.2(b)(2) and the institution made a credit decision denying the preapproval request.

8. *Action taken—preapproval request approved but not accepted.* A financial institution reports that the preapproval request was approved but not accepted if the application was a request for a preapproval under a preapproval program as defined in § 1003.2(b)(2) and the institution made a credit decision approving the preapproval request but the application did not result in a covered loan originated by the financial institution.

9. *Action taken—counteroffers.* If a financial institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity, with a different interest rate, or in a different amount) and the applicant declines to proceed with the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant. If the applicant agrees to proceed with consideration of the financial institution's counteroffer, the financial institution reports the action taken as the disposition of the application based on the terms of the counteroffer. For example, assume a financial institution makes a counteroffer, the applicant agrees to proceed with the terms of the counteroffer, and the financial institution then makes a credit decision approving the application conditional on satisfying underwriting or creditworthiness conditions, and the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness. The financial institution reports that the action taken as application withdrawn in accordance with comment 4(a)(8)(i)–13.i. Similarly, assume a financial institution makes a counteroffer, the applicant agrees to proceed with consideration of the counteroffer, and the financial institution provides a conditional approval stating the conditions to be met to originate the counteroffer. The financial institution reports the action taken on the application in accordance with comment 4(a)(8)(i)–13 regarding conditional approvals.

10. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing and before a financial institution is required to submit its loan/application register containing the information for the transaction under § 1003.5(a), the institution reports the transaction as an application that was approved but not accepted.

11. *Action taken—purchased covered loans.* An institution reports the covered loans that it purchased during the calendar year. An institution does not report the covered loans that it declined to purchase, unless, as discussed in comments 4(a)–2 through –4, the institution reviewed the application prior to closing, in which case it reports the application or covered loan according to comments 4(a)–2 through –4.

12. *Action taken—repurchased covered loans.* See comment 4(a)–5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

13. *Action taken—conditional approvals.* If an institution issues an approval other than a commitment pursuant to a preapproval program as defined under § 1003.2(b)(2), and that approval is subject to the applicant meeting certain conditions, the institution reports the action taken as provided below dependent on whether the conditions are solely customary commitment or closing conditions or if the conditions include any underwriting or creditworthiness conditions.

i. *Action taken examples.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions and they are not met, the institution reports the action taken as a denial. If, however, the conditions involve submitting additional information about underwriting or creditworthiness that the institution needs to make the credit decision, and the institution has sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond within the period of time specified in the notice, the institution reports the action taken as file closed for incompleteness. *See* comment 4(a)(8)(i)–6. If the conditions are solely customary commitment or closing conditions and the conditions are not met, the institution reports the action taken as approved but not accepted. If all the conditions (underwriting, creditworthiness, or customary commitment or closing conditions) are satisfied and the institution agrees to extend credit but the covered loan is not originated, the institution reports the action taken as application approved but not accepted. If the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness, the institution reports the action taken as application withdrawn. If all underwriting and creditworthiness conditions have been met, and the outstanding conditions are solely customary commitment or closing conditions and the applicant expressly withdraws before the covered loan is originated, the institution reports the action taken as application approved but not accepted.

ii. *Customary commitment or closing conditions.* Customary commitment or closing conditions include, for example: a clear-title requirement, an acceptable property survey, acceptable title insurance

binder, clear termite inspection, a subordination agreement from another lienholder, and, where the applicant plans to use the proceeds from the sale of one home to purchase another, a settlement statement showing adequate proceeds from the sale.

iii. *Underwriting or creditworthiness conditions.* Underwriting or creditworthiness conditions include, for example: conditions that constitute a counter-offer, such as a demand for a higher down-payment; satisfactory debt-to-income or loan-to-value ratios, a determination of need for private mortgage insurance, or a satisfactory appraisal requirement; or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of income or assets.

14. *Action taken—pending applications.* An institution does not report any covered loan application still pending at the end of the calendar year; it reports that application on its loan/application register for the year in which final action is taken.

Paragraph 4(a)(8)(ii)

1. *Action taken date—general.* A financial institution reports the date of the action taken.

2. *Action taken date—applications denied and files closed for incompleteness.* For applications, including requests for a preapproval, that are denied or for files closed for incompleteness, the financial institution reports either the date the action was taken or the date the notice was sent to the applicant.

3. *Action taken date—application withdrawn.* For applications withdrawn, the financial institution may report the date the express withdrawal was received or the date shown on the notification form in the case of a written withdrawal.

4. *Action taken date—approved but not accepted.* For a covered loan approved by an institution but not accepted by the applicant, the institution reports any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans).

5. *Action taken date—originations.* For covered loan originations, including a preapproval request that leads to an origination by the financial institution, an institution generally reports the closing or account opening date. For covered loan originations that an institution acquires from a party that initially received the application, the institution reports either the closing or account opening date, or the date the institution acquired the covered loan from the party that initially received the application. If the disbursement of funds takes place on a date later than the closing or account opening date, the institution may use the date of initial disbursement. For a construction/permanent covered loan, the institution reports either the closing or account opening date, or the date the covered loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). Notwithstanding this flexibility regarding the use of the closing or account opening date in connection with reporting the date action was taken, the institution must report the origination as occurring in the year in which the origination goes to closing or the account is opened.

6. *Action taken date—loan purchased.* For covered loans purchased, a financial institution reports the date of purchase.

Paragraph 4(a)(9)

1. *Multiple properties with one property taken as security.* If a covered loan is related to more than one property, but only one property is taken as security (or, in the case of an application, proposed to be taken as security), a financial institution reports the information required by § 1003.4(a)(9) for the property taken as or proposed to be taken as security. A financial institution does not report the information required by § 1003.4(a)(9) for the property or properties related to the loan that are not taken as or proposed to be taken as security. For example, if a covered loan is secured by property A, and the proceeds are used to purchase or rehabilitate (or to refinance home purchase or home improvement loans related to) property B, the institution reports the information required by § 1003.4(a)(9) for property A and does not report the information required by § 1003.4(a)(9) for property B.

2. *Multiple properties with more than one property taken as security.* If more than one property is taken or, in the case of an application, proposed to be taken as security for a single covered loan, a financial institution reports the covered loan or application in a single entry on its loan/application register and provides the information required by § 1003.4(a)(9) for one of the properties taken as security that contains a dwelling. A financial institution does not report information about the other properties taken as security. If an institution is required to report specific information about the property identified in § 1003.4(a)(9), the institution reports the information that relates to the property identified in § 1003.4(a)(9) (or, if the transaction is partially exempt under § 1003.3(d) and no data are reported pursuant to § 1003.4(a)(9), the property that the institution would have identified in § 1003.4(a)(9) if the transaction were not partially exempt). For example, Financial Institution A originated a covered loan that is secured by both property A and property B, each of which contains a dwelling. Financial Institution A reports the loan as one entry on its loan/application register, reporting the information required by § 1003.4(a)(9) for either property A or property B. If Financial Institution A elects to report the information required by § 1003.4(a)(9) about property A, Financial Institution A also reports the information required by § 1003.4(a)(5), (6), (14), (29), and (30) related to property A. For aspects of the entries that do not refer to the property identified in § 1003.4(a)(9) (*i.e.,* § 1003.4(a)(1) through (4), (7), (8), (10) through (13), (15) through (28), and (31) through (38)), Financial Institution A reports the information applicable to the covered loan or application and not information that relates only to the property identified in § 1003.4(a)(9).

3. *Multifamily dwellings.* A single multifamily dwelling may have more than one postal address. For example, three apartment buildings, each with a different street address, comprise a single multifamily dwelling that secures a covered loan. For the purposes of § 1003.4(a)(9), a financial institution reports the information required by § 1003.4(a)(9) in the same manner described in comment 4(a)(9)–2.

4. *Loans purchased from another institution.* The requirement to report the property location information required by § 1003.4(a)(9) applies not only to applications and originations but also to purchased covered loans.

5. *Manufactured home.* If the site of a manufactured home has not been identified, a financial institution complies by reporting that the information required by § 1003.4(a)(9) is not applicable.

Paragraph 4(a)(9)(i)

1. *General.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(9)(i) requires a financial institution to report the property address of the location of the property securing a covered loan or, in the case of an application, proposed to secure a covered loan. The address should correspond to the property identified on the legal obligation related to the covered loan. For applications that did not result in an origination, the address should correspond to the location of the property proposed to secure the loan as identified by the applicant. For example, assume a loan is secured by a property located at 123 Main Street, and the applicant's or borrower's mailing address is a post office box. The financial institution should not report the post office box, and should report 123 Main Street.

2. *Property address—format.* A financial institution complies with the requirements in § 1003.4(a)(9)(i) by reporting the following information about the physical location of the property securing the loan.

i. *Street address.* When reporting the street address of the property, a financial institution complies by including, as applicable, the primary address number, the predirectional, the street name, street prefixes and/or suffixes, the postdirectional, the secondary address identifier, and the secondary address, as applicable. For example, 100 N Main ST Apt 1.

ii. *City name.* A financial institution complies by reporting the name of the city in which the property is located.

iii. *State name.* A financial institution complies by reporting the two letter State code for the State in which the property is located, using the U.S. Postal Service official State abbreviations.

iv. *Zip Code.* A financial institution complies by reporting the five or nine digit Zip Code in which the property is located.

3. *Property address—not applicable.* A financial institution complies with § 1003.4(a)(9)(i) by reporting that the requirement is not applicable if the property address of the property securing the covered loan is not known. For example, if the property did not have a property address at closing or if the applicant did not provide the property address of the property to the financial institution before the application was denied, withdrawn, or closed for incompleteness, the financial institution complies with § 1003.4(a)(9)(i) by reporting that the requirement is not applicable.

Paragraph 4(a)(9)(ii)

1. *Optional reporting.* Section 1003.4(a)(9)(ii) requires a financial institution to report the State, county, and census tract of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan if the property is located in an MSA or MD in which the financial institution has a home or branch office or if the institution is subject to § 1003.4(e). Section 1003.4(a)(9)(ii)(C) further limits the requirement to report census tract to covered loans secured by or applications proposed to be secured by properties located in counties with a population of more than 30,000 according to the most recent decennial census conducted by the U.S. Census Bureau. For transactions for which State, county, or census tract reporting is not required under § 1003.4(a)(9)(ii) or (e), financial institutions may report that the requirement is not applicable, or they may voluntarily report the State, county, or census tract information.

Paragraph 4(a)(9)(ii)(A)

1. *Applications—State not provided.* When reporting an application, a financial institution complies with § 1003.4(a)(9)(ii)(A) by reporting that the requirement is not applicable if the State in which the property is located was not known before the application was denied, withdrawn, or closed for incompleteness.

Paragraph 4(a)(9)(ii)(B)

1. *General.* A financial institution complies by reporting the five-digit Federal Information Processing Standards (FIPS) numerical county code.

2. *Applications—county not provided.* When reporting an application, a financial institution complies with § 1003.4(a)(9)(ii)(B) by reporting that the requirement is not applicable if the county in which the property is located was not known before the application was denied, withdrawn, or closed for incompleteness.

Paragraph 4(a)(9)(ii)(C)

1. *General.* Census tract numbers are defined by the U.S. Census Bureau. A financial institution complies with § 1003.4(a)(9)(ii)(C) if it uses the boundaries and codes in effect on January 1 of the calendar year covered by the loan/application register that it is reporting.

2. *Applications—census tract not provided.* When reporting an application, a financial institution complies with § 1003.4(a)(9)(ii)(C) by reporting that the requirement is not applicable if the census tract in which the property is located was not known before the application was denied, withdrawn, or closed for incompleteness.

Paragraph 4(a)(10)(i)

1. *Applicant data—general.* Refer to appendix B to this part for instructions on collection of an applicant's ethnicity, race, and sex.

2. *Transition rule for applicant data collected prior to January 1, 2018.* If a financial institution receives an application prior to January 1, 2018, but final action is taken on or after January 1, 2018, the financial institution complies with § 1003.4(a)(10)(i) and (b) if it collects the information in accordance with the requirements in effect at the time the information was collected. For example, if a financial institution receives an application on November 15, 2017, collects the applicant's ethnicity, race, and sex in accordance with the instructions in effect on that date, and takes final action on the application on January 5, 2018, the financial institution has complied with the requirements of § 1003.4(a)(10)(i) and (b), even though those instructions changed after the information was collected but before the date of final action. However, if, in this example, the financial institution collected the applicant's ethnicity, race, and sex on or after January 1, 2018, § 1003.4(a)(10)(i) and (b) requires the financial institution to collect the information in accordance with the amended instructions.

Paragraph 4(a)(10)(ii)

1. *Applicant data—completion by financial institution.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting the applicant's age, as of the application date under § 1003.4(a)(1)(ii), as the number of whole years derived from the date of birth as shown on the application form. For example, if an applicant provides a date of birth of 01/15/1970 on the application form that the financial institution receives on 01/14/2015, the institution reports 44 as the applicant's age.

2. *Applicant data—co-applicant.* If there are no co-applicants, the financial institution reports that there is no co-applicant. If there is more than one co-applicant, the financial institution reports the age only for the first co-applicant listed on the application form. A co-applicant may provide an absent co-applicant's age on behalf of the absent co-applicant.

3. *Applicant data—purchased loan.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting that the requirement is not applicable when reporting a purchased loan for which the institution chooses not to report the age.

4. *Applicant data—non-natural person.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting that the requirement is not applicable if the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report the applicant's age is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution reports the applicant's age.

5. *Applicant data—guarantor.* For purposes of § 1003.4(a)(10)(ii), if a covered loan or application includes a guarantor, a financial institution does not report the guarantor's age.

Paragraph 4(a)(10)(iii)

1. *Income data—income relied on.* When a financial institution evaluates income as part of a credit decision, it reports the gross annual income relied on in making the credit decision. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. If an institution relies on only a portion of an applicant's income in its determination, it does not report that portion of income not relied on. For example, if an institution, pursuant to lender and investor guidelines, does not rely on an applicant's commission income because it has been earned for less than 12 months, the institution does not include the applicant's commission income in the income reported. Likewise, if an institution relies on the verified gross income of the applicant in making the credit decision, then the institution reports the verified gross income. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes the cosigner's income to the extent relied upon. An institution, however, does not include the income of a guarantor who is only secondarily liable.

2. *Income data—co-applicant.* If two persons jointly apply for a covered loan and both list income on the application, but the financial institution relies on the income of only one applicant in evaluating creditworthiness, the institution reports only the income relied on.

3. *Income data—loan to employee.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable for a covered loan to, or an application from, its employee to protect the employee's privacy, even though the institution relied on the employee's income in making the credit decision.

4. *Income data—assets.* A financial institution does not include as income amounts considered in making a credit decision based on factors that an institution relies on in addition to income, such as amounts derived from underwriting calculations of the potential annuitization or depletion of an applicant's remaining assets. Actual distributions from retirement accounts or other assets that are relied on by the financial institution as income should be reported as income. The interpretation of income in this paragraph does not affect § 1003.4(a)(23), which requires, except for purchased covered loans, the collection of the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision.

5. *Income data—credit decision not made.* Section 1003.4(a)(10)(iii) requires a financial institution to report the gross annual income relied on in processing the application if a credit decision was not made. For example, assume an institution received an application that included an applicant's self-reported income, but the application was withdrawn before a credit decision that would have considered income was made. The financial institution reports the income information relied on in processing the application at the time that the application was withdrawn or the file was closed for incompleteness.

6. *Income data—credit decision not requiring consideration of income.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable if the application did not or would not have required a credit decision that considered income under the financial institution's policies and procedures. For example, if the financial institution's policies and procedures do not consider income for a streamlined refinance program, the institution reports that the requirement is not applicable, even if the institution received income information from the applicant.

7. *Income data—non-natural person.* A financial institution reports that the requirement is not applicable when the applicant or co-applicant is not a natural person (*e.g.,* a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report income data is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution is required to report the information described in § 1003.4(a)(10)(iii).

8. *Income data—multifamily properties.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable when the covered loan is secured by, or application is proposed to be secured by, a multifamily dwelling.

9. *Income data—purchased loans.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable when reporting a purchased covered loan for which the institution chooses not to report the income.

10. *Income data—rounding.* A financial institution complies by reporting the dollar amount of the income in thousands, rounded to the nearest thousand ($500 rounds up to the next $1,000). For example, $35,500 is reported as 36.

Paragraph 4(a)(11)

1. *Type of purchaser—loan-participation interests sold to more than one entity.* A financial institution that originates a covered loan, and then sells it to more than one entity, reports the ''type of purchaser'' based on the entity purchasing the greatest interest, if any. For purposes of § 1003.4(a)(11), if a financial institution sells some interest or interests in a covered loan but retains a majority interest in that loan, it does not report the sale.

2. *Type of purchaser—swapped covered loans.* Covered loans ''swapped'' for mortgage-backed securities are to be treated as sales; the purchaser is the entity receiving the covered loans that are swapped.

3. *Type of purchaser—affiliate institution.* For purposes of complying with § 1003.4(a)(11), the term ''affiliate'' means any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

4. *Type of purchaser—private securitizations.* A financial institution that knows or reasonably believes that the covered loan it is selling will be securitized by the entity purchasing the covered loan, other than by one of the government-sponsored enterprises, reports the purchasing entity type as a private securitizer regardless of the type or affiliation of the purchasing entity. Knowledge or reasonable belief could, for example, be based on the purchase agreement or other related documents, the financial institution's previous transactions with the purchaser, or the purchaser's role as a securitizer (such as an investment bank). If a financial institution selling a covered loan does not know or reasonably believe that the purchaser will securitize the loan, and the seller knows that the purchaser frequently holds or disposes of loans by means other than securitization, then the financial institution should report the covered loan as purchased by, as appropriate, a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage company, finance company, affiliate institution, or other type of purchaser.

5. *Type of purchaser—mortgage company.* For purposes of complying with § 1003.4(a)(11), a mortgage company means a nondepository institution that purchases covered loans and typically originates such loans. A mortgage company might be an affiliate or a subsidiary of a bank holding company or thrift holding company, or it might be an independent mortgage company. Regardless, a financial institution reports the purchasing entity type as a mortgage company, unless the mortgage company is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

6. *Purchases by subsidiaries.* A financial institution that sells a covered loan to its subsidiary that is a commercial bank, savings bank, or savings association, should report the covered loan as purchased by a commercial bank, savings bank, or savings association. A financial institution that sells a covered loan to its subsidiary that is a life insurance company, should report the covered loan as purchased by a life insurance company. A financial institution that sells a covered loan to its subsidiary that is a credit union, mortgage company, or finance company, should report the covered loan as purchased by a credit union, mortgage company, or finance company. If the subsidiary that purchases the covered loan is not a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage company, or finance company, the seller institution should report the loan as purchased by other type of purchaser. The financial institution should report the covered loan as purchased by an affiliate institution when the subsidiary is an affiliate of the seller institution.

7. *Type of purchaser—bank holding company or thrift holding company.* When a financial institution sells a covered loan to a bank holding company or thrift holding company (rather than to one of its subsidiaries), it should report the loan as purchased by other type of purchaser, unless the bank holding company or thrift holding company is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

8. *Repurchased covered loans.* See comment 4(a)–5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

9. *Type of purchaser—quarterly recording.* For purposes of recording the type of purchaser within 30 calendar days after the end of the calendar quarter pursuant to § 1003.4(f), a financial institution records that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during the calendar quarter for which the institution is recording the data. If the financial institution sells the covered loan in a subsequent quarter of the same calendar year, the financial institution records the type of purchaser on its loan/application register for the quarter in which the covered loan was sold. If a financial institution sells the covered loan in a succeeding year, the financial institution should not record the sale.

10. *Type of purchaser—not applicable.* A financial institution reports that the requirement is not applicable for applications that were denied, withdrawn, closed for incompleteness or approved but not accepted by the applicant; and for preapproval requests that were denied or approved but not accepted by the applicant. A financial institution also reports that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during that same calendar year.

Paragraph 4(a)(12)

1. *Average prime offer rate.* Average prime offer rates are annual percentage rates derived from average interest rates and other loan pricing terms offered to borrowers by a set of creditors for mortgage loans that have low-risk pricing characteristics. Other loan pricing terms may include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics may include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses creditor data by transaction type.

2. *Bureau tables.* The Bureau publishes tables of current and historic average prime offer rates by transaction type on the FFIEC's website (*http://www.ffiec.gov/hmda*) and the Bureau's website (*https://www.consumerfinance.gov*). The Bureau calculates an annual percentage rate, consistent with Regulation Z (*see* 12 CFR 1026.22 and 12 CFR part 1026, appendix J),

for each transaction type for which pricing terms are available from the creditor data described in comment 4(a)(12)–1. The Bureau uses loan pricing terms available in the creditor data and other information to estimate annual percentage rates for other types of transactions for which the creditor data are limited or not available. The Bureau publishes on the FFIEC's website and the Bureau's website the methodology it uses to arrive at these estimates. A financial institution may either use the average prime offer rates published by the Bureau or determine average prime offer rates itself by employing the methodology published on the FFIEC's website and the Bureau's website. A financial institution that determines average prime offer rates itself, however, is responsible for correctly determining the rates in accordance with the published methodology.

3. *Rate spread calculation—annual percentage rate.* The requirements of § 1003.4(a)(12)(i) refer to the covered loan's annual percentage rate. For closed-end mortgage loans, a financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.18 or 1026.38. For open-end lines of credit, a financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.6. If multiple annual percentage rates are calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.6, a financial institution relies on the annual percentage rate in effect at the time of account opening. If an open-end line of credit has a variable-rate feature and a fixed-rate and -term payment option during the draw period, a financial institution relies on the annual percentage rate in effect at the time of account opening under the variable-rate feature, which would be a discounted initial rate if one is offered under the variable-rate feature. See comment 4(a)(12)–8 for guidance regarding the annual percentage rate a financial institution relies on in the case of an application or preapproval request that was approved but not accepted.

4. *Rate spread calculation—comparable transaction.* The rate spread calculation in § 1003.4(a)(12)(i) is defined by reference to a comparable transaction, which is determined according to the covered loan's amortization type (*i.e.,* fixed- or variable-rate) and loan term. For covered loans that are open-end lines of credit, § 1003.4(a)(12)(i) requires a financial institution to identify the most closely comparable closed-end transaction. The tables of average prime offer rates published by the Bureau (see comment 4(a)(12)–2) provide additional detail about how to identify the comparable transaction.

i. *Fixed-rate transactions.* For fixed-rate covered loans, the term for identifying the comparable transaction is the transaction's maturity (*i.e.,* the period until the last payment will be due under the closed-end mortgage loan contract or open-end line of credit agreement). If an open-end credit plan has a fixed rate but no definite plan length, a financial institution complies with § 1003.4(a)(12)(i) by using a 30-year fixed-rate loan as the most closely comparable closed-end transaction. Financial institutions may refer to the table on the FFIEC website entitled ''Average Prime Offer Rates-Fixed'' when identifying a comparable fixed-rate transaction.

ii. *Variable-rate transactions.* For variable-rate covered loans, the term for identifying the comparable transaction is the initial, fixed-rate period (*i.e.,* the period until the first scheduled rate adjustment). For example, five years is the relevant term for a variable-rate transaction with a five-year, fixed-rate introductory period that is amortized over thirty years. Financial institutions may refer to the table on the FFIEC website entitled ''Average Prime Offer Rates-Variable'' when identifying a comparable variable-rate transaction. If an open-end line of credit has a variable rate and an optional, fixed-rate feature, a financial institution uses the rate table for variable-rate transactions.

iii. *Term not in whole years.* When a covered loan's term to maturity (or, for a variable-rate transaction, the initial fixed-rate period) is not in whole years, the financial institution uses the number of whole years closest to the actual loan term or, if the actual loan term is exactly halfway between two whole years, by using the shorter loan term. For example, for a loan term of ten years and three months, the relevant term is ten years; for a loan term of ten years and nine months, the relevant term is 11 years; for a loan term of ten years and six months, the relevant term is ten years. If a loan term includes an odd number of days, in addition to an odd number of months, the financial institution rounds to the nearest whole month, or rounds down if the number of odd days is exactly halfway between two months. The financial institution rounds to one year any covered loan with a term shorter than six months, including variable-rate covered loans with no initial, fixed-rate periods. For example, if an open-end covered loan has a rate that varies according to an index plus a margin, with no introductory, fixed-rate period, the transaction term is one year.

iv. *Amortization period longer than loan term.* If the amortization period of a covered loan is longer than the term of the transaction to maturity, § 1003.4(a)(12)(i) requires a financial institution to use the loan term to determine the applicable average prime offer rate. For example, assume a financial institution originates a closed-end, fixed-rate loan that has a term to maturity of five years and a thirty-year amortization period that results in a balloon payment. The financial institution complies with § 1003.4(a)(12)(i) by using the five-year loan term.

5. *Rate-set date.* The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the interest rate was set by the financial institution for the final time before final action is taken (*i.e.,* the application was approved but not accepted or the covered loan was originated).

i. *Rate-lock agreement.* If an interest rate is set pursuant to a ''lock-in'' agreement between the financial institution and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. Except as provided in comment 4(a)(12)–5.ii, if a rate is reset after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the financial institution exercises discretion in setting the rate for the final time before final action is taken. The same rule applies when a rate-lock agreement is extended and the rate is reset at the same rate, regardless of whether market rates have increased, decreased, or remained the same since the initial rate was set. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before final action is taken.

ii. *Change in loan program.* If a financial institution issues a rate-lock commitment under one loan program, the borrower subsequently changes to another program that is subject to different pricing terms, and the financial institution changes the rate promised to the borrower under the rate-lock commitment accordingly, the rate-set date is the date of the program change. However, if the financial institution changes the promised rate to the rate that would have been available to the borrower under the new program on the date of the original rate-lock commitment, then that is the date the rate is set, provided the financial institution consistently follows that practice in all such cases or the original rate-lock agreement so provided. For example, assume that a borrower locks a rate of 2.5 percent on June 1 for a 30-year, variable-rate loan with a five-year, fixed-rate introductory period. On June 15, the borrower decides to switch to a 30-year, fixed-rate loan, and the rate available to the borrower for that product on June 15 is 4.0 percent. On June 1, the 30-year, fixed-rate loan would have been available to the borrower at a rate of 3.5 percent. If the financial institution offers the borrower the 3.5 percent rate (*i.e.,* the rate that would have been available to the borrower for the fixed-rate product on June 1, the date of the original rate-lock) because the original agreement so provided or because the financial institution consistently follows that practice for borrowers who change loan programs, then the financial institution should use June 1 as the rate-set date. In all other cases, the financial institution should use June 15 as the rate-set date.

iii. *Brokered loans.* When a financial institution has reporting responsibility for an application for a covered loan that it received from a broker, as discussed in comment 4(a)–2 (*e.g.,* because the financial institution makes a credit decision prior to closing or account opening), the rate-set date is the last date the financial institution set the rate with the broker, not the date the broker set the borrower's rate.

6. *Compare the annual percentage rate to the average prime offer rate.* Section 1003.4(a)(12)(i) requires a financial institution to compare the covered loan's annual percentage rate to the most recently available average prime offer rate that was in effect for the comparable transaction as of the rate-set date. For purposes of § 1003.4(a)(12)(i), the most recently available

rate means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. However, § 1003.4(a)(12)(i) does not permit a financial institution to use an average prime offer rate before its effective date.

7. *Rate spread—scope of requirement.* If the covered loan is an assumption, reverse mortgage, a purchased loan, or is not subject to Regulation Z, 12 CFR part 1026, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable. If the application did not result in an origination for a reason other than the application was approved but not accepted by the applicant, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the rate spread. See § 1003.3(d) and related commentary.

8. *Application or preapproval request approved but not accepted.* In the case of an application or preapproval request that was approved but not accepted, § 1003.4(a)(12) requires a financial institution to report the applicable rate spread. In such cases, the financial institution would provide early disclosures under Regulation Z, 12 CFR 1026.18 or 1026.37 (for closed-end mortgage loans), or 1026.40 (for open-end lines of credit), but might never provide any subsequent disclosures. In such cases where no subsequent disclosures are provided, a financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the application or preapproval request, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.18 or 1026.37 (for closed-end mortgage loans), or 1026.40 (for open-end lines of credit), as applicable. For transactions subject to Regulation C for which no disclosures under Regulation Z are required, a financial institution complies with § 1003.4(a)(12)(i) by reporting that the requirement is not applicable.

9. *Corrected disclosures.* In the case of a covered loan or an application that was approved but not accepted, if the annual percentage rate changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(a), pursuant to 12 CFR 1026.19(a)(2), under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), or under 12 CFR 1026.6(a), the financial institution complies with § 1003.4(a)(12)(i) by comparing the corrected and disclosed annual percentage rate to the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. For purposes of § 1003.4(a)(12), the date the corrected disclosure was provided to the borrower is the date the disclosure was mailed or delivered to the borrower in person; the financial institution's method of delivery does not affect the date provided. For example, where a financial institution provides a corrected version of the disclosures required under 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the date provided is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). The provision of a corrected disclosure does not affect how a financial institution determines the rate-set date. *See* comment 4(a)(12)–5. For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), that reflects a corrected annual percentage rate, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), that reflects a corrected annual percentage rate, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which final action is taken. The financial institution does not report the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date if the corrected disclosure was provided to the borrower after the end of the quarter in which final action is taken, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the difference between the corrected annual percentage rate and the most recently available average prime offer rate that was in effect for a comparable transaction as of the rate-set date on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which final action is taken.

Paragraph 4(a)(13)

1. *HOEPA status—not applicable.* If the covered loan is not subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, a financial institution complies with § 1003.4(a)(13) by reporting that the requirement is not applicable. If an application did not result in an origination, a financial institution complies with § 1003.4(a)(13) by reporting that the requirement is not applicable.

Paragraph 4(a)(14)

1. *Determining lien status for applications and covered loans originated and purchased.* i. Financial institutions are required to report lien status for covered loans they originate and purchase and applications that do not result in originations (preapproval requests that are approved but not accepted, preapproval requests that are denied, applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness). For covered loans purchased by a financial institution, lien status is determined by reference to the best information readily available to the financial institution at the time of purchase. For covered loans that a financial institution originates and applications that do not result in originations, lien status is determined by reference to the best information readily available to the financial institution at the time final action is taken and to the financial institution's own procedures. Thus, financial institutions may rely on the title search they routinely perform as part of their underwriting procedures—for example, for home purchase loans. Regulation C does not require financial institutions to perform title searches solely to comply with HMDA reporting requirements. Financial institutions may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant's statement on the application or the applicant's credit report. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant's credit report shows that the applicant has a mortgage—and that mortgage will not be paid off as part of the transaction—the financial institution may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination—for example, because the application was denied or withdrawn—the financial institution would report the application as an application for a subordinate-lien loan.

ii. Financial institutions may also consider their established procedures when determining lien status for applications that do not result in originations. For example, assume an applicant applies to a financial institution to refinance a $100,000 first mortgage; the applicant also has an open-end line of credit for $20,000. If the financial institution's practice in such a case is to ensure that it will have first-lien position—through a subordination agreement with the holder of the lien securing the open-end line of credit—then the financial institution should report the application as an application for a first-lien covered loan.

2. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(15)

1. *Credit score—relied on.* Except for purchased covered loans and partially exempt transactions under § 1003.3(d), § 1003.4(a)(15) requires a financial institution to report the credit score or scores relied on in making the credit decision and information about the scoring model used to generate each score. A financial institution relies on a credit score in making the credit decision if the credit score was a factor in the credit decision even if it was not a

dispositive factor. For example, if a credit score is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the credit score even if the financial institution denies the application because one or more underwriting requirements other than the credit score are not satisfied.

2. *Credit score—multiple credit scores.* When a financial institution obtains or creates two or more credit scores for a single applicant or borrower but relies on only one score in making the credit decision (for example, by relying on the lowest, highest, most recent, or average of all of the scores), the financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used. When a financial institution uses more than one credit scoring model and combines the scores into a composite credit score that it relies on, the financial institution reports that score and reports that more than one credit scoring model was used. When a financial institution obtains or creates two or more credit scores for an applicant or borrower and relies on multiple scores for the applicant or borrower in making the credit decision (for example, by relying on a scoring grid that considers each of the scores obtained or created for the applicant or borrower without combining the scores into a composite score), § 1003.4(a)(15) requires the financial institution to report one of the credit scores for the applicant or borrower that was relied on in making the credit decision. In choosing which credit score to report in this circumstance, a financial institution need not use the same approach for its entire HMDA submission, but it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). In instances such as these, the financial institution should report the name and version of the credit scoring model for the score reported.

3. *Credit score—multiple applicants or borrowers.* In a transaction involving two or more applicants or borrowers for whom the financial institution obtains or creates a single credit score and relies on that credit score in making the credit decision for the transaction, the institution complies with § 1003.4(a)(15) by reporting that credit score for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the financial institution's discretion, by reporting that credit score for the first co-applicant and reporting that the requirement is not applicable for the applicant. Otherwise, a financial institution complies with § 1003.4(a)(15) by reporting a credit score for the applicant that it relied on in making the credit decision, if any, and a credit score for the first co-applicant that it relied on in making the credit decision, if any. To illustrate, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates two credit scores for the applicant and two credit scores for the co-applicant. Assume further that the financial institution relies on a single credit score that is the lowest, highest, most recent, or average of all of the credit scores obtained or created to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the financial institution's discretion, by reporting the data for the first co-applicant and reporting that the requirement is not applicable for the applicant. Alternatively, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates three credit scores for the applicant and three credit scores for the co-applicant. Assume further that the financial institution relies on the middle credit score for the applicant and the middle credit score for the co-applicant to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting both the middle score for the applicant and the middle score for the co-applicant.

4. *Transactions for which no credit decision was made.* If a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant.

5. *Transactions for which no credit score was relied on.* If a financial institution makes a credit decision without relying on a credit score for the applicant or borrower, the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable.

6. *Purchased covered loan.* A financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

7. *Non-natural person.* When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable.

Paragraph 4(a)(16)

1. *Reason for denial—general.* A financial institution complies with § 1003.4(a)(16) by reporting the principal reason or reasons it denied the application, indicating up to four reasons. The financial institution should report only the principal reason or reasons it denied the application, even if there are fewer than four reasons. For example, if a financial institution denies the application because of the applicant's credit history and debt-to-income ratio, the financial institution need only report these two principal reasons. The reasons reported must be specific and accurately describe the principal reason or reasons the financial institution denied the application.

2. *Reason for denial—preapproval request denied.* Section 1003.4(a)(16) requires a financial institution to report the principal reason or reasons it denied the application. A request for a preapproval under a preapproval program as defined by § 1003.2(b)(2) is an application. If a financial institution denies a preapproval request, the financial institution complies with § 1003.4(a)(16) by reporting the reason or reasons it denied the preapproval request.

3. *Reason for denial—adverse action model form or similar form.* If a financial institution chooses to provide the applicant the reason or reasons it denied the application using the model form contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons) or a similar form, § 1003.4(a)(16) requires the financial institution to report the reason or reasons that were specified on the form by the financial institution, which includes reporting the ''Other'' reason or reasons that were specified on the form by the financial institution, if applicable. If a financial institution chooses to provide a disclosure of the applicant's right to a statement of specific reasons using the model form contained in appendix C to Regulation B (Form C–5, Sample Disclosure of Right to Request Specific Reasons for Credit Denial) or a similar form, or chooses to provide the denial reason or reasons orally under Regulation B, 12 CFR 1002.9(a)(2)(ii), the financial institution complies with § 1003.4(a)(16) by entering the principal reason or reasons it denied the application.

4. *Reason for denial—scope of requirement.* A financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the action taken on the application, pursuant to § 1003.4(a)(8), is not a denial. For example, a financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the loan is originated or purchased by the financial institution, or the application or preapproval request was approved but not accepted, or the application was withdrawn before a credit decision was made, or the file was closed for incompleteness. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the principal reason or reasons it denied an application. See § 1003.3(d) and related commentary.

Paragraph 4(a)(17)(i)

1. *Total loan costs—scope of requirement.* Section 1003.4(a)(17)(i) does not require financial institutions to report the total loan costs for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.43(c), and 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a

financial institution complies with § 1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the total loan costs. See § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures.* If the amount of total loan costs changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(17)(i) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(17)(i), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurs. The financial institution does not report the corrected amount of total loan costs in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurs, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of total loan costs on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

Paragraph 4(a)(17)(ii)

1. *Total points and fees—scope of requirement.* Section 1003.4(a)(17)(ii) does not require financial institutions to report the total points and fees for transactions not subject to Regulation Z, 12 CFR 1026.43(c), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes, or for applications or purchased covered loans. In these cases, a financial institution complies with § 1003.4(a)(17)(ii) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the total points and fees. See § 1003.3(d) and related commentary.

2. *Total points and fees cure mechanism.* For covered loans subject to this reporting requirement, if a financial institution determines that the transaction's total points and fees exceeded the applicable limit and cures the overage pursuant to Regulation Z, 12 CFR 1026.43(e)(3)(iii) and (iv), a financial institution complies with § 1003.4(a)(17)(ii) by reporting the correct amount of total points and fees, provided that the cure was effected during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission, the financial institution reports the revised amount of total points and fees only if it cured the overage prior to the end of the quarter in which closing occurred. The financial institution does not report the revised amount of total points and fees in its quarterly submission if it cured the overage after the end of the quarter, even if the cure was effected prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the revised amount of total points and fees on its annual loan/application register.

Paragraph 4(a)(18)

1. *Origination charges—scope of requirement.* Section 1003.4(a)(18) does not require financial institutions to report the total borrower-paid origination charges for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(18) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the total borrower-paid origination charges. See § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(18) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures.* If the total amount of borrower-paid origination charges changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(18) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(18), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of borrower-paid origination charges only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurs. The financial institution does not report the corrected amount of borrower-paid origination charges in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurs, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of borrower-paid origination charges on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

Paragraph 4(a)(19)

1. *Discount points—scope of requirement.* Section 1003.4(a)(19) does not require financial institutions to report the discount points for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(19) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the discount points. See § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(19) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures.* If the amount of discount points changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(19) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(19), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of discount points in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurred, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of discount points on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

Paragraph 4(a)(20)

1. *Lender credits—scope of requirement.* Section 1003.4(a)(20) does not require financial institutions to report lender credits for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(20) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report lender credits. See § 1003.3(d) and related commentary.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(20) by reporting that the requirement is not applicable to the transaction.

3. *Corrected disclosures.* If the amount of lender credits changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(20) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurred. For purposes of § 1003.4(a)(20), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example:

i. In the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1)(i), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

ii. In the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of lender credits in its quarterly submission if the corrected disclosure was provided to the borrower after the end of the quarter in which closing occurred, even if the corrected disclosure was provided to the borrower prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of lender credits on its annual loan/application register, provided that the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurred.

Paragraph 4(a)(21)

1. *Interest rate—disclosures.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(21) requires a financial institution to identify the interest rate applicable to the approved application, or to the covered loan at closing or account opening. For covered loans or applications subject to the integrated mortgage disclosure requirements of Regulation Z, 12 CFR 1026.19(e) and (f), a financial institution complies with § 1003.4(a)(21) by reporting the interest rate disclosed on the applicable disclosure. For covered loans or approved applications for which disclosures were provided pursuant to both the early and the final disclosure requirements in Regulation Z, 12 CFR 1026.19(e) and (f), a financial institution reports the interest rate disclosed pursuant to 12 CFR 1026.19(f). A financial institution may rely on the definitions and commentary to the sections of Regulation Z relevant to the disclosure of the interest rate pursuant to 12 CFR 1026.19(e) or (f). If a financial institution provides a revised or corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(e) or (f), pursuant to 12 CFR 1026.19(e)(3)(iv) or (f)(2), as applicable, the financial institution complies with § 1003.4(a)(21) by reporting the interest rate on the revised or corrected disclosure, provided that the revised or corrected disclosure was provided to the borrower prior to the end of the reporting period in which final action is taken. For purposes of § 1003.4(a)(21), the date the revised or corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.37(a)(4) or 1026.38(a)(3)(i), as applicable.

2. *Applications.* In the case of an application, § 1003.4(a)(21) requires a financial institution to report the applicable interest rate only if the application has been approved by the financial institution but not accepted by the borrower. In such cases, a financial institution reports the interest rate applicable at the time that the application was approved by the financial institution. A financial institution may report the interest rate appearing on the disclosure provided pursuant to 12 CFR 1026.19(e) or (f) if such disclosure accurately reflects the interest rate at the time the application was approved. For applications that have been denied or withdrawn, or files closed for incompleteness, a financial institution reports that no interest rate was applicable to the application.

3. *Adjustable rate—interest rate unknown.* Except as provided in comment 4(a)(21)–1, for adjustable-rate covered loans or applications, if the interest rate is unknown at the time that the application was approved, or at closing or account opening, a financial institution reports the fully-indexed rate based on the index applicable to the covered loan or application. For purposes of § 1003.4(a)(21), the fully-indexed rate is the index value and margin at the time that the application was approved, or, for covered loans, at closing or account opening.

Paragraph 4(a)(22)

1. *Prepayment penalty term—scope of requirement.* Section 1003.4(a)(22) does not require financial institutions to report the term of any prepayment penalty for transactions not subject to Regulation Z, 12 CFR part 1026, such as loans or lines of credit made primarily for business or commercial purposes, or for reverse mortgages or purchased covered loans. In these cases, a financial institution complies with § 1003.4(a)(22) by reporting that the requirement is not applicable to the transaction. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the term of any prepayment penalty. See § 1003.3(d) and related commentary.

2. *Transactions for which no prepayment penalty exists.* For covered loans or applications that have no prepayment penalty, a financial institution complies with

§ 1003.4(a)(22) by reporting that the requirement is not applicable to the transaction. A financial institution may rely on the definitions and commentary to Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii) in determining whether the terms of a transaction contain a prepayment penalty.

Paragraph 4(a)(23)

1. *General.* For covered loans that are not purchased covered loans and that are not partially exempt under § 1003.3(d), § 1003.4(a)(23) requires a financial institution to report the ratio of the applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio) relied on in making the credit decision. For example, if a financial institution calculated the applicant's or borrower's debt-to-income ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the debt-to-income ratio calculated according to the secondary market investor's requirements in making the credit decision, § 1003.4(a)(23) requires the financial institution to report the debt-to-income ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a debt-to-income ratio was one of multiple factors.* A financial institution relies on the ratio of the applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio) in making the credit decision if the debt-to-income ratio was a factor in the credit decision even if it was not a dispositive factor. For example, if the debt-to-income ratio was one of multiple factors in a financial institution's credit decision, the financial institution has relied on the debt-to-income ratio and complies with § 1003.4(a)(23) by reporting the debt-to-income ratio, even if the financial institution denied the application because one or more underwriting requirements other than the debt-to-income ratio were not satisfied.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the ratio of the applicant's total monthly debt to total monthly income (debt-to-income ratio). For example, if a file was closed for incompleteness and was so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income ratio. Similarly, if an application was withdrawn by the applicant before a credit decision was made, the financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income ratio.

4. *Transactions for which no debt-to-income ratio was relied on.* Section 1003.4(a)(23) does not require a financial institution to calculate the ratio of an applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio), nor does it require a financial institution to rely on an applicant's or borrower's debt-to-income ratio in making a credit decision. If a financial institution made a credit decision without relying on the applicant's or borrower's debt-to-income ratio, the financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable since no debt-to-income ratio was relied on in connection with the credit decision.

5. *Non-natural person.* A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable when the applicant and co-applicant, if applicable, are not natural persons.

6. *Multifamily dwellings.* A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable for a covered loan secured by, or an application proposed to be secured by, a multifamily dwelling.

7. *Purchased covered loans.* A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable when reporting a purchased covered loan.

Paragraph 4(a)(24)

1. *General.* Except for purchased covered loans and partially exempt transactions under § 1003.3(d), § 1003.4(a)(24) requires a financial institution to report the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio) relied on in making the credit decision. For example, if a financial institution calculated a combined loan-to-value ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the combined loan-to-value ratio calculated according to the secondary market investor's requirements in making the credit decision, § 1003.4(a)(24) requires the financial institution to report the combined loan-to-value ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a combined loan-to-value ratio was one of multiple factors.* A financial institution relies on the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio) in making the credit decision if the combined loan-to-value ratio was a factor in the credit decision, even if it was not a dispositive factor. For example, if the combined loan-to-value ratio is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the combined loan-to-value ratio and complies with § 1003.4(a)(24) by reporting the combined loan-to-value ratio, even if the financial institution denies the application because one or more underwriting requirements other than the combined loan-to-value ratio are not satisfied.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio). For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio.

4. *Transactions for which no combined loan-to-value ratio was relied on.* Section 1003.4(a)(24) does not require a financial institution to calculate the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio), nor does it require a financial institution to rely on a combined loan-to-value ratio in making a credit decision. If a financial institution makes a credit decision without relying on a combined loan-to-value ratio, the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable since no combined loan-to-value ratio was relied on in making the credit decision.

5. *Purchased covered loan.* A financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

6. *Property.* A financial institution reports the combined loan-to-value ratio relied on in making the credit decision, regardless of which property or properties it used in the combined loan-to-value ratio calculation. The property used in the combined loan-to-value ratio calculation does not need to be the property identified in § 1003.4(a)(9) and may include more than one property and non-real property. For example, if a financial institution originated a covered loan for the purchase of a multifamily dwelling, the loan was secured by the multifamily dwelling and by non-real property, such as securities, and the financial institution used the multifamily dwelling and the non-real property to calculate the combined loan-to-value ratio that it relied on in making the credit decision, § 1003.4(a)(24) requires the financial institution to report the relied upon ratio. Section 1003.4(a)(24) does not require a financial institution to use a particular combined loan-to-value ratio calculation method but instead requires financial institutions to report the combined loan-to-value ratio relied on in making the credit decision.

Paragraph 4(a)(25)

1. *Amortization and maturity.* For a fully amortizing covered loan, the number of months after which the legal obligation matures is the number of months in the amortization schedule, ending with the final

payment. Some covered loans do not fully amortize during the maturity term, such as covered loans with a balloon payment; such loans should still be reported using the maturity term rather than the amortization term, even in the case of covered loans that mature before fully amortizing but have reset options. For example, a 30-year fully amortizing covered loan would be reported with a term of ''360,'' while a five year balloon covered loan would be reported with a loan term of ''60.''

2. *Non-monthly repayment periods.* If a covered loan or application includes a schedule with repayment periods measured in a unit of time other than months, the financial institution should report the covered loan or application term using an equivalent number of whole months without regard for any remainder.

3. *Purchased loans.* For a covered loan that was purchased, a financial institution reports the number of months after which the legal obligation matures as measured from the covered loan's origination.

4. *Open-end line of credit.* For an open-end line of credit with a definite term, a financial institution reports the number of months from origination until the account termination date, including both the draw and repayment period.

5. *Loan term—scope of requirement.* For a covered loan or application without a definite term, such as a reverse mortgage, a financial institution complies with § 1003.4(a)(25) by reporting that the requirement is not applicable. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the loan term. See § 1003.3(d) and related commentary.

Paragraph 4(a)(26)

1. *Types of introductory rates.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(26) requires a financial institution to report the number of months, or proposed number of months in the case of an application, from closing or account opening until the first date the interest rate may change. For example, assume an open-end line of credit contains an introductory or ''teaser'' interest rate for two months after the date of account opening, after which the interest rate may adjust. In this example, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as ''2.'' Section 1003.4(a)(26) requires a financial institution to report the number of months based on when the first interest rate adjustment may occur, even if an interest rate adjustment is not required to occur at that time and even if the rates that will apply, or the periods for which they will apply, are not known at closing or account opening. For example, if a closed-end mortgage loan with a 30-year term has an adjustable-rate product with an introductory interest rate for the first 60 months, after which the interest rate is permitted, but not required to vary, according to the terms of an index rate, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as ''60.'' Similarly, if a closed-end mortgage loan with a 30-year term is a step-rate product with an introductory interest rate for the first 24 months, after which the interest rate will increase to a different known interest rate for the next 36 months, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as ''24.''

2. *Preferred rates.* Section 1003.4(a)(26) does not require reporting of introductory interest rate periods based on preferred rates unless the terms of the legal obligation provide that the preferred rate will expire at a certain defined date. Preferred rates include terms of the legal obligation that provide that the initial underlying rate is fixed but that it may increase or decrease upon the occurrence of some future event, such as an employee leaving the employ of the financial institution, the borrower closing an existing deposit account with the financial institution, or the borrower revoking an election to make automated payments. In these cases, because it is not known at the time of closing or account opening whether the future event will occur, and if so, when it will occur, § 1003.4(a)(26) does not require reporting of an introductory interest rate period.

3. *Loan or application with a fixed rate.* A financial institution complies with § 1003.4(a)(26) by reporting that the requirement is not applicable for a covered loan with a fixed rate or an application for a covered loan with a fixed rate.

4. *Purchased loan.* A financial institution complies with § 1003.4(a)(26) by reporting that requirement is not applicable when the covered loan is a purchased covered loan with a fixed rate.

5. *Non-monthly introductory periods.* If a covered loan or application includes an introductory interest rate period measured in a unit of time other than months, the financial institution complies with § 1003.4(a)(26) by reporting the introductory interest rate period for the covered loan or application using an equivalent number of whole months without regard for any remainder. For example, assume an open-end line of credit contains an introductory interest rate for 50 days after the date of account opening, after which the interest rate may adjust. In this example, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as ''1.'' The financial institution must report one month for any introductory interest rate period that totals less than one whole month.

Paragraph 4(a)(27)

1. *General.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(27) requires reporting of contractual features that would allow payments other than fully amortizing payments. Section 1003.4(a)(27) defines the contractual features by reference to Regulation Z, 12 CFR part 1026, but without regard to whether the covered loan is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11), and without regard to whether the property is a dwelling as defined in § 1026.2(a)(19). For example, assume that a financial institution originates a business-purpose transaction that is exempt from Regulation Z pursuant to 12 CFR 1026.3(a)(1), to finance the purchase of a multifamily dwelling, and that there is a balloon payment, as defined by Regulation Z, 12 CFR 1026.18(s)(5)(i), at the end of the loan term. The multifamily dwelling is a dwelling under § 1003.2(f), but not under Regulation Z, 12 CFR 1026.2(a)(19). In this example, the financial institution should report the business-purpose transaction as having a balloon payment under § 1003.4(a)(27)(i), assuming the other requirements of this part are met. Aside from these distinctions, financial institutions may rely on the definitions and related commentary provided in the appropriate sections of Regulation Z referenced in § 1003.4(a)(27) of this part in determining whether the contractual feature should be reported.

Paragraph 4(a)(28)

1. *General.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(28) requires a financial institution to report the property value relied on in making the credit decision. For example, if the institution relies on an appraisal or other valuation for the property in calculating the loan-to-value ratio, it reports that value; if the institution relies on the purchase price of the property in calculating the loan-to-value ratio, it reports that value.

2. *Multiple property values.* When a financial institution obtains two or more valuations of the property securing or proposed to secure the covered loan, the financial institution complies with § 1003.4(a)(28) by reporting the value relied on in making the credit decision. For example, when a financial institution obtains an appraisal, an automated valuation model report, and a broker price opinion with different values for the property, it reports the value relied on in making the credit decision. Section § 1003.4(a)(28) does not require a financial institution to use a particular property valuation method, but instead requires a financial institution to report the valuation relied on in making the credit decision.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value.

4. *Transactions for which no property value was relied on.* Section 1003.4(a)(28) does not require a financial institution to obtain a property valuation, nor does it

require a financial institution to rely on a property value in making a credit decision. If a financial institution makes a credit decision without relying on a property value, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable since no property value was relied on in making the credit decision.

Paragraph 4(a)(29)

1. *Classification under State law.* A financial institution should report a covered loan that is or would have been secured only by a manufactured home but not the land on which it is sited as secured by a manufactured home and not land, even if the manufactured home is considered real property under applicable State law.

2. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of § 1003.4(a)(29).

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

4. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in § 1003.4(a)(9) is not a manufactured home. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the information specified in § 1003.4(a)(29). See § 1003.3(d) and related commentary.

Paragraph 4(a)(30)

1. *Indirect land ownership.* Indirect land ownership can occur when the applicant or borrower is or will be a member of a resident-owned community structured as a housing cooperative in which the occupants own an entity that holds the underlying land of the manufactured home community. In such communities, the applicant or borrower may still have a lease and pay rent for the lot on which his or her manufactured home is or will be located, but the property interest type for such an arrangement should be reported as indirect ownership if the applicant is or will be a member of the cooperative that owns the underlying land of the manufactured home community. If an applicant resides or will reside in such a community but is not a member, the property interest type should be reported as a paid leasehold.

2. *Leasehold interest.* A leasehold interest could be formalized in a lease with a defined term and specified rent payments, or could arise as a tenancy at will through permission of a land owner without any written, formal arrangement. For example, assume a borrower will locate the manufactured home in a manufactured home community, has a written lease for a lot in that park, and the lease specifies rent payments. In this example, a financial institution complies with § 1003.4(a)(30) by reporting a paid leasehold. However, if instead the borrower will locate the manufactured home on land owned by a family member without a written lease and with no agreement as to rent payments, a financial institution complies with § 1003.4(a)(30) by reporting an unpaid leasehold.

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

4. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of § 1003.4(a)(30).

5. *Direct ownership.* An applicant or borrower has a direct ownership interest in the land on which the dwelling is or is to be located when it has a more than possessory real property ownership interest in the land such as fee simple ownership.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in § 1003.4(a)(9) is not a manufactured home. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the information specified in § 1003.4(a)(30). See § 1003.3(d) and related commentary.

Paragraph 4(a)(31)

1. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

2. *Manufactured home community.* For an application or covered loan secured by a manufactured home community, the financial institution should include in the number of individual dwelling units the total number of manufactured home sites that secure the loan and are available for occupancy, regardless of whether the sites are currently occupied or have manufactured homes currently attached. A financial institution may include in the number of individual dwelling units other units such as recreational vehicle pads, manager apartments, rental apartments, site-built homes or other rentable space that are ancillary to the operation of the secured property if it considers such units under its underwriting guidelines or the guidelines of an investor, or if it tracks the number of such units for its own internal purposes. For a loan secured by a single manufactured home that is or will be located in a manufactured home community, the financial institution should report one individual dwelling unit.

3. *Condominium and cooperative projects.* For a covered loan secured by a condominium or cooperative property, the financial institution reports the total number of individual dwelling units securing the covered loan or proposed to secure the covered loan in the case of an application. For example:

i. Assume that a loan is secured by the entirety of a cooperative property. The financial institution would report the number of individual dwelling units in the cooperative property.

ii. Assume that a covered loan is secured by 30 individual dwelling units in a condominium property that contains 100 individual dwelling units and that the loan is not exempt from Regulation C under § 1003.3(c)(3). The financial institution reports 30 individual dwelling units.

4. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial institution's own procedures in reporting the information required by § 1003.4(a)(31). Information readily available could include, for example, information provided by an applicant that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

Paragraph 4(a)(32)

1. *Affordable housing income restrictions.* For purposes of § 1003.4(a)(32), affordable housing income-restricted units are individual dwelling units that have restrictions based on the income level of occupants pursuant to restrictive covenants encumbering the property. Such income levels are frequently expressed as a percentage of area median income by household size as established by the U.S. Department of Housing and Urban Development or another agency responsible for implementing the applicable affordable housing program. Such restrictions are frequently part of compliance with programs that provide public funds, special tax treatment, or density bonuses to encourage development or preservation of affordable housing. Such restrictions are frequently evidenced by a use agreement, regulatory agreement, land use restriction agreement, housing assistance payments contract, or similar agreement. Rent control or rent stabilization laws, and the acceptance by the owner or manager of a multifamily dwelling of Housing Choice Vouchers (24 CFR part 982) or other similar forms of portable housing assistance that are tied to an occupant and not an individual dwelling unit, are not affordable housing income-restricted dwelling units for purposes of § 1003.4(a)(32).

2. *Federal affordable housing sources.* Examples of Federal programs and funding sources that may result in individual dwelling units that are reportable under § 1003.4(a)(32) include, but are not limited to:

i. Affordable housing programs pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

ii. Public housing (42 U.S.C. 1437a(b)(6));

iii. The HOME Investment Partnerships program (24 CFR part 92);

iv. The Community Development Block Grant program (24 CFR part 570);

v. Multifamily tax subsidy project funding through tax-exempt bonds or tax credits (26 U.S.C. 42; 26 U.S.C. 142(d));

vi. Project-based vouchers (24 CFR part 983);

vii. Federal Home Loan Bank affordable housing program funding (12 CFR part 1291); and

viii. Rural Housing Service multifamily housing loans and grants (7 CFR part 3560).

3. *State and local government affordable housing sources.* Examples of State and local sources that may result in individual dwelling units that are reportable under

§ 1003.4(a)(32) include, but are not limited to: State or local administration of Federal funds or programs; State or local funding programs for affordable housing or rental assistance, including programs operated by independent public authorities; inclusionary zoning laws; and tax abatement or tax increment financing contingent on affordable housing requirements.

4. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

5. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial institution's own procedures in reporting the information required by § 1003.4(a)(32). Information readily available could include, for example, information provided by an applicant that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable if the property securing the covered loan or, in the case of an application, proposed to secure the covered loan is not a multifamily dwelling. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the information specified in § 1003.4(a)(32). See § 1003.3(d) and related commentary.

Paragraph 4(a)(33)

1. *Agents.* If a financial institution is reporting actions taken by its agent consistent with comment 4(a)–4, the agent is not considered the financial institution for the purposes of § 1003.4(a)(33). For example, assume that an applicant submitted an application to Financial Institution A, and Financial Institution A made the credit decision acting as Financial Institution B's agent under State law. A covered loan was originated and the obligation arising from a covered loan was initially payable to Financial Institution A. Financial Institution B purchased the loan. Financial Institution B reports the origination and not the purchase, and indicates that the application was not submitted directly to the financial institution and that the transaction was not initially payable to the financial institution.

Paragraph 4(a)(33)(i)

1. *General.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(33)(i) requires a financial institution to indicate whether the applicant or borrower submitted the application directly to the financial institution that is reporting the covered loan or application. The following scenarios demonstrate whether an application was submitted directly to the financial institution that is reporting the covered loan or application.

i. The application was submitted directly to the financial institution if the mortgage loan originator identified pursuant to § 1003.4(a)(34) was an employee of the reporting financial institution when the originator performed the origination activities for the covered loan or application that is being reported.

ii. The application was also submitted directly to the financial institution reporting the covered loan or application if the reporting financial institution directed the applicant to a third-party agent (*e.g.,* a credit union service organization) that performed loan origination activities on behalf of the financial institution and did not assist the applicant with applying for covered loans with other institutions.

iii. If an applicant contacted and completed an application with a broker or correspondent that forwarded the application to a financial institution for approval, an application was not submitted to the financial institution.

Paragraph 4(a)(33)(ii)

1. *General.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(33)(ii) requires financial institutions to report whether the obligation arising from a covered loan was or, in the case of an application, would have been initially payable to the institution. An obligation is initially payable to the institution if the obligation is initially payable either on the face of the note or contract to the financial institution that is reporting the covered loan or application. For example, if a financial institution reported an origination of a covered loan that it approved prior to closing, that closed in the name of a third-party, such as a correspondent lender, and that the financial institution purchased after closing, the covered loan was not initially payable to the financial institution.

2. *Applications.* A financial institution complies with § 1003.4(a)(33)(ii) by reporting that the requirement is not applicable if the institution had not determined whether the covered loan would have been initially payable to the institution reporting the application when the application was withdrawn, denied, or closed for incompleteness.

Paragraph 4(a)(34)

1. *NMLSR ID.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(34) requires a financial institution to report the Nationwide Mortgage Licensing System and Registry unique identifier (NMLSR ID) for the mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable. The NMLSR ID is a unique number or other identifier generally assigned to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act), 12 U.S.C. 5101 *et seq.,* and its implementing regulations (12 CFR part 1007 and 12 CFR part 1008).

2. *Mortgage loan originator without NMLSR ID.* An NMLSR ID for the mortgage loan originator is not required by § 1003.4(a)(34) to be reported by a financial institution if the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID. For example, certain individual mortgage loan originators may not be required to obtain an NMLSR ID for the particular transaction being reported by the financial institution, such as a commercial loan. However, some mortgage loan originators may have obtained an NMLSR ID even if they are not required to obtain one for that particular transaction. If a mortgage loan originator has been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting the mortgage loan originator's NMLSR ID regardless of whether the mortgage loan originator is required to obtain an NMLSR ID for the particular transaction being reported by the financial institution. In the event that the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable.

3. *Multiple mortgage loan originators.* If more than one individual associated with a covered loan or application meets the definition of a mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, a financial institution complies with § 1003.4(a)(34) by reporting the NMLSR ID of the individual mortgage loan originator with primary responsibility for the transaction as of the date of action taken pursuant to § 1003.4(a)(8)(ii). A financial institution that establishes and follows a reasonable, written policy for determining which individual mortgage loan originator has primary responsibility for the reported transaction as of the date of action taken complies with § 1003.4(a)(34).

4. *Purchased loans.* If a financial institution purchases a covered loan that satisfies the coverage criteria of Regulation Z, 12 CFR 1026.36(g), and that was originated prior to January 10, 2014, the financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable. In addition, if a financial institution purchases a covered loan that does not satisfy the coverage criteria of Regulation Z, 12 CFR 1026.36(g), and that was originated prior to January 1, 2018, the financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable. Purchasers of both such types of covered loans may report the NMLSR ID.

Paragraph 4(a)(35)

1. *Automated underwriting system data—general.* Except for purchased covered loans and partially exempt transactions under § 1003.3(d), § 1003.4(a)(35) requires a financial institution to report the name of the automated underwriting system (AUS) used by the financial institution to evaluate the application and the result generated by that AUS. The following scenarios illustrate when a financial institution reports the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS.

i. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS used by the financial institution to evaluate the application and the result generated by that system, regardless of whether the AUS was used in its

underwriting process. For example, if a financial institution uses an AUS to evaluate an application prior to submitting the application through its underwriting process, the financial institution complies with § 1003.4(a)(35) by reporting the name of the AUS it used to evaluate the application and the result generated by that system.

ii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan in its portfolio or sell the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and intends to sell the covered loan to that securitizer but ultimately does not sell the covered loan and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system. Similarly, if a financial institution uses an AUS developed by a securitizer to evaluate an application to determine whether to originate the covered loan but does not intend to sell the covered loan to that securitizer and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), that is developed by a securitizer to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the securitizer intends to hold the covered loan it purchased from the financial institution in its portfolio or securitize the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and the financial institution sells the covered loan to that securitizer but the securitizer holds the covered loan it purchased in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iv. A financial institution, which is also a securitizer, that uses its own AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan it originates in its portfolio, purchase the covered loan, or securitize the covered loan. For example, if a financial institution, which is also a securitizer, has developed its own AUS and uses that AUS to evaluate an application that it intends to originate and hold in its portfolio and not purchase or securitize the covered loan, the financial institution complies with § 1003.4(a)(35) by reporting the name of its AUS that it used to evaluate the application and the result generated by that system.

2. *Definition of automated underwriting system.* A financial institution must report the information required by § 1003.4(a)(35)(i) if the financial institution uses an automated underwriting system (AUS), as defined in § 1003.4(a)(35)(ii), to evaluate an application. To be covered by the definition in § 1003.4(a)(35)(ii), a system must be an electronic tool that has been developed by a securitizer, Federal government insurer, or a Federal government guarantor of closed-end mortgage loans or open-end lines of credit. A person is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, if it has securitized, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or open-end line of credit at any point in time. A person may be a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, for purposes of § 1003.4(a)(35) even if it is not actively securitizing, insuring, or guaranteeing closed-end mortgage loans or open-end lines of credit at the time a financial institution uses the AUS to evaluate an application. Where the person that developed the electronic tool has never been a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, at the time a financial institution uses the tool to evaluate an application, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable because an AUS was not used to evaluate the application. If a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is also a securitizer, then the financial institution complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system. On the other hand, if a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is not a securitizer, then the financial institution is not required by § 1003.4(a)(35) to report the use of that system and the result generated by that system. In addition, for an AUS to be covered by the definition in § 1003.4(a)(35)(ii), the system must provide a result regarding both the credit risk of the applicant and the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used to evaluate the application. For example, if a system is an electronic tool that provides a determination of the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used by a financial institution to evaluate the application, but the system does not also provide an assessment of the creditworthiness of the applicant—such as an evaluation of the applicant's income, debt, and credit history—then that system does not qualify as an AUS, as defined in § 1003.4(a)(35)(ii). A financial institution that uses a system that is not an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application does not report the information required by § 1003.4(a)(35)(i).

3. *Reporting automated underwriting system data—multiple results.* When a financial institution uses one or more automated underwriting systems (AUS) to evaluate the application and the system or systems generate two or more results, the financial institution complies with § 1003.4(a)(35) by reporting, except for purchased covered loans, the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS as determined by the following principles. To determine what AUS (or AUSs) and result (or results) to report under § 1003.4(a)(35), a financial institution follows each of the principles that is applicable to the application in question, in the order in which they are set forth below.

i. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application using the Federal Housing Administration's (FHA) Technology Open to Approved Lenders (TOTAL) Scorecard and subsequently evaluates the application with an AUS used to determine eligibility for a non-FHA loan, but ultimately originates an FHA loan, the financial institution complies with § 1003.4(a)(35) by reporting TOTAL Scorecard and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)–3.ii.

ii. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the purchaser, insurer, or guarantor, if any, the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application with the AUS of Securitizer A and subsequently evaluates the application with the AUS of Securitizer B, but the financial institution ultimately originates a covered loan that it sells within the same calendar year to Securitizer A, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the purchaser, insurer, or guarantor, if any, the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)–3.iii.

iii. If a financial institution obtains two or more AUS results and none of the systems

generating those results correspond to the purchaser, insurer, or guarantor, if any, or the financial institution is following this principle because more than one AUS result is generated by a system that corresponds to either the loan type or the purchaser, insurer, or guarantor, the financial institution complies with § 1003.4(a)(35) by reporting the AUS result generated closest in time to the credit decision and the name of the AUS that generated that result. For example, if a financial institution evaluates an application with the AUS of Securitizer A, subsequently again evaluates the application with Securitizer A's AUS, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the second AUS result. Similarly, if a financial institution obtains a result from an AUS that requires the financial institution to underwrite the loan manually, but the financial institution subsequently processes the application through a different AUS that also generates a result, the financial institution complies with § 1003.4(a)(35) by reporting the name of the second AUS that it used to evaluate the application and the AUS result generated by that system.

iv. If a financial institution obtains two or more AUS results at the same time and the principles in comment 4(a)(35)–3.i through .iii do not apply, the financial institution complies with § 1003.4(a)(35) by reporting the name of all of the AUSs used by the financial institution to evaluate the application and the results generated by each of those systems. For example, if a financial institution simultaneously evaluates an application with the AUS of Securitizer A and the AUS of Securitizer B, the financial institution complies with § 1003.4(a)(35) by reporting the name of both Securitizer A's AUS and Securitizer B's AUS and the results generated by each of those systems. In any event, however, the financial institution does not report more than five AUSs and five results. If more than five AUSs and five results meet the criteria in this principle, the financial institution complies with § 1003.4(a)(35) by choosing any five among them to report.

4. *Transactions for which an automated underwriting system was not used to evaluate the application.* Section 1003.4(a)(35) does not require a financial institution to evaluate an application using an automated underwriting system (AUS), as defined in § 1003.4(a)(35)(ii). For example, if a financial institution only manually underwrites an application and does not use an AUS to evaluate the application, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable since an AUS was not used to evaluate the application.

5. *Purchased covered loan.* A financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

6. *Non-natural person.* When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable.

7. *Determination of securitizer, Federal government insurer, or Federal government guarantor.* Section 1003.4(a)(35)(ii) provides that an ''automated underwriting system'' means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit that provides a result regarding the credit risk of the applicant and whether the covered loan is eligible to be originated, purchased, insured, or guaranteed by that securitizer, Federal government insurer, or Federal government guarantor. A person is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, if it has ever securitized, insured, or guaranteed a closed-end mortgage loan or open-end line of credit. If a financial institution knows or reasonably believes that the system it is using to evaluate an application is an electronic tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, then the financial institution complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system. Knowledge or reasonable belief could, for example, be based on a sales agreement or other related documents, the financial institution's previous transactions or relationship with the developer of the electronic tool, or representations made by the developer of the electronic tool demonstrating that the developer of the electronic tool is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. If a financial institution does not know or reasonably believe that the system it is using to evaluate an application is an electronic tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable, provided that the financial institution maintains procedures reasonably adapted to determine whether the electronic tool it is using to evaluate an application meets the definition in § 1003.4(a)(35)(ii). Reasonably adapted procedures include attempting to determine with reasonable frequency, such as annually, whether the developer of the electronic tool is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. For example:

i. In the course of renewing an annual sales agreement the developer of the electronic tool represents to the financial institution that it has never been a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. On this basis, the financial institution does not know or reasonably believe that the system it is using to evaluate an application is an electronic tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit and complies with § 1003.4(a)(35) by reporting that the requirement is not applicable.

ii. Based on their previous transactions a financial institution is aware that the developer of the electronic tool it is using to evaluate an application has securitized a closed-end mortgage loan or open-end line of credit in the past. On this basis, the financial institution knows or reasonably believes that the developer of the electronic tool is a securitizer and complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system.

Paragraph 4(a)(37)

1. *Open-end line of credit.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(37) requires a financial institution to identify whether the covered loan or the application is for an open-end line of credit. See comments 2(o)–1 and –2 for a discussion of open-end line of credit and extension of credit.

Paragraph 4(a)(38)

1. *Primary purpose.* Except for partially exempt transactions under § 1003.3(d), § 1003.4(a)(38) requires a financial institution to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose. See comment 3(c)(10)–2 for a discussion of how to determine the primary purpose of the transaction and the standard applicable to a financial institution's determination of the primary purpose of the transaction. See comments 3(c)(10)–3 and –4 for examples of excluded and reportable business- or commercial-purpose transactions.

* * * * *

[The following amendments would be effective January 1, 2022, further amending the part as proposed to be amended as of January 1, 2020.]

■ 6. Section 1003.2 is amended by revising paragraphs (g)(1)(v)(B) and (g)(2)(ii)(B) to read as follows:

§ 1003.2 Definitions.

* * * * *

(g) * * *

(1) * * *

(v) * * *

(B) In each of the two preceding calendar years, originated at least 200 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10); and

(2) * * *

(ii) * * *

(B) In each of the two preceding calendar years, originated at least 200 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10).

* * * * *

■ 7. Section 1003.3 is amended by revising paragraph (c)(12) to read as follows:

§ 1003.3 Exempt institutions and excluded and partially exempt transactions.

* * * * *

(c) * * *

(12) An open-end line of credit, if the financial institution originated fewer than 200 open-end lines of credit in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit; or

* * * * *

■ 8. In supplement I to part 1003:

■ a. Under *Section 1003.2—Definitions,* revise *2(g) Financial Institution*; and

■ b. Under *Section 1003.3—Exempt Institutions and Excluded and Partially Exempt Transactions,* under *3(c) Excluded Transactions,* revise *Paragraph 3(c)(12).*

The revisions read as follows:

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

* * * * *

2(g) Financial Institution

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2019, the preceding calendar year is 2018 and the preceding December 31 is December 31, 2018. Accordingly, in 2019, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)–2 on December 31, 2018. Likewise, in 2020, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 25 closed-end mortgage loans during either 2018 or 2019.

2. [Reserved]

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 200 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)–4 discusses a financial institution's responsibilities during the calendar year of a merger.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition.* The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For purposes of these illustrations, a ''covered institution'' means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a), and ''an institution that is not covered'' means either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

Alternative 1—Paragraph 2(g)–5

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 50 closed-end mortgage loans in each of the two preceding calendar years or at least 200 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

Alternative 2—Paragraph 2(g)–5

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 100 closed-end mortgage loans in each of the two preceding calendar years or at least 200 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

6. *Branches of foreign banks—treated as banks.* A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a ''bank'' under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of § 1003.2(g).

7. *Branches and offices of foreign banks and other entities—treated as nondepository financial institutions.* A Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of ''bank'' under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under § 1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under § 1003.2(g)(2).

* * * * *

Section 1003.3—Exempt Institutions and Excluded and Partially Exempt Transactions

3(c) Excluded Transactions

* * * * *

Paragraph 3(c)(12)

1. *General.* Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 200 open-end lines of

credit in either of the two preceding calendar years. For example, assume that a bank is a financial institution in 2022 under § 1003.2(g) because it originated 100 closed-end mortgage loans in 2020, 175 closed-end mortgage loans in 2021, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 75 and 85 open-end lines of credit in 2020 and 2021, respectively. The closed-end mortgage loans that the bank originated or purchased, or for which it received applications, during 2022 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the open-end lines of credit that the bank originated or purchased, or for which it received applications, during 2022 are excluded transactions under § 1003.3(c)(12) and need not be reported. See comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

2. *Optional reporting.* A financial institution may report applications for, originations of, or purchases of open-end lines of credit that are excluded transactions because the financial institution originated fewer than 200 open-end lines of credit in either of the two preceding calendar years. However, a financial institution that chooses to report such excluded applications for, originations of, or purchases of open-end lines of credit must report all such applications for open-end lines of credit which it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would be covered loans for a given calendar year. Note that applications which remain pending at the end of a calendar year are not reported, as described in comment 4(a)(8)(i)–14.

* * * * *

Dated: April 26, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–08983 Filed 5–10–19; 8:45 am]

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Part III

Commodity Futures Trading Commission

17 CFR Parts 23, 43, 45, and 49

Certain Swap Data Repository and Data Reporting Requirements; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 23, 43, 45, and 49

RIN Number 3038–AE32

Certain Swap Data Repository and Data Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing amendments to parts 23, 43, 45, and 49 of the Commission's regulations to improve the accuracy of data reported to, and maintained by, swap data repositories (''SDRs''). Among other changes, the proposed amendments would modify existing requirements for SDRs to establish policies and procedures to confirm the accuracy of swap data with both counterparties to a swap. The proposed amendments would further require reporting counterparties to verify the accuracy of swap data pursuant to those SDR procedures. The Commission is also proposing certain amendments to parts 23, 43, 45, and 49 to provide enhanced and streamlined oversight over SDRs and data reporting generally.

DATES: Comments must be received on or before July 29, 2019.

ADDRESSES: You may submit comments, identified by RIN number 3038–AE32, by any of the following methods:

- The agency's website, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the website.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Benjamin DeMaria, Special Counsel, 202–418–5988, *bdemaria@cftc.gov* or Meghan Tente, Lead Attorney-Advisor, 202–418–5785, *mtente@cftc.gov,* Division of Market Oversight, Data and Reporting Branch, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Introduction
B. Statutory Authority
C. Regulatory History—Final Rulemakings
II. Proposed Amendments to Part 49
A. § 49.2—Definitions
B. § 49.3—Procedures for Registration
C. § 49.5—Equity Interest Transfers
D. § 49.6—Request for Transfer of Registration
E. § 49.9—Open Swaps Reports Provided to the Commission
F. § 49.10—Acceptance of Data
G. § 49.11—Verification of Swap Data Accuracy
H. § 49.12—Swap Data Repository Recordkeeping Requirements
I. § 49.13—Monitoring, Screening, and Analyzing Data
J. § 49.15—Real-Time Public Reporting by Swap Data Repositories
K. § 49.16—Privacy and Confidentiality Requirements of Swap Data Repositories
L. § 49.17—Access to SDR Data
M. § 49.18—Confidentiality Arrangement
N. § 49.20—Governance Arrangements (Core Principle 2)
O. § 49.22—Chief Compliance Officer
P. § 49.24—System Safeguards
Q. § 49.25—Financial Resources
R. § 49.26—Disclosure Requirements of Swap Data Repositories
S. § 49.28—Operating Hours of Swap Data Repositories
T. § 49.29—Information Relating to Swap Data Repository Compliance
U. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission
V. § 49.31—Delegation of Authority to the Director of the Division of Market Oversight Relating to Certain Part 49 Matters
III. Proposed Amendments to Part 45
A. § 45.2—Swap Recordkeeping
B. § 45.14—Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data
IV. Proposed Amendments to Part 43
A. § 43.3—Method and Timing for Real-Time Public Reporting
V. Proposed Amendments to Part 23
A. § 23.204—Reports to Swap Data Repositories
B. § 23.205—Real-Time Public Reporting
VI. Request for Comments
VII. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
C. Cost-Benefit Considerations
D. Anti-Trust Considerations

I. Background

A. Introduction

Pursuant to the Dodd-Frank Act,[2] beginning in 2011, the Commission adopted parts 45 and 49 of its regulations to implement a swap data reporting and recordkeeping regime along with registration requirements and duties for SDRs.[3] In 2012, the Commission adopted part 23 of its regulations, which sets forth requirements for swap dealers (''SDs'') and major swap participants (''MSPs'') related to the timely and accurate reporting, confirmation, and processing of swaps.[4] The regulations the Commission is proposing to amend with this release concern data reporting and recordkeeping duties generally and other duties for SDRs.

B. Statutory Authority

Section 727 of the Dodd-Frank Act added section 2(a)(13)(G) to the Commodity Exchange Act (''CEA'' or ''Act''), which requires all swaps—whether cleared or uncleared—to be reported to SDRs,[5] which are registered

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), *available at https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.*

[3] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011) (''Part 49 Adopting Release''); Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012) (''Part 45 Adopting Release'').

[4] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012) (''Part 23 Adopting Release'').

[5] Section 721 of the Dodd-Frank Act amended section 1a of the CEA to add the definition of SDR. Pursuant to section 1a(48) of the CEA, the term SDR ''means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose

entities created by section 728 of the Dodd-Frank Act.[6] Section 728 of the Dodd-Frank Act added section 21 to the CEA,[7] which governs registration and regulation of SDRs, and directs the Commission to promulgate rules concerning those duties and responsibilities.

To register and maintain registration with the Commission, SDRs are required to comply with specific duties and core principles enumerated in CEA section 21 as well as other requirements that the Commission may prescribe by rule. In particular, CEA section 21(c) mandates that SDRs: (1) Accept data; (2) confirm with both counterparties the accuracy of submitted data; (3) maintain data according to standards prescribed by the Commission; (4) provide direct electronic access to the Commission or any designee of the Commission (including another registered entity); (5) provide public reporting of data in the form and frequency required by the Commission; (6) establish automated systems for monitoring, screening, and analyzing data (including the use of end-user clearing exemptions) at the direction of the Commission; (7) maintain data privacy; (8) make data available to other specified regulators, on a confidential basis, pursuant to section 8 of the CEA,[8] upon request and after notifying the Commission; and (9) establish and maintain emergency and business continuity-disaster recovery (''BC–DR'') procedures. CEA section 21(f)(4)(C) further requires the Commission to establish additional duties for SDRs to minimize conflicts of interest, protect data, ensure compliance, and guarantee the safety and security of the SDR.[9] Section 21(b) of the CEA also directs the Commission to prescribe standards for data recordkeeping and reporting that apply to both registered entities and reporting counterparties.[10]

Section 4s(f) of the CEA,[11] added by section 731 of the Dodd-Frank Act, established recordkeeping and reporting requirements for SDs and MSPs. CEA section 4s(f)(1)(A)[12] requires SDs and MSPs, among other things, to provide transaction and position reports that the Commission requires by rule or regulation. CEA section 4s(f)(2)[13] requires the Commission to adopt rules governing, among other things, recordkeeping and reporting by SDs and MSPs.

C. Regulatory History—Final Rulemakings

On August 4, 2011, the Commission adopted part 49 of the Commission's regulations.[14] Part 49 implements the requirements of section 21 of the CEA by setting forth the specific duties that SDRs are required to comply with to be initially registered as an SDR and maintain such registration as an SDR with the Commission. As part of the Part 49 Adopting Release, the Commission, among other sections, adopted § 49.11 regarding the confirmation of data accuracy.

Pursuant to CEA section 4s(f)(2), the Commission promulgated swap reporting rules for SDs and MSPs, including §§ 23.204–205, which were both adopted on April 3, 2012.[15] Section 23.204(a) requires SDs and MSPs to report all information and swap data in accordance with part 45. Section 23.204(b) requires SDs and MSPs to have the procedures and electronic systems necessary to report all information and swap data required to be reported in accordance with part 45. Sections 23.205(a) and (b) establish parallel requirements for SDs and MSPs with respect to the real-time reporting requirements of part 43.

Since the Commission adopted part 49 in 2011, Commission staff has led many efforts to evaluate and improve reporting issues relating to data accuracy. Commission staff leads or participates in several international regulatory working groups concentrating on harmonization of data reporting and is incorporating in this release lessons learned from these undertakings and best practices from the international regulatory community. Commission staff's efforts have also included the formation of an interdivisional staff working group to identify, and make recommendations to resolve, reporting challenges associated with certain swap data recordkeeping and reporting provisions.[16] The Commission has also requested comments from the public on reporting issues.[17]

Throughout these ongoing efforts, the Commission has generally adhered to the view that verification of data accuracy can be achieved through: (i) SDR processes confirming the accuracy of data submitted; (ii) data reconciliation exercises by entities that reported data; and (iii) the prompt reporting of errors and omissions when discovered.[18]

Most recently, based in part on information received during the ongoing efforts described above, Commission staff announced a comprehensive review of swap reporting regulations and released the Roadmap to Achieve High Quality Swap Data (''Roadmap'')[19] to solicit feedback on improvements to data reporting and how the Commission's regulatory goals may be achieved without imposing unnecessary burdens on market participants. Commission staff requested comments in response to the Roadmap (''Roadmap Request for Comment'') and received a number of comment letters that addressed data accuracy and confirmation of data reported to SDRs, among other subjects.[20]

References to ''commenters'' in this release refer to those who submitted comment letters in response to the Roadmap Request for Comment. Summaries and a discussion of the relevant comments submitted by those commenters appear in the appropriate section in this release.[21]

The revisions and additions proposed in this release are intended to address the SDR Operations Review goals of the Roadmap related to confirming the accuracy of swap data,[22] to improve the clarity and consistency of regulations governing SDRs, and to bolster the Commission's oversight of SDRs. This proposal is the first of three anticipated Roadmap rulemakings that, when all of

of providing a centralized recordkeeping facility for swaps.'' 7 U.S.C. 1a(48).

[6] The Commission notes that there are currently three SDRs provisionally registered with the Commission: CME Inc., DTCC Data Repository (U.S.) LLC (''DDR''), and ICE Trade Vault, LLC (''ICE'').

[7] 7 U.S.C. 24a.

[8] 7 U.S.C. 12(e).

[9] Pursuant to this provision, the Commission may develop one or more additional duties applicable to SDRs. 7 U.S.C. 24a(f)(4). This provision is referred to as ''Core Principle 4.''

[10] *See* 7 U.S.C. 24a(b)(1)(B).

[11] 7 U.S.C. 6s(f).

[12] 7 U.S.C. 6s(f)(1)(A).

[13] 7 U.S.C. 6s(f)(2).

[14] *See* Part 49 Adopting Release.

[15] *See* Part 23 Adopting Release.

[16] *See* Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), *available at http://www.cftc.gov/PressRoom/PressReleases/pr6837-14.*

[17] *See, e.g.,* Review of Swap Data Recordkeeping and Reporting Requirements, Request for Comment, 79 FR 16689 (Mar. 26, 2014).

[18] *See id.* at 16695.

[19] *See* CFTC Letter 17–33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (July 10, 2017), *available at http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf;* Roadmap to Achieve High Quality Swap Data, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.*

[20] These comment letters are *available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=1824.*

[21] *See* section II.G.1.

[22] *See* Roadmap, p. 6 (stating the Commission's intent to ''Identify the most efficient and effective solution for swap counterparty(ies) to confirm the accuracy and completeness of data held in an SDR.'').

the planned rulemakings are complete, should achieve the Roadmap's overall goals of improving the quality, accuracy, and completeness of the data reported to the Commission, streamlining data reporting, and clarifying obligations for market participants.[23] When the Commission proposes the next two rulemakings, the Commission anticipates re-opening the comment period for this proposal to provide market participants with an opportunity to comment collectively on the three rulemakings together, because the proposals address interconnected issues. As the Roadmap rulemakings must all work in tandem to achieve these goals, the Commission also anticipates that key provisions of each rulemaking would have the same compliance date, regardless of when each rulemaking is released in final form. The Commission intends to provide a sufficient implementation period for these various rulemakings in order to give SDRs and market participants enough time to implement and test the changes that would be required.

Where possible, in creating the proposed regulations set forth in this release, the Commission has taken into consideration certain pertinent rules adopted by other regulators, including the European Securities and Markets Authority (''ESMA'') and the U.S. Securities and Exchange Commission (''SEC'').[24] This is particularly the case for the SEC's regulations relating to the registration, duties, and core principles of Security-Based Swap Data Repositories (''SBSDRs'') [25] and reporting requirements for Security-Based Swaps (''SBSs'') set forth in Regulation SBSR (''Regulation SBSR'').[26] The Commission notes that there are similarities between the regulatory framework for SBSDRs and the SDR regulations that are the subject of this proposal.

II. Proposed Amendments to Part 49

A. § 49.2—Definitions

1. Formatting Change to § 49.2(a)

The defined terms in § 49.2(a) currently are numbered and arranged in alphabetical order. The Commission is proposing to remove the numbering and instead arrange the defined terms in § 49.2(a) solely in alphabetical order. Arranging the defined terms in § 49.2(a) solely in alphabetical order would require the Commission to make fewer conforming changes to § 49.2(a) and other regulations when adding or removing defined terms in the future, as the Commission currently proposes to do.[27]

2. Proposed Changes to § 49.2

i. Conforming and Ministerial Changes to Some Definitions

The Commission proposes non-substantive conforming and ministerial changes to certain definitions to provide clarity and for consistency with other Commission regulations.[28] Specifically, the Commission is proposing the following changes to definitions in § 49.2(a):

- ''Asset class'': Modify the definition to conform the wording to the definition of ''asset class'' used in part 43.[29]
- ''Commercial use'': Modify the definition to use active instead of passive voice, and to change use of swap data for regulatory purposes and/or responsibilities to use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities.
- ''Market participant'': Change the term ''swaps execution facilities'' to ''swap execution facilities,'' to conform to section 5h of the Act and other Commission regulations, and make the term counterparty singular.
- ''Non-affiliated third party'': Clarify paragraph (3) to identify ''a person jointly employed'' by an SDR and any affiliate.
- ''Person associated with a swap data repository'': Clarify that paragraph (3) includes a ''jointly employed person.''
- ''Swap data'': Modify the definition to more closely match the related definitions of ''SDR data'' and ''swap transaction and pricing data'' that are being added to § 49.2(a) and to incorporate the requirements to provide swap data to the Commission pursuant to part 49.

Finally, the Commission proposes to remove the term ''capitalized'' from § 49.2(b), to reflect that most defined terms used in part 49 are not capitalized in the text of part 49. The Commission does not consider any of the above changes to be substantive.

ii. ''As Soon As Technologically Practicable''

The Commission proposes to add the term ''as soon as technologically practicable'' as a defined term to standardize the meaning and use of this term across the Commission's swap reporting regulations. The term as soon as technologically practicable would mean as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants. The term is intended to be identical to the use of the term as it is used in parts 43 and 45 of the Commission's regulations.[30]

iii. ''Non-Swap Dealer/Major Swap Participant/Derivatives Clearing Organization Reporting Counterparty''

The Commission proposes to add the term ''non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty,'' defined to mean a reporting counterparty that is not a swap dealer, major swap participant, derivatives clearing organization, or exempt derivatives clearing organization. The Commission believes the defined term would provide clarity in part 49.

[23] *See id.* at 3 (describing the Commission's goals for the review of reporting regulations).

[24] The Commission has also reviewed the SEC's recent proposed rule on risk mitigation techniques for uncleared security-based swaps, which addresses issues related to reconciling security-based swap transactions and confirming the transaction data. *See generally* Risk Mitigation Techniques for Uncleared Security-Based Swaps, 84 FR 4614 (Feb. 15, 2019).

[25] *See generally* Security-Based Swap Data Repository Registration, Duties and Core Principles, 80 FR 11438 (Mar. 19, 2015) (''SBSDR Adopting Release''). The SEC adopted Rules 13n–1 through 13n–12 (17 CFR 240n–1 through 240n–12) under the Securities Exchange Act of 1934 (''Exchange Act'') relating to the registration and operation of SBSDRs.

[26] *See generally* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, 80 FR 14740 (Mar. 19, 2015) (''SBSR Adopting Release''). The SEC adopted Regulation SBSR (Rules 900 through 909, 17 CFR 242.900 through 909) to create a reporting framework for SBSs. The SEC has also adopted additional regulations regarding the reporting and dissemination of certain information related to SBSs. *See generally* 81 FR 53546 (Aug. 12, 2016).

[27] The Office of the Federal Register prefers the solely alphabetical approach to definitions sections. *See* Office of the Federal Register, Document Drafting Handbook May 2017 Update, Revision 5, 2–31 (2017) (''*Definitions.* In sections or paragraphs containing only definitions, we recommend that you do not use paragraph designations if you list the terms in alphabetical order.'').

[28] Other than removing subsection numbering and ministerial corrections as discussed above in section II.A.1, the Commission is not proposing any substantive changes to the definitions of ''affiliate,'' ''control,'' ''foreign regulator,'' ''independent perspective,'' ''position,'' or ''section 8 material,'' as those terms are defined in current § 49.2(a).

[29] *See* 17 CFR 43.2 (Asset class means a broad category of commodities including, without limitation, any ''excluded commodity'' as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity and such other asset classes as may be determined by the Commission.).

[30] *See* 17 CFR 43.2 (defining of as soon as technologically practicable). Part 45 of the Commission's regulations also uses the term ''as soon as technologically practicable'' in the same way as part 43 and this proposed definition, but does not define the term.

iv. ''Open Swap''

The Commission proposes to add the term ''open swap'' as a defined term and to define the term as an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated. The Commission considers an ''open swap'' to mean a swap that is still in force or ''alive.'' This definition is intended to function the same as the definitions of ''open swap'' [31] and ''closed swap'' [32] in part 20, but provides more clarity as to the Commission's meaning of the term.

v. ''Reporting Counterparty''

The Commission proposes to add the term ''reporting counterparty'' as a defined term to standardize its meaning and use across the Commission's swap reporting regulations. Reporting counterparty would mean the counterparty responsible for reporting SDR data to an SDR pursuant to parts 43, 45, or 46 of the Commission's regulations. The term is intended to be functionally equivalent to the term ''reporting party,'' as defined in part 43,[33] the term ''reporting counterparty,'' as defined in part 45,[34] and the term ''reporting counterparty,'' as defined in part 46.[35] The Commission notes that the reporting counterparty may not always be the entity reporting SDR data to the SDR, particularly for transactions executed on swap execution facilities (''SEFs'') or designated contract markets (''DCMs''), but it is the counterparty responsible for the initial and subsequent SDR data reporting, as determined by parts 43, 45, or 46 of the Commission's regulations, as applicable to a particular swap.

vi. ''SDR Data''

The Commission proposes to add the term ''SDR data'' as a defined term. SDR data would mean the specific data elements and information required to be reported to an SDR or disseminated by an SDR, pursuant to two or more of parts 43, 45, 46, and/or 49, as applicable. The Commission notes that in this context, ''disseminated'' would include SDRs making swap data available to the Commission as required by part 49.

The term SDR data would refer to multiple sources of data reported to the SDR or disseminated by the SDR. For example, SDR data could refer to all data reported or disseminated pursuant to parts 43, 45, and 46, or may refer to data reported or disseminated pursuant to parts 45 and 46, depending on the context in which the term is used. This is in contrast with the proposed term ''swap transaction and pricing data,'' discussed below, which would only refer to data reported to the SDR or publicly disseminated by the SDR pursuant to part 43 and the term ''swap data,'' which would only refer to data reported to the SDR or made available to the Commission pursuant to part 45. The Commission believes that consolidating references to the different types of data that must be reported to an SDR and data the SDR must make available to the public or to the Commission into a single term would provide clarity throughout part 49.

vii. ''SDR Information''

The Commission proposes to amend the existing definition of ''SDR information'' to add ''related to the business of the swap data repository that is not SDR data'' to the end of the current definition. The Commission believes this change would make clear that the scope of SDR information is limited to information that the SDR receives or maintains related to its business that is not the SDR data reported to or disseminated by the SDR. SDR information would include, for example, SDR policies and procedures created pursuant to part 49.[36]

viii. ''Swap Transaction and Pricing Data'' and ''As Soon as Technologically Practicable''

The Commission proposes to add the terms ''swap transaction and pricing data'' and ''as soon as technologically practicable'' as defined terms from part 43. Swap transaction and pricing data would mean the data elements and information required to be reported to an SDR or publicly disseminated by an SDR, as applicable, pursuant to part 43. Though this phrase is not currently defined in part 43, it is used throughout that part to refer to the data that must be reported to an SDR and publicly disseminated by an SDR pursuant to part 43, and the meaning of the term added here is identical. The Commission is proposing to adopt the same definition of as soon as technologically practicable defined in part 43, which means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants. The Commission is proposing to add both phrases as defined terms in part 49 to increase consistency in terminology used in the Commission's swap reporting regulations.

ix. Removal of ''Reporting Entity''

The Commission proposes to remove the term ''reporting entity'' from part 49. The Commission believes that ''reporting entity'' is no longer necessary with the proposed addition of the defined term for ''reporting counterparty,'' because reporting counterparties are also reporting entities under the current definition.[37] SEFs and DCMs are the only entities that may have the responsibility to report data that are not included in the proposed definition of ''reporting counterparty.'' The Commission notes that this proposed rule would retain most requirements related to reporting entities, but would update the terminology used to describe the requirements. As a result, most obligations for reporting entities would still exist under the proposed amendments.

x. Removal of ''Registered Swap Data Repository''

The Commission proposes to remove the term ''registered swap data repository'' from part 49. The Commission believes the term ''registered swap data repository'' is not needed in part 49 because the defined term ''swap data repository'' already exists in § 1.3.[38] The definition of ''swap data repository'' in § 1.3 is identical to the definition contained in section 1a(48) of the CEA.[39] This definition of

[31] *See* 17 CFR 20.1 (Open swap or swaption means a swap or swaption that has not been closed.).

[32] *See* 17 CFR 20.1 (Closed swap or closed swaption means a swap or swaption that has been settled, exercised, closed out, or terminated.).

[33] *See* 17 CFR 43.2 (Reporting party means the party to a swap with the duty to report a publicly reportable swap transaction in accordance with part 43 and section 2(a)(13)(F) of the CEA.).

[34] *See* 17 CFR 45.1 (Reporting counterparty means the counterparty required to report swap data pursuant to part 45, selected as provided in § 45.8.).

[35] *See* 17 CFR 46.1 (Reporting counterparty means the counterparty required to report swap data pursuant to part 46, selected as provided in § 46.5.).

[36] This clarification is particularly relevant for the SDR recordkeeping obligations in the proposed amendments to § 49.12, discussed below in section II.H.

[37] *See* 17 CFR 49.2(a)(12) (defining ''reporting entity'' as those entities that are required to report swap data to a registered swap data repository which includes derivatives clearing organizations, swap dealers, major swap participants and certain non-swap dealer/non-major swap participant counterparties.).

[38] *See* 17 CFR 1.3 (defining ''swap data repository'' as ''any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.'').

[39] *See* 7 U.S.C. 1a(48) (''The term 'swap data repository' means any person that collects and maintains information or records with respect to

Continued

''swap data repository'' therefore already applies, and would continue to apply, to part 49 and all other Commission regulations and, when combined with § 49.1,[40] removes the need for a separate defined term for ''registered swap data repository.'' The inclusion of the word ''registered'' in ''registered swap data repository'' and the definition of the term [41] also creates unnecessary confusion as to when the requirements of part 49 apply to entities that are in the process of registering as SDRs or are provisionally registered as SDRs under the requirements of § 49.3(b).[42] Finally, the removal of the term ''registered swap data repository'' would decrease inconsistency in terms within part 49 and would also increase consistency between part 49 and other Commission regulations, which overwhelmingly use the term ''swap data repository.'' The Commission emphasizes that removing the defined term ''registered swap data repository'' is a non-substantive amendment that would not in any way modify the requirements applicable to current or future SDRs.

Request for Comment. The Commission requests comment on all aspects of the proposed changes to § 49.2. The Commission also invites specific comment on the following:

(1) Are there any proposed amendments to definitions in existing regulations in part 49 that are unclear or inaccurate?

B. § 49.3—Procedures for Registration

Section 49.3 of the Commission's regulations establishes procedural and substantive requirements for SDR registration. In relevant part, § 49.3 requires persons seeking SDR registration to file an application for registration on Form SDR [43] and to amend it periodically.[44] Specifically, current § 49.3(a)(5) requires that if any information in Form SDR or any amendment becomes inaccurate for any reason, whether before or after the registration application has been granted, the SDR shall promptly file an amendment on Form SDR updating such information. In addition, § 49.3(a)(5) requires the SDR to submit an annual amendment to Form SDR within sixty days after the end of the SDR's fiscal year.

The Commission is proposing to amend § 49.3(a)(5) to remove the requirement for SDRs to: (i) File an annual amendment to Form SDR; and (ii) amend Form SDR after the registration application has been granted pursuant to § 49.3(a). Accordingly, as proposed, § 49.3(a)(5) would simply require an SDR to amend Form SDR to correct inaccuracies until its application for registration has been granted.

The Commission no longer believes that the requirement to amend Form SDR after registration is needed because the SDRs registered under § 49.3(a) will have demonstrated the ability to meet initial registration and compliance requirements in order to receive registration and the registered SDRs will still submit changes to many of the items in Form SDR as rule filings under part 40.[45] The Commission is also proposing new § 49.29, which would permit the Commission to request that SDRs produce information demonstrating compliance with the Commission's regulations, as discussed further in section II.T. The Commission does, however, believe that updates to Form SDR are still necessary prior to the granting of registration under § 49.3(a), because the application would still be active and the applicant would still need to demonstrate the ability to meet initial registration and compliance requirements.

Consistent with the above proposed amendments, the Commission is also proposing to amend Form SDR to remove the references to annual amendments and amendments after SDR registration.[46]

As discussed below in section II.O, current § 49.22(f)(2) requires that the annual compliance report be provided to the Commission concurrently with the filing of the annual amendment to Form SDR that must be submitted to the Commission pursuant to § 49.3(a)(5) of this part. The Commission is proposing removing the reference to § 49.3(a)(5) from § 49.22(f)(2), to reflect the removal of the annual amendment requirement from § 49.3(a)(5).

Request for Comment. The Commission requests comment on all aspects of the proposed changes to § 49.3(a)(5).

C. § 49.5—Equity Interest Transfers

The Commission is proposing to amend § 49.5 to streamline the requirements for equity interest transfers for SDRs. The Commission believes that the amendments to § 49.5 simplify the notification and timing requirements associated with transfers of equity interest for SDRs.

1. Notification of Intended Equity Interest Transfer—Proposed § 49.5(a)

Current § 49.5(a) establishes the requirement for SDRs to provide the Commission an equity transfer notification. Specifically, current § 49.5(a) requires that: (i) Upon entering into any agreement that could result in an equity interest transfer of ten percent or more in the SDR, the SDR shall file a notification with the Secretary of the Commission in the manner specified by the Secretary, no later than the business day following the date on which the SDR enters into a firm obligation to transfer the equity interest; and (ii) that the SDR amend any information that is no longer accurate on Form SDR consistent with the procedures set forth in § 49.3.

Proposed § 49.5 would revise current § 49.5(a) in several respects. First, proposed § 49.5 would make clear that the proposed rule would apply to both the direct and indirect transfers of ten percent or more of the equity interest in the SDR. The Commission believes that including both direct and indirect transfers of equity ownership in proposed § 49.5 is necessary for the Commission to properly oversee SDRs and to address any compliance concerns that may arise from the indirect transfer of equity interest in an SDR through transactions involving an SDR's direct or indirect parent company, but not the SDR itself.

Second, proposed § 49.5 would require that the SDR file the equity transfer notification at the earliest possible time but no later than the open of business ten business days following the date upon which a firm obligation is made to transfer, directly or indirectly, ten percent or more of the equity interest in the SDR. The Commission believes SDRs may need additional time to file the necessary documents, and ten business days would provide greater flexibility to SDRs without sacrificing the

transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.'').

[40] *See* 17 CFR 49.1 (''The provisions of this part apply to any swap data repository as defined under Section 1a(48) of the [CEA] which is registered or is required to register as such with the Commission pursuant to Section 21(a) of the [CEA].'').

[41] *See* 17 CFR 49.2(a)(11) (''The term '*registered swap data repository*' means a swap data repository that is registered under Section 21 of the [CEA].'').

[42] *See* 17 CFR 49.3(b) (creating standards for granting provisional registration to an SDR).

[43] *See* 17 CFR 49.3(a)(1).

[44] *See* 17 CFR 49.3(a)(5).

[45] *See* 17 CFR 40.1, 40.5, and 40.6 (containing the filing and review provisions applicable to rules under the Commission's regulations).

[46] The Commission is proposing various non-substantive amendments to Form SDR. These amendments include making terminology consistent throughout Form SDR, fixing incorrect references and misspellings, and fixing grammatical and style errors.

information the Commission needs to conduct effective oversight of SDRs.

Third, proposed § 49.5 would specify that the equity transfer notification be filed electronically with the Secretary of the Commission and the Director of the Division of Market Oversight (''DMO'') via email. The Commission is also proposing to remove the requirement to amend information that is no longer accurate on Form SDR due to the equity interest transfer because the requirement is duplicative in light of the requirements of both current and proposed § 49.3(a)(5).[47]

2. Documentation Requirements—Proposed § 49.5(b)

Current § 49.5(b) sets forth the documentation requirements for the equity transfer notice. Current § 49.5(b) requires that: (i) The notification include any relevant agreements, corporate documents, charts outlining new ownership or corporate or organizational structure, a brief description of the purpose and any impact of the transfer, and a representation from the SDR that it meets all of the requirements of section 21 of the Act and Commission regulations; (ii) the SDR keep the Commission apprised of the projected date that the transaction will be consummated, and provide the Commission any new agreements or modifications to the original agreements filed pursuant to § 49.5; and (iii) the SDR notify the Commission of the consummation of the transaction on the day it occurs.

The Commission is proposing to simplify current § 49.5(b) and instead simply provide that the Commission may, upon receiving an equity transfer notification from an SDR, request that the SDR provide supporting documentation for the transaction. The Commission believes that reserving the authority to request supporting documentation rather than compelling specific production would satisfy the Commission's need for information without placing unnecessary burdens on SDRs.

3. Notification of Completed Equity Interest Transfer—Proposed § 49.5(c)

Current § 49.5(c) requires that, upon the transfer, the SDR file with the Secretary of the Commission a certification that the registered SDR meets all of the requirements of section 21 of the Act and Commission regulations, and state whether changes to any aspects of the SDR's operations were made as a result of such change in ownership, with a description of any such change. The certification may rely on and be supported by reference to an SDR registration application or prior filings made pursuant to a rule submission requirement, along with any necessary new filings, including material updates of prior submissions. The certification must be filed within two business days of the date on which the equity interest was acquired.

Proposed § 49.5(c) would instead require that upon the transfer of the equity interest, whether directly or indirectly, the SDR shall file electronically with the Secretary of the Commission and DMO a certification that the SDR meets all of the requirements of section 21 of the Act and Commission regulations, no later than two business days following the date on which the equity interest of ten percent or more was acquired. The Commission believes proposed § 49.5(a) and (c) would provide the Commission with the pertinent information it needs to assess the impact of an equity interest transfer on the SDR's operations.

Request for Comment. The Commission requests comment on all aspects of the proposed changes to § 49.5.

D. § 49.6—Request for Transfer of Registration

The Commission is proposing amendments to streamline the requirements for the transferring of SDR registration to a successor entity in § 49.6. As part of these amendments, the Commission is proposing to retitle the section ''Request for transfer of registration,'' to more accurately reflect the subject of the regulation.

Proposed § 49.6(a) would require that an SDR seeking to transfer its registration from its legal entity as a result of a corporate change that creates a new legal entity file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission. Examples of such corporate changes could include, but are not limited to, re-organizations, mergers, acquisitions, bankruptcy, or other similar events that result in the creation of a new legal entity for the SDR.

Proposed § 49.6(b) would specify that an SDR file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

Proposed § 49.6(c) would set forth the information that must be included in the request for transfer of registration, including the underlying documentation that governs the corporate change, governance documents, and representations by the transferee entity, among other information. Proposed § 49.6(d) would specify that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

Current § 49.6(a) requires that in the event of a corporate transaction that creates a new entity, an SDR must request a transfer of its registration, rules, and other matters no later than 30 days after the succession. Current § 49.6(a) also specifies that the registration shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files a Form SDR application for registration, and the predecessor files a Form SDR request for vacation, provided, however, that the registration of the predecessor SDR shall cease to be effective 90 days after the Form SDR registration application is filed by the successor SDR.

Current § 49.6(b) requires that if the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor SDR on Form SDR to reflect these changes. The amendment shall be an application for registration filed by the predecessor and adopted by the successor.

The Commission believes that the amendments to § 49.6 would simplify the process for requesting a transfer of SDR registration. The Commission believes the requirement, timing, content of requests, and format of a Commission determination in proposed § 49.6(a), (b), (c), and (d) respectively, would achieve the Commission's information needs when an SDR seeks to transfer registration. These requirements would streamline the requirements for SDRs by setting forth a clear process for transfer that focuses on informing the Commission of changes relevant to the Commission in carrying out its oversight responsibilities, as opposed to requiring SDRs to file new Forms SDR, which would likely duplicate most of the transferor's current Form SDR.

Request for Comment. The Commission requests comment on all aspects of the proposed changes to § 49.6.

[47] Proposed § 49.5(a) would continue to apply the requirement to update information in Form SDR that is no longer accurate due to an equity interest transfer to an SDR whose application for registration has not been granted under § 49.3(a).

E. § 49.9—Open Swaps Reports Provided to the Commission

The Commission is proposing to replace current § 49.9 with requirements for SDRs to provide open swaps reports to the Commission.[48] The Commission proposes renaming § 49.9 ''Open swaps reports provided to the Commission'' to reflect this change.

Proposed § 49.9(a) would require SDRs to provide the Commission with open swaps reports that contain an accurate reflection of the swap data for every swap data field required to be reported under part 45 for every open swap maintained by the SDR, organized by the unique identifier created pursuant to § 45.5 of the Commission's regulations associated with each open swap,[49] as of the time the SDR compiles the open swaps report.

Proposed § 49.9(b) would require SDRs to transmit all open swaps reports to the Commission as instructed by the Commission, and notes that such instructions may include, but would not be limited to, the method, timing, and frequency of transmission, as well as the format of the swap data to be transmitted.[50]

Current § 49.9 lists and briefly summarizes the duties of SDRs. Current § 49.9 does not contain any unique regulatory requirements, but instead references where the duties are found in other sections of part 49.[51] The Commission believes that current § 49.9 is superfluous because all of the SDR duties listed in § 49.9 are also contained, in much greater detail, in the other sections of part 49. The Commission notes that removing current § 49.9 would be a non-substantive change that would not affect the requirements for SDRs found in the other sections of part 49, including the sections currently referenced in § 49.9.

The Commission believes that regularly receiving accurate and up-to-date information on the open swaps maintained by each SDR is necessary for the Commission to perform its regulatory functions. While the specific requirements in proposed § 49.9 are new to part 49, SDRs currently send open swaps reports to the Commission on a regular basis. The Commission currently uses open swaps reports to produce a weekly swaps report that is made available to the public[52] and for entity-netted notional calculations.[53] The Commission also uses open swaps to perform market risk and position calculations, and for additional market research projects.

SDRs currently provide open swaps reports that use different calculation approaches and different formats. These variations among SDRs reduce the Commission's ability to effectively use the swap data. The Commission notes that the proposed regulations would standardize a type of report the SDRs already create for the Commission. The Commission believes that providing standards for how the swap data in open swaps reports should be provided to the Commission would help remedy issues the Commission faces in trying to reconcile open swaps reports across the SDRs.

The Commission notes that it would have the ability to instruct SDRs as to all aspects of transmitting the open swaps reports to the Commission under proposed § 49.9. These instructions may include the method of transmission (*e.g.,* file types and methods used for transmission), the timing of transmission, the frequency of transmission, and the formatting of the swap data included in the reports. The Commission believes that retaining the flexibility to determine how SDRs would provide open swaps reports to the Commission and the ability to modify the requirements over time as needed would allow the Commission to use the information in the reports to fulfill its regulatory responsibilities while not requiring unnecessary effort on the part of the SDRs.

The Commission intends to work with the SDRs before creating or modifying any instructions pursuant to proposed § 49.9 and would provide a reasonable amount of time for SDRs to adjust their systems before any instructions take effect. The Commission notes that it currently works with SDRs to implement changes to open swaps reports, with SDRs being given time to update their systems as needed. The Commission anticipates using a similar process when working with the SDRs on the new requirements for open swaps reports.

Request for Comment. The Commission requests comment on all aspects of the proposed changes to § 49.9.

F. § 49.10—Acceptance of Data

The Commission proposes amending § 49.10 to add a new paragraph (e) to address correction of errors and omissions in SDR data. SDRs are currently required to publicly disseminate cancellations and corrections to swap transaction and pricing data as soon as technologically practicable after receipt of any cancellation or correction,[54] and transmit corrections to errors and omissions in swap data previously transmitted to the Commission in the same format as the erroneous or omitted swap data was originally transmitted.[55]

Swap counterparties, SEFs, and DCMs currently have obligations to report errors and omissions to the reporting counterparty, SEF, DCM, or SDR, depending on whether they are reporting swap transaction and pricing data or swap data.[56] The Commission is proposing to move the obligations for SDRs in correcting errors and omissions to § 49.10(e), to place all obligations for SDRs in part 49.[57] The Commission believes proposed § 49.10(e) is consistent with the SDRs' duty to correct errors and omissions that already exists in the CEA and current Commission regulations.

Proposed § 49.10(e) would set forth the general requirement that an SDR correct errors and omissions in SDR

[48] As discussed above in section II.A, the Commission is proposing to define an open swap as an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated.

[49] Proposed § 49.11 would also require SDRs to distribute open swaps reports to reporting counterparties. While a distinct report and separate requirement from proposed § 49.9, the Commission expects that the swap data contained in the open swaps reports provided to the Commission under proposed § 49.9 and the swap data provided to reporting counterparties under proposed § 49.11 would be identical, except for any data that is required to be kept confidential, if both reports reflect data as of the same moment. *See* section II.G below.

[50] As discussed below in section II.V, proposed § 49.31 would delegate the Commission's authority in proposed § 49.9, including the authority to create instructions for transmitting open swaps reports to the Commission, to the Director of DMO.

[51] As discussed below in section II.Q, the Commission is proposing conforming amendments to § 49.25 to remove references to amended § 49.9.

[52] The Commission's various public reports, including the weekly swaps reports, are *available at http://www.cftc.gov/MarketReports/index.htm.*

[53] *See* ''Introducing ENNs: A Measure of the Size of Interest Rate Swaps Markets,'' Jan. 2018, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@economicanalysis/documents/file/oce_enns0118.pdf.*

[54] *See* 17 CFR 43.3(e)(1), (3), and (4) (requiring an SDR to publicly disseminate corrections and cancellations to data and containing requirements for cancellation and correction).

[55] *See* 17 CFR 45.14(c) (requiring corrections to be transmitted to the Commission in the same format as the data was originally transmitted, unless otherwise approved).

[56] *See* § 43.3(e) for swap transaction and pricing data, discussed below in section IV.A, and § 45.14 for swap data, discussed below in section III.B. The obligations for swap counterparties, SEFs, and DCMs to report errors and omissions in swap transaction and pricing data and swap data would remain in their current sections.

[57] Parts 43 and 45, while containing provisions related to SDR acceptance and dissemination of data, concentrate on the reporting and dissemination of data by all market participants, while part 49 contains provisions that govern the registration and operations of SDRs more generally.

data that was previously reported to the SDR or was not previously reported to the SDR as required,[58] regardless of the state of the swap that is the subject of the SDR data.

Proposed § 49.10(e)(1)–(4) would set forth the specific requirements SDRs would need to meet to fulfill the general requirement in § 49.10(e). Proposed § 49.10(e)(1) would require an SDR to accept corrections for errors and omissions reported to the SDR pursuant to parts 43, 45, and 46.

Proposed § 49.10(e)(2) would require each SDR to correct the reported errors and omissions as soon as technologically practicable after the SDR receives a report of errors or omissions.

Proposed § 49.10(e)(3) would require an SDR to disseminate corrected SDR data to the public and the Commission, as applicable, as soon as technologically practicable after the SDR corrects the SDR data. Proposed § 49.10(e)(4) would require SDRs to establish, maintain, and enforce policies and procedures designed for the SDR to fulfill its responsibilities under § 49.10(e)(1)–(3).[59]

As noted above, new § 49.10(e) is designed to complement the correction provisions of other parts of the Commission's swap reporting regulations that apply to the entities reporting errors and omissions to SDRs, including proposed § 45.14(b), to ensure that errors and omissions in SDR data are corrected and disseminated as soon as possible.[60] The Commission also notes that SDRs currently have the duty to correct all SDR data previously reported, and all SDR data that was erroneously not reported as required, and to properly disseminate the corrections as required, including making the corrected SDR data available to the Commission as instructed,[61] which will continue pursuant to proposed § 49.17.[62]

Finally, the Commission notes that, as specified in § 49.10(e), the requirements of new § 49.10(e) would apply regardless of the state of the swap, meaning SDRs would have to correct and disseminate SDR data for swaps that have matured or were otherwise terminated and are no longer open swaps. The Commission believes this requirement is necessary for SDRs to continue to maintain and disseminate SDR data that accurately reflects market activity to the public[63] and regulators. Further, SDRs currently do regularly make and disseminate corrections to previously-reported SDR data and SDR data that was not initially reported as required, including SDR data for previously matured or terminated swaps.

In general, the Commission believes that specifying SDRs' responsibilities to receive corrections to SDR data from market participants, make the corrections to the SDR data, and to provide the corrected SDR data to the public and the Commission, as applicable, would further the Commission's goal of having accurate and complete SDR data available to both the Commission and the public by clearly delineating the SDRs' responsibilities in the process.

Request for Comment. The Commission requests comment on all aspects of proposed § 49.10(e).

G. § 49.11—Verification of Swap Data Accuracy

The Commission proposes to revise the current requirements of § 49.11 that set forth SDRs' responsibilities to confirm the accuracy and completeness of swap data reported to SDRs. At the same time, the Commission is proposing to revise the requirements of § 45.14 for reporting counterparties, SEFs, and DCMs to verify swap data and correct errors in swap data.[64] The Commission believes that revised § 49.11 and § 45.14 would provide SDRs, reporting counterparties, SEFs, and DCMs with a clear understanding of their respective responsibilities for verifying swap data.

The Commission is proposing to change the name of § 49.11 to ''Verification of swap data accuracy'' from ''Confirmation of data accuracy'' in order to reduce the number of differing uses of the word ''confirmation'' within the Commission's regulations. The Commission uses different tenses of the word ''verify'' [65] for the proposed requirement for the same reason.

1. General Requirement To Verify Swap Data Accuracy—Proposed § 49.11(a)

The Commission proposes to amend § 49.11(a) to include a general requirement that SDRs verify the accuracy and completeness of swap data that the SDRs receive from SEFs, DCMs, and reporting counterparties, or third-party service providers acting on their behalf.[66] Revised § 49.11(a) would also require each SDR to establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of swap data that it receives from SEFs, DCMs, reporting counterparties, or third-party service providers.[67]

As noted above, proposed § 45.14(a) contains companion requirements to proposed § 49.11(a) that would require reporting counterparties to verify swap data with SDRs and to conform to the relevant SDR's verification policies and procedures in fulfilling their verification responsibilities.[68]

Section 21(c)(2) of the CEA requires SDRs to confirm with both counterparties to the swap the accuracy of the data that was submitted.[69] The Commission implemented section 21(c)(2) through adopting current § 49.11. Current § 49.11(a) requires that SDRs establish and adopt policies and procedures to ensure the accuracy of

[58] The Commission notes that the failure to perform the initial data reporting as required under parts 43, 45, or 46 is an ''omission'' for the purposes of those parts and proposed § 49.10. The SDR would be required to correct the omission pursuant to proposed § 49.10, just as it would be required to correct any other error or omission, regardless of the state of the swap, and disseminate the corrected data as required in proposed § 49.10.

[59] The Commission notes that the policies and procedures for reporting corrections to the SDR created pursuant to § 49.10(e) would be subject to disclosure to SEFs, DCMs, and reporting counterparties under proposed § 49.26(j). *See* section II.R below. The Commission is aware of previous instances where market participants were not provided with SDR policies and procedures related to the reporting or correction of data and were unaware of the SDR's requirements, which unnecessarily interfered with the reporting and correction processes. The requirements of proposed § 49.10(e)(4) and proposed § 49.26(j) are intended to prevent a similar situation from occurring in the context of data corrections.

[60] *See* section III.B below.

[61] *See* 17 CFR 43.3(e) (correction and dissemination requirements for swap transaction and pricing data); 17 CFR 45.14 (correction and dissemination requirements for swap data); *see also* 17 CFR 49.13(a) (requiring SDRs to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.).

[62] *See* section II.L below. As discussed in that section, SDRs are currently required to provide the Commission with direct electronic access to SDR data, including scheduled data transfers to the Commission.

[63] The Commission understands that market participants use the real-time swap transaction and pricing data disseminated by SDRs pursuant to part 43 for a variety of purposes, including modeling of the swaps markets that impacts their decisions related to transacting in swaps.

[64] *See* section III.B below.

[65] The Commission recognizes that CEA section 21(c)(2) uses the term ''confirm,'' but for the reasons stated above believes ''verification'' and ''verify'' are necessary to avoid confusion.

[66] The Commission notes that an SDR may receive swap data from any SEF, DCM, or reporting counterparty, as defined in proposed § 49.2, but that the SDR would, under the proposed regulations, verify the accuracy and completeness of swap data with the reporting counterparty for a given swap, as discussed in this section. Likewise, under proposed § 45.14(a), the reporting counterparty would be required to verify the accuracy and completeness of swap data as required by that section.

[67] SDRs would be required make their policies and procedures created pursuant to proposed § 49.11(a) available to their users and potential users under the requirements of proposed § 49.26(j).

[68] *See* section III.B below.

[69] 7 U.S.C. 24a(c)(2).

swap data and other regulatory information that is reported to an SDR. Current § 49.11(b) generally requires an SDR to confirm the accuracy and completeness of all swap data submitted pursuant to part 45. The Commission provided an exception to the requirement that SDRs confirm with both counterparties to the swap the accuracy of the data that was submitted in § 49.11(b)(1)(ii) for swap creation data and § 49.11(b)(2)(ii) for swap continuation data when swap data is received from a SEF, DCM, derivatives clearing organization (''DCO''), or from a third-party service provider acting on behalf of the swap counterparty, under certain conditions.[70]

SDRs are required under current § 49.11(b)(1)(i) and § 49.11(b)(2)(i) to notify both counterparties to a swap when swap data is submitted directly via a swap counterparty, such as an SD, MSP, or non-SD/MSP counterparty, and not by a SEF, DCM, DCO, or a third-party service provider.[71] However, because counterparties do not currently have a corollary obligation to respond to the SDRs' notifications, SDRs have adopted rules based on the concept of negative affirmation: Reported swap data is presumed accurate and confirmed if a counterparty does not inform the SDR of errors or omissions or otherwise make modifications to a trade record for a certain period of time.[72]

When the Commission adopted current § 49.11, it did not believe that requiring an SDR to affirmatively communicate with both counterparties to a swap was necessary when the swap data was submitted to the SDR by a SEF, DCM, DCO, or third-party service provider.[73] However, based on the Commission's experience with swap data submitted by SEFs, DCMs, DCOs, and third-party service providers since the rule was adopted, the Commission believes that such swap data has not been consistently complete and accurate in some instances, and the swap data accuracy is not sufficient to justify the exception to the requirement that SDRs confirm the reported swap data's accuracy with swap counterparties. The current requirements have had a negative effect on swap data accuracy and consistency, which has hampered the Commission's ability to carry out its regulatory responsibilities.

Commission staff received many comments on confirmation requirements for swap data reported to SDRs in response to the Roadmap Request for Comment.[74] In general, the SDRs commented that they cannot meet their obligation to confirm data with both counterparties because non-reporting counterparties are not required to confirm data reported to the SDR under current regulations.[75] The SDRs also stated that they often have no way to contact non-reporting counterparties because non-reporting counterparties are not obligated to connect to the SDRs' services.[76] SDRs also commented that the obligation to confirm data accuracy should generally reside with the entities that are in the best position to know whether the reported data is accurate and complete (*i.e.,* the parties to the swap, not the SDRs).[77]

As a result, many SDRs advocated for removing some or all SDR obligations from § 49.11 of the Commission's regulations.[78] The Joint SDR letter commented that the Commission should clearly define the obligations of counterparties to confirm the accuracy and completeness of reported data, including requiring non-reporting counterparties to on-board with every SDR and to follow the SDRs' processes and procedures, if the non-reporting counterparties have confirmation obligations.[79]

Other commenters, including end-user groups, opposed confirmation requirements for non-reporting counterparties.[80] Chatham stated that non-reporting parties are rarely the cause of errors in the swap data and that reconciliation by reporting counterparties in conjunction with more robust validation of swap data would render reconciliation by non-reporting counterparties unnecessary.[81] CEWG advocated against any periodic reconciliation, and suggested that if reconciliation is required, it only be required for position data.[82]

The Commission's proposed revisions to § 49.11 and § 45.14(a)[83] should provide more detail on the responsibilities of SDRs, working in conjunction with reporting counterparties, to verify the accuracy and completeness of swap data. As described in the discussions of proposed § 49.11(b)–(d) below, the Commission is proposing that SDRs only verify swap data with reporting counterparties because the Commission believes this would be the most practical approach to verification. The Commission understands that SDRs are not parties to swaps and are therefore unable to verify the accuracy and completeness of swap data without the assistance of a swap counterparty.

The Commission believes reporting counterparties are in the best position to verify swap data with SDRs. The CEA's swap reporting framework is based on reporting counterparties reporting swap data on behalf of non-reporting counterparties.[84] Because of the data reporting requirements for reporting counterparties, reporting counterparties are connected to SDRs for reporting, while non-reporting counterparties, especially those that are not SDs/MSPs, often lack such connections.[85] For

[70] In these cases, §§ 49.11(b)(1)(ii) and 49.11(b)(2)(ii) relax the general requirement that the SDR affirmatively notify both counterparties directly if: (1) The SDR has formed a reasonable belief that the swap data is accurate; (2) the swap data or accompanying information reflect that both counterparties agreed to the swap data; and (3) the counterparties were provided with a 48-hour correction period.

[71] *See* 17 CFR 49.11(b).

[72] *See, e.g.,* CME Rules 604.A and 604.B; DTCC Data Repository (U.S.) LLC Rule 3.3.3.3; and ICE Trade Vault Rules 4.6 and 4.7.

[73] *See* Part 49 Adopting Release at 54547 (describing the requirements of § 49.11).

[74] The following organizations submitted comments related to confirmation and reconciliation for data reported to SDRs: American Counsel of Life Insurers (''ACLI''); Commercial Energy Working Group (''CEWG''); Chatham Financial (''Chatham''); CME Group (''CME''); Coalition for Derivatives End-Users (''Coalition''); Depository Trust & Clearing Corporation (''DTCC''); Eurex Clearing AG (''Eurex''); a joint comment letter from BSDR LLC, Chicago Mercantile Exchange Inc., and ICE Trade Vault (''Joint SDR''); Global Financial Markets Association (''GFMA''); ICE Trade Vault (''ICE''); International Energy Credit Association (''IECA''); a joint letter comment letter from International Swaps and Derivatives Association, Inc. and the Securities Industry and Financial Markets Association (''ISDA/SIFMA''); Japanese Bankers Association (''JBA''); Natural Gas Supply Association (''NGSA''); a joint comment letter from National Rural Electric Cooperative Association and American Public Power Association (''NRECA/APPA''); and Securities Industry and Financial Markets Association Asset Management Group (''SIFMA AMG'').

[75] Joint SDR Letter at 5; ICE Letter at 2.

[76] Joint SDR Letter at 5; DTCC Letter at 3; ICE Letter at 2.

[77] Joint SDR Letter at 5 (listing CME and ICE as supporting this belief); CME Letter at 2; DTCC Letter at 3.

[78] Joint SDR Letter at 5; CME Letter at 2; ICE Letter at 2.

[79] Joint SDR Letter at 5 (listing CME and ICE as providing this recommendation).

[80] Coalition Letter at 4 (noting that end-users do not have the dedicated systems, personnel, or resources to confirm swap details with SDRs); IECA Letter at 2; NRECA/APPA Letter at 3; Chatham Letter at 3–4; JBA Letter at 1–2; NGSA Letter at 3; ISDA/SIFMA Letter at 6; ACLI Letter at 2–3; SIFMA AMG Letter at 1–2.

[81] Chatham Letter at 3–4.

[82] CEWG Letter at 3.

[83] *See* section III.B.

[84] As discussed in the Part 45 Adopting Release, in designating reporting counterparties to report on behalf of non-reporting counterparties, Congress made a policy choice to place lesser burdens on non-reporting counterparties. *See* 77 FR 2136, 2166 (discussing the reporting counterparty hierarchy in CEA section 4r(a)(3)).

[85] The Commission notes that under current and proposed § 45.14(b), a non-reporting counterparty's correction responsibilities are limited to notifying

entities that never serve as reporting counterparties, such a requirement would mean the expense of building, maintaining, and operating systems to connect to SDRs purely for the purposes of verifying swap data. The Commission believes this outcome would be inconsistent with the CEA's goal of placing swap data reporting responsibilities on reporting counterparties.

2. Distribution of Open Swaps Reports—Proposed § 49.11(b)

To meet the requirement to verify swap data accuracy in proposed § 49.11(a), proposed § 49.11(b) would require an SDR to distribute to each reporting counterparty on a regular basis an open swaps report detailing the swap data maintained by the SDR for all open swaps.[86]

The Commission notes that the open swaps report would contain the same type of information that would be provided to the Commission in an open swaps report under proposed § 49.9, as of the time the SDR compiles the open swaps report, but limited to the open swaps for which the recipient of the open swaps report is the reporting counterparty.[87] The Commission notes that an SDR would not be required to provide an open swaps report to an entity that does not have any open swaps at the time the SDR compiles a particular open swaps report, even if the entity has been the reporting counterparty for swaps previously maintained by the SDR. For example, if all of the swaps for which an entity was the reporting counterparty were terminated before the SDR begins compiling an open swaps report, the SDR need not provide an open swaps report to that reporting counterparty. The SDR would need to provide subsequent open swaps reports to the entity if the entity becomes the reporting counterparty for any swaps that are open as of the time of a subsequent regular compiling of open swaps reports.

The Commission also notes that it is not proposing to prescribe how an SDR must distribute the open swaps reports to reporting counterparties. Commission staff understands some SDRs ''push'' or actively send information to reporting counterparties, while other SDRs typically have customers ''pull'' information by having those customers connect to SDR systems to retrieve the information. The Commission would not have a preference between these two approaches, provided that the SDR has instructed its customers on when and how the SDR would distribute the open swaps reports in the SDR's swap data verification policies and procedures that it makes available to market participants pursuant to proposed § 49.26(j), such that the SDR's customers are able to effectively access and utilize the open swaps reports.

The Commission also notes that it does not have a preference as to the communication methods, such as file types and data languages, that the SDRs and reporting counterparties use when distributing the open swaps reports, as long as the communication methods are made clear in the SDR's swap data verification policies and procedures and the entities can effectively communicate regarding the contents of each open swaps report, including accounting for all necessary automated systems, mapping of data fields, and potential data translation between data languages. The Commission would expect SDRs and reporting counterparties to work together to devise efficient and effective methods for successfully distributing the open swaps reports, with particular attention paid to creating a distribution system that minimizes the burden of distribution for non-SD/MSP/DCO reporting counterparties. Reporting counterparties are already connected to SDRs to fulfill their reporting responsibilities under part 45 and therefore the Commission anticipates that SDRs and reporting counterparties would be able to communicate easily, potentially through existing infrastructure for reporting swap data.

3. Content of Open Swaps Reports—Proposed § 49.11(b)(1)

Proposed § 49.11(b)(1) would require an SDR to distribute an open swaps report that contains an accurate reflection of the swap data for every swap data field required to be reported for swaps pursuant to part 45 for every open swap maintained by the SDR for which the recipient of the report is the reporting counterparty, organized by the unique identifier created pursuant to § 45.5 of the Commission's regulations associated with every open swap, as of the time the SDR compiles the open swaps report.

The Commission notes that the swap data to be included in the open swaps report would need to include every data field required to be reported for swaps under part 45, unless access to a particular data field is prohibited by other Commission regulations.[88]

The Commission believes that having every reporting counterparty review the swap data and respond to the SDR as required in proposed § 45.14 would improve the quality of swap data by facilitating the discovery and correction of errors and omissions. Proposed § 49.11(b)(1) would facilitate this review by requiring the SDRs to provide the swap data for all of a reporting counterparty's open swaps on a regular basis. The Commission anticipates this process would be largely automated and would become more efficient over time as reporting counterparties and SDRs gain experience with verification.

The Commission is not proposing specific requirements for the formatting of the open swaps report provided pursuant to proposed § 49.11(b)(1), but the Commission expects that the swap data included in the open swaps report would be identical to the swap data provided to the Commission pursuant to proposed § 49.9 in all instances where the two reports reflect swap data as of the same time, except for any data that is required to be kept confidential.[89] The Commission believes it is important that the reporting counterparty would be able to review the same swap data that is provided to the Commission as of the moment the SDR compiled the open swaps report, to help ensure data consistency.

4. Frequency of Open Swaps Reports for SD, MSP, and DCO Reporting Counterparties—Proposed § 49.11(b)(2)

Proposed § 49.11(b)(2) would require SDRs to distribute the open swaps reports to all SD/MSP/DCO reporting counterparties on a weekly basis, no

the reporting counterparty of the errors and omissions, as opposed to notifying the SDR. *See* 17 CFR 45.14(b); section III.B below. Requiring non-reporting counterparties to verify swap data would be the only instance where a non-reporting counterparty has swap data responsibilities with SDRs outside of corrections.

[86] Under proposed § 45.14(a), a reporting counterparty would then compare its books and records related to each swap for which it is the reporting counterparty against the report to determine if the swap data the SDR maintains is complete and accurate. *See* section III.B below.

[87] The Commission anticipates that, because the SDR would be required to regularly distribute the open swaps report on the same day during the verification period for each individual reporting counterparty under proposed § 49.11(b)(1)–(2), the SDR would begin to compile the open swaps report at the same time before each distribution.

[88] The Commission notes that the confidentiality requirements, particularly § 49.17(f), would apply to the open swaps reports. Under § 49.17(f), for example, an SDR may not include the identity or legal entity identifier of the non-reporting counterparty to the swap (or the non-reporting counterparty's clearing member for the swap) if the swap was executed anonymously on a SEF or DCM and cleared in accordance with the Commission regulations referenced in § 49.17(f)(2). *See* 17 CFR 49.17(f)(2) (providing the exception to the general prohibition on market participant access to swap data maintained by SDRs).

[89] *See* section II.E above (discussing the proposed requirements for providing open swaps reports to the Commission).

later than 11:59 p.m. Eastern Time[90] on the day of the week that the SDR chooses to regularly distribute the open swaps reports. The Commission notes that it is not prescribing the day that the SDR chooses to distribute the open swaps report, but would require that the SDR use the same day of the week for each distribution. The Commission would also require that the SDR distribute all of the open swaps reports to the relevant reporting counterparties on the same day. Distributing the open swaps reports irregularly may create the unnecessary risk of confusion and/or missed reports, and may lead to swap data not being properly verified. Regular distribution would also allow reporting counterparties to prepare for when they would be required to fulfill their verification responsibilities.

The Commission believes that SDs, MSPs, and DCOs, as large, sophisticated Commission-registered entities that are accustomed to swap data regulatory compliance, and as the most likely entities to serve as reporting counterparties,[91] can efficiently verify swap data on a weekly basis. Further, as SDs, MSPs, and DCOs are the reporting counterparty for the overwhelming majority of swaps,[92] requiring these entities to review the swap data maintained for their open swaps on a weekly basis would ensure that the large majority of open swaps would be verified within a week of execution, which would also facilitate the prompt correction of any errors or omissions in the swap data for these swaps.

5. Frequency of Open Swaps Reports for Non-SD/MSP/DCO Reporting Counterparties—Proposed § 49.11(b)(3)

Proposed § 49.11(b)(3) would require SDRs to distribute the open swaps reports to non-SD/MSP/DCO reporting counterparties on a monthly basis, no later than 11:59 p.m. Eastern Time on the day of the month that the SDR chooses to regularly distribute the open swaps reports. For the reasons discussed above with respect to proposed § 49.11(b)(2), the Commission is not prescribing the day of the month that the SDR chooses to distribute the open swaps reports, but does require that the SDR use the same day of the month for each distribution. The Commission is also proposing to require that the SDR distribute all of the open swaps reports to the relevant reporting counterparties on the same day.

The Commission believes that monthly distribution would satisfy the Commission's need for accurate swap data. The Commission is aware that non-SD/MSP/DCO counterparties tend to be less active in the swaps markets with fewer resources to devote to regulatory compliance. The Commission understands that this is particularly true of swaps end-users that use swaps infrequently and are more likely to engage in swaps for hedging purposes. Non-SD/MSP/DCO counterparties are also the reporting counterparties for relatively few swaps;[93] therefore, the Commission believes that there would not be a significant risk of errors associated with less frequent verification for these reporting counterparties.

6. Receipt of Verification of Data Accuracy or Notice of Discrepancy—Proposed § 49.11(c)

Proposed § 49.11(c) would require SDRs to receive from each reporting counterparty to which it sends an open swaps report, in response to the open swaps report, either a verification of data accuracy indicating that the swap data contained in the open swaps report distributed pursuant to § 49.11(b) is accurate and complete or a notice of discrepancy indicating that the data contained in an open swaps report contains one or more discrepancies.[94] Proposed § 49.11(c) would also require SDRs to establish, maintain, and enforce policies and procedures reasonably designed for the SDR to successfully receive the verification of data accuracy or the notice of discrepancy.

The Commission notes that an SDR would not fully satisfy the requirements of proposed § 49.11 until it receives the verification of data accuracy or notice of discrepancy. The Commission believes that proposed § 49.11(c) would help ensure that the reporting counterparty has received and reviewed the open swaps report, which would aid the data correction process and improve the quality of swap data. The Commission also believes that proof of compliance would assist the SDRs and the Commission with any necessary compliance reviews.

The requirement to establish, maintain, and enforce policies and procedures regarding this stage of verification would help ensure that the SDR is fully prepared to perform its verification duties and, because the policies and procedures would be made available to reporting counterparties pursuant to proposed § 49.26(j), would help ensure that the verification process is clear and efficient for reporting counterparties and SDRs. The Commission notes that it is not prescribing the methods for how SDRs fulfill their responsibilities under proposed § 49.11(c), but does expect that the SDRs would be reasonable in the requirements of their policies and would utilize methods that are as low-cost and efficient as possible. The Commission particularly encourages SDRs to be accommodating for non-SD/MSP/DCO reporting counterparties.

The Commission notes that proposed § 45.14 includes corresponding requirements for reporting counterparties to verify the accuracy and completeness of swap data in response to the open swaps reports and for reporting counterparties to follow an SDR's verification policies and procedures in fulfilling their verification responsibilities, including analyzing and responding to open swaps reports. These corresponding requirements would help ensure that reporting counterparties respond to the open swaps reports in a timely and efficient manner, such that SDRs can fulfill their responsibilities under proposed § 49.11(c).

The Commission also clarifies that, given the separate proposed companion requirements for reporting counterparties, an SDR would not be responsible for failing to satisfy the requirements of § 49.11 in the instance where an SDR made a full, good-faith effort to comply with proposed § 49.11, and followed its policies and procedures created pursuant to proposed § 49.11 in doing so, but was prevented from fulfilling the requirements because of a reporting counterparty failing to meet its responsibilities to respond to the open swaps report as required under proposed § 45.14(a). In such a situation, the reporting counterparty would be held responsible for its failure to satisfy the requirements of proposed § 45.14.

[90] The Commission is specifying a time under proposed § 49.11 for consistency purposes. SDRs would need to account for the adjustments to Eastern Time that occur during the year in their verification policies and procedures and reporting counterparties would need to accommodate these adjustments in their verification practices.

[91] Any swap involving at least one SD, MSP, or DCO as a counterparty will have a reporting counterparty that is a SD, MSP, or DCO. *See* 17 CFR 45.8 (providing the requirements for determining which counterparty to a swap is the reporting counterparty).

[92] *See* De Minimis Exception to the Swap Dealer Definition, 83 FR 56666, 56674 (Nov. 13, 2018) (stating that, in 2017, approximately 98 percent of swap transactions involved at least one registered SD).

[93] *See id.* (finding that, during the examination period, 98 percent of swap transactions involved at least one SD/MSP counterparty).

[94] The Commission notes that an SDR receiving a notice of discrepancy should expect to—and be prepared to—receive corrections for the errors and omissions in the swap data close in time to when it receives the notice of discrepancy, due to the requirements of proposed § 45.14(b).

7. Amending Verification Policies and Procedures—Proposed § 49.11(d)

Proposed § 49.11(d) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when adopting or amending their verification policies and procedures.[95]

Request for Comment. The Commission requests comment on all aspects of proposed § 49.11. The Commission also invites specific comment on the following:

(2) Is the Commission's proposed approach, which does not involve non-reporting counterparties in the verification process, an effective approach to verification? Why or why not? Are there additional benefits or costs to involving non-reporting counterparties in the verification process that have not been considered? Please be specific.

(3) Should the Commission be more prescriptive in how the SDRs must distribute the open swaps reports to reporting counterparties pursuant to proposed § 49.11(b)? If so, what should be the requirements included in the prescribed approach? Please be specific.

(4) Should the Commission be more prescriptive for the distribution timing and formatting for the open swaps reports the SDRs would provide to the reporting counterparties pursuant to proposed § 49.11(b)(2) and (3)? If so, what should be the requirements in the prescribed approach? Please be specific.

(5) Should the Commission prescribe any aspect of how SDRs must receive verifications of accuracy or notices of discrepancy pursuant to proposed § 49.11(c)? If so, what should be the requirements in the prescribed approach? Please be specific.

(6) Should the Commission require the verification of all swap data messages, as opposed to open swaps reports? Please explain why or why not. If so, what would be the costs and benefits associated with requiring the verification of all swap data messages? Please be specific.

(7) Should the Commission require verification of open swaps reports more or less frequently than weekly for reporting counterparties that are SDs, MSPs, or DCOs? If so, please explain why and suggest a more appropriate verification frequency.

(8) Should the Commission require verification of open swaps reports more or less frequently than monthly for reporting counterparties that are not SDs, MSPs, or DCOs? If so, please explain why and suggest a more appropriate verification frequency.

(9) Should reporting counterparties also be required to verify the completeness and accuracy of swap transaction and pricing data submitted pursuant to part 43? Please explain why or why not.

H. § 49.12—Swap Data Repository Recordkeeping Requirements

Current recordkeeping requirements for SDRs are found in §§ 49.12, 45.2(f), and 45.2(g) of the Commission's regulations. Current § 49.12 contains recordkeeping requirements for SDRs, which include both specific provisions and references to the recordkeeping requirements for SDRs included in parts 43 and 45.[96] The Commission is proposing amendments to the SDR recordkeeping rules to clarify ambiguities, resolve inconsistencies, and move requirements for SDRs currently in part 45 to part 49.

Proposed § 49.12(a) would require that SDRs keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data that is reported to the SDR.

Proposed § 49.12(b) would specify separate recordkeeping requirements for SDR information in proposed § 49.12(b)(1) and SDR data reported to the SDR in proposed § 49.12(b)(2). Proposed § 49.12(b)(1) would require that an SDR maintain all SDR information, including, but not limited to, all documents, policies, and procedures required to be kept by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the SDR in the course of its business. All SDR information would be maintained in accordance with § 1.31 of this chapter.

Proposed § 49.12(b)(2) would require an SDR to maintain all SDR data and timestamps reported to or created by the SDR, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records would be readily accessible by the SDR and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from which such records are retrievable by the SDR within three business days.[97]

Proposed § 49.12(c) would require SDRs to create and maintain records of SDR validation errors and SDR data reporting errors and omissions. Proposed § 49.12(c)(1) would require an SDR to create and maintain an accurate record of all reported SDR data that fails to satisfy the SDR's data validation procedures. The records would include, but would not be limited to, records of all of the SDR data reported to the SDR that failed to satisfy the SDR data validation procedures, all SDR validation errors, and all related messages and timestamps.

Proposed § 49.12(c)(2) would require an SDR to create and maintain an accurate record of all SDR data errors and omissions reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, and 46. SDRs would be required to make the records available to the Commission on request.

The Commission is proposing to amend § 49.12(d) by replacing it with a revised version of current § 49.12(c) that would require that: (i) All records required to be kept pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required to be kept, created, or maintained by the SDR in accordance with § 1.31.

Finally, the Commission is proposing a technical change to move the current requirements of § 49.12(e) to the proposed revised requirements of SDRs to monitor, screen, and analyze SDR data in § 49.13, as discussed further below in section II.I.

Current § 49.12 [98] contains recordkeeping requirements for SDRs, which include both specific provisions and references to the recordkeeping requirements for SDRs included in parts 43 and 45.[99] Current § 49.12(a) requires an SDR to maintain its books and records in accordance with the recordkeeping requirements of part 45.[100]

Current § 49.12(b) requires the SDR to maintain swap data (including historical

[95] Verification policies and procedures would be considered ''rules'' for the purposes of part 40 requirements. *See* 17 CFR 40.1, 40.5, and 40.6 (containing the filing and review provisions applicable to rules under the Commission's regulations).

[96] *See generally* 17 CFR 43.3(h)(4), 17 CFR 45.2.

[97] The propose retention period is the current requirement for SDR records retention. *See* 17 CFR 45.2(g) (requiring that all records required to be kept by an SDR be kept readily accessible and electronically available to the Commission throughout the existence of the swap and for five years after final termination of the swap and then kept in archival storage for an additional period of at least ten years).

[98] *See* 17 CFR 49.12.

[99] *See generally* 17 CFR 49.12, 17 CFR 45.2.

[100] The recordkeeping requirements of part 45 for SDRs are found in § 45.2(f) and (g). *See* 17 CFR 45.2(f) and (g).

positions) throughout the existence of the swap and for five years following the final termination of the swap, during which time the records must be readily accessible by the SDR, available to the Commission via real-time electronic access, and in archival storage from which the data is retrievable by the SDR within three business days.[101] Current § 49.12(b) however does not fully account for the requirements of § 45.2(g)(2).[102] Additionally, the sections of part 45 applicable to SDRs apply to all records, as opposed to current § 49.12(b), which only applies to swap data.

Current § 49.12(c) requires all records that are required to be kept pursuant to part 49 be open to inspection upon request by any representative of the Commission and the U.S. Department of Justice. Current § 49.12(c) also requires that copies of all SDR records will be provided, at the expense of the SDR or person required to keep such records, to any representative of the Commission upon request, either by electronic means or in hard copy, or both, as requested by the Commission.

Current § 49.12(d) requires an SDR to comply with the real time public reporting and recordkeeping requirements of § 49.15 and part 43. Current § 49.12(e) requires an SDR to establish policies and procedures to calculate positions for position limits and for any other purpose as required by the Commission.

The Commission's proposed amendments to § 49.12(a) incorporate the provisions of current § 45.2(f). Current § 49.12(a) implies that the recordkeeping requirements only apply to swap data [103] while § 45.2(f) clearly states that its requirements apply to records, not only data reported to the SDR.[104] As discussed in section III.A, coupled with the deletion of § 45.2(f) and (g), this amendment would reduce confusion that may arise from having separate SDR recordkeeping requirements in two different rules. This amendment would also clearly state that an SDR is required to keep records beyond just the swap data that is reported to the SDR, which is consistent with the requirements of current § 45.2(f). The Commission notes that, despite the amendment to § 49.12(a), the actual requirements for an SDR would remain the same, because the amendments to § 49.12(a) are merely reproducing the § 45.2(f) requirements, which have applied to SDRs since the effective date for part 45 in 2012.

The Commission is proposing to amend current § 49.12(b) because: (i) Current § 49.12(b) only applies to swap data,[105] as opposed to all records required to be kept by an SDR; [106] (ii) current § 49.12(b) only fully includes the record retention and retrieval requirements of § 45.2(g)(1),[107] though the requirements of § 45.2(g)(2) [108] also apply to all SDR records; and (iii) neither current § 49.12(b) nor § 45.2 distinguish between records of data related to swaps and other records required to be kept by SDRs in regards to the retention periods. Current § 49.12(b) and § 45.2 use the existence of the swap as the basis for the record retention timeframes, but this offers no guidance on how long to keep a record of SDR information, such as SDR policies and procedures. The Commission proposes to remove these inconsistencies and to clarify the scope of SDR recordkeeping, while also consolidating SDR recordkeeping obligations in one regulation.

Proposed § 49.12(b)(1) also requires that the SDR information be maintained in accordance with § 1.31.[109] The proposed changes to § 49.12(b) would also help harmonize the Commission's regulations with the SEC's regulations.[110] The SDR information listed in the proposed changes to § 49.12(b)(1) largely matches the SEC's requirement for SBSDR recordkeeping [111] and the retention provisions of § 1.31 of this chapter largely match the requirement for SBSDRs.[112] Further, any SDR that also registers with the SEC as an SBSDR would have to comply with § 49.12 and § 240.13n–7, and therefore consistency between the recordkeeping provisions would be particularly beneficial to these SDRs. The SDR information records requirement is also similar to recordkeeping obligations for DCMs,[113] SEFs,[114] and DCOs.[115]

By specifically requiring records to be kept for all SDR data reported to the SDR, including all timestamps and messages to or from the SDR related to the reported SDR data, as opposed to only swap data,[116] and requiring that the records be kept for ten years in archival storage,[117] proposed § 49.12(b)(2) would reorganize current § 49.12(b). These ''new'' requirements are however already applicable to SDR recordkeeping by virtue of their inclusion in § 45.2(f) and (g).[118]

[101] *See* 17 CFR 49.12(b).

[102] Section 45.2(g)(2) requires that all records required to be kept by an SDR must be kept in archival storage for ten years after the initial § 45.2(g)(1) retention period. Current § 49.12(b) only includes the initial retention period.

[103] *See* 17 CFR 49.12(a) (regarding the swap data required to be reported to the swap data repository).

[104] *See* 17 CFR 45.2(f) (Each swap data repository registered with the Commission shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission.).

[105] *See* 17 CFR 49.12(b) (A registered swap data repository shall maintain swap data).

[106] *See* 17 CFR 45.2(f) (Stating that SDRs are required to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository and all swap data reported to the swap data repository).

[107] *See* 17 CFR 45.2(g)(1) (Throughout the existence of the swap and for five years following the final termination of the swap, during which time the records must be readily accessible by the swap data repository and available to the Commission via real time electronic access.).

[108] *See* 17 CFR 45.2(g)(2) (Thereafter, for a period of at least ten additional years in archival storage from which they are retrievable by the swap data repository within three business days.).

[109] Section 1.31 of the Commission's regulations is the Commission's general recordkeeping provision, which requires, among other requirements, that all regulatory records that do not pertain to specific transactions and are not retained oral communications be kept for no less than five years from the creation date of the record. *See* 17 CFR 1.31(b)(3).

[110] The concept of separate recordkeeping requirements for information similar to SDR information and for SDR data reported to an SDR has already been adopted by the SEC in its regulations governing SBSDRs. *See* 17 CFR 240.13n–7(b) (listing recordkeeping requirements for SBSDRs); 17 CFR 240.13n–7(d) (excluding ''transaction data and positions'' from the recordkeeping requirements and instead referring to 17 CFR 240.13n–5 for this recordkeeping).

[111] *See* 17 CFR 240.13n–7(b)(1) (Every security-based swap data repository shall keep and preserve at least one copy of all documents, including all documents and policies and procedures required by the Securities Exchange Act and the rules and regulations thereunder, correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such.).

[112] *Compare* 17 CFR 1.31(b)(3) (A records entity shall keep each regulatory record for a period of not less than five years from the date on which the record was created.) *and* 17 CFR 1.31(b)(4) (A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.) *with* 17 CFR 240.13n–7(b)(2) (Every SBSDR shall keep all such documents for a period of not less than five years, the first two years in a place that is immediately available to representative of the Securities and Exchange Commission for inspection and examination.).

[113] *See* 17 CFR 38.951.

[114] *See* 17 CFR 37.1001.

[115] *See* 17 CFR 39.20.

[116] *See* 17 CFR 49.12(b) (A registered swap data repository shall maintain swap data throughout the existence of the swap and for five years following final termination of the swap).

[117] Current § 49.12(b) does not specifically include the ten-year requirement, though current § 49.12(a) does state that books and records must be kept in accordance with the requirements of part 45, which does include the ten-year requirement. *See* 17 CFR 49.12(a) and (b); 17 CFR 45.2(g)(2).

[118] *See* 17 CFR 45.2(f) and (g). Though the term ''swap data'' is defined in § 49.2(a) to mean the specific data elements and information set forth in

Proposed § 49.12(b)(2) would reproduce the requirements of § 45.2(f) and (g) in part 49 to minimize the number of regulatory sections that contain recordkeeping and retention requirements for SDRs.

The Commission notes that though the Commission is specifically proposing recordkeeping requirements for SDR data validation errors and SDR data reporting errors in this proposed § 49.12(c), this would not in any way limit the scope of recordkeeping requirements in proposed § 49.12 to these records. The recordkeeping discussed in proposed § 49.12(c) would also be required under the more general recordkeeping provisions of proposed § 49.12.

The Commission notes that it believes SDRs already receive the data validations information that would be required in proposed § 49.12(c) via regular interaction with SEFs, DCMs, and reporting counterparties, but emphasizes that it must be maintained in order to allow for assessments of reporting compliance, including the initial reporting and the correction of the SDR data. The Commission also notes that because the records addressed by proposed § 49.12(c) are all comprised of or relate to SDR data reported to SDRs, all records created and maintained by the SDR pursuant to proposed § 49.12(c) would be subject to the requirements of proposed § 49.12(b)(2).

The Commission notes that current § 49.12(d) [119] is redundant because its requirements that an SDR comply with the real time public reporting and recordkeeping requirements prescribed in § 49.15 and part 43 are also required by revised §§ 49.12(b)(2) and 49.15, as well as part 43. The Commission further notes that though current § 49.12(d) is proposed to be removed, SDRs would still be subject to the real time public reporting and recordkeeping requirements of § 49.15 and part 43.

Request for Comment. The Commission requests comment on all aspects of proposed § 49.12. The Commission also invites specific comment on the following:

(10) Would SDRs be substantially impacted by changing the archival storage requirements of current § 45.2(g)(2) and proposed § 49.12(b)(2) from ten years to a different period of time? If so, what would be the correct length of time, and how would this change impact the SDRs? Please include specific facts and figures when providing comments.

I. § 49.13—Monitoring, Screening, and Analyzing Data

Section 21(c)(5) of the CEA specifically requires SDRs to, at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individuals and affiliated entities.[120] The Commission believes, based on the text of section 21(c)(5) of the CEA, that SDRs function not only as repositories for swap data, but also as providers of data support for the Commission's oversight of swaps markets and swap market participants. To implement section 21(c)(5), the Commission adopted current § 49.13 and § 49.14.

Current § 49.13 requires SDRs to: (i) Monitor, screen, and analyze all swap data in their possession as the Commission may require, including for the purpose of any standing swap surveillance objectives that the Commission may establish as well as ad hoc requests; and (ii) develop systems and maintain sufficient resources as necessary to execute any monitoring, screening, or analyzing functions assigned by the Commission.

In the Part 49 Adopting Release, the Commission received comments relating to §§ 49.13(a) and 49.14 indicating concerns that the then-proposed regulations did not sufficiently describe the specific tasks SDRs are expected to perform.[121] In response, the Commission specifically stated that its intention in adopting §§ 49.13(a) and 49.14 was to codify the statutory requirements in CEA section 21(c)(5) and later establish specific monitoring, screening, and analyzing duties when its knowledge of the swaps markets was more fully-developed.[122]

The Commission has worked with SDRs to implement the Commission's swap reporting regulations since 2011. In that time, SDRs have worked with Commission staff to produce reports that enable the Commission to perform oversight and monitoring of the swaps market. For instance, Commission staff uses the open swaps reports to monitor risk. In addition, reports on clearing exception elections provide the Commission with information on which entities are claiming exemptions from the Commission's mandatory clearing requirement for swaps.

As noted in the Part 49 Adopting Release, the Commission intended to establish specific monitoring, screening, and analyzing duties for SDRs separately. The Commission believes that, based on its experience working with SDRs to monitor, screen, and analyze swap data as directed by CEA section 21(c)(5) thus far, it is prepared to identify the specific duties. The Commission expects specifying these topic areas would not impose substantial new fixed costs on SDRs because SDRs have already established the technology and related infrastructure designed to monitor, screen, and analyze data at the request of the Commission as required under current § 49.13(a).

Finally, the Commission notes that the requested tasks would only be performed by SDRs to provide the Commission with data and reports related to the listed topic areas that would assist the Commission in performing its regulatory functions. The Commission would not expect SDRs to perform any of the Commission's regulatory functions or to provide recommendations to the Commission.

The Commission proposes to amend § 49.13 to provide more detail on the monitoring, screening, and analyzing tasks that SDRs may be required to perform as directed by the Commission. The Commission is also proposing to amend § 49.13 to make clear that the requirements of proposed § 49.13 would apply to SDR data reported to the SDR pursuant to parts 43, 45, and 46. CEA section 21(c)(5) requires SDRs to

part 45 of this chapter, the Commission notes that the term ''swap data'' is not currently defined in part 45. Section 45.2(f) requires the SDR to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities related to the business of the swap data repository and all swap data reported to the swap data repository, as prescribed by the Commission. This expansive requirement for ''all pertinent data and memoranda'' for all activities related to the business of the swap data repository and all swap data reported to the swap data repository shows that § 45.2(g) requires the SDRs to keep records of data from activities beyond reporting pursuant to part 45 of this chapter, including, for example, all of the required swap transaction and pricing data reporting pursuant to part 43 of this chapter. The ''full, complete, and systematic records'' that must be kept for ''all activities related to the business'' of the SDR also include all messages related to the reported data, including all messages sent from the SDR and to the SDR. This recordkeeping obligation on SDRs is analogous to recordkeeping obligations on DCMs, SEFs, and DCOs. *See* 17 CFR 38.950, 37.1001, and 39.20(a).

[119] *See* 17 CFR 49.12(d) (A registered swap data repository shall comply with the real time public reporting and recordkeeping requirements prescribed in § 49.15 and part 43 of this chapter.).

[120] 7 U.S.C. 24a(c)(5).

[121] *See* letters from: (1) Americans for Financial Reform on February 22, 2011; (2) Chris Barnard on May 25, 2011; (3) Better Markets on February 22, 2011; (4) CME Group on February 22, 2011; (5) Depository Trust & Clearing Corporation on February 22, 2011; (6) Reval on February 18, 2011; (7) SunGard Energy & Commodities on February 22, 2011; and (8) TriOptima on February 22, 2011 *available at http://comments.cftc.gov/PublicComments/CommentList.aspx?id=939.*

[122] *See* Part 49 Adopting Release at 54548.

establish automated systems for monitoring, screening, and analyzing swap data, but the term ''swap data'' is not defined in the CEA. The Commission believes that monitoring, screening, and analyzing tasks could be incomplete if limited to only swap data, as defined in § 49.2.[123]

Proposed § 49.13(a) would generally require that an SDR: (i) Establish automated systems for monitoring, screening, and analyzing all relevant SDR data in its possession in the form and manner as directed by the Commission, and (ii) routinely monitor, screen, and analyze relevant SDR data at the request of the Commission.[124]

Proposed § 49.13(a)(1) would require SDRs to utilize relevant SDR data maintained by the SDR to provide information to the Commission concerning such relevant SDR data. Proposed § 49.13(a)(1) would state that monitoring, screening, and analyzing requests may require the SDRs to compile and/or calculate the requested information within discrete categories, including comparing information among categories, and lists potential topics areas for which the Commission could request related data and reports: (i) The accuracy, timeliness, and quality of SDR data; (ii) updates and corrections to, and verification of the accuracy of, SDR data; (iii) currently open swaps and the consistency of SDR data related to individual swaps; (iv) the calculation of market participants' swap positions, including for purposes of position limit compliance, risk assessment, and compliance with other regulatory requirements; [125] (v) swap counterparty exposure to other counterparties and standard market risk metrics; (vi) swap valuations and margining activities; (vii) audit trails for individual swaps, including post-transaction events such as allocation, novation, and compression, and all related messages; (viii) compliance with Commission regulations; (ix) market surveillance; (x) the use of clearing exemptions and exceptions; and/or (xi) statistics on swaps market activity.

Proposed § 49.13(a)(2) would state that all monitoring, screening, and analyzing requests shall be at the discretion of the Commission, which includes, but is not limited to, the content, scope, and frequency of each required response, and require that all information provided pursuant to a request conform to the form and manner requirements established for the request pursuant to proposed § 49.30.[126]

Proposed § 49.13(a)(3) would require that all monitoring, screening, and analyzing requests be fulfilled within the time specified by the Commission for the particular request.[127] Proposed § 49.13(b) would require that SDRs establish, and at all times maintain, sufficient information technology, staff, and other resources to fulfill the requirements in § 49.13 in the manner prescribed by the Commission.

The Commission is also proposing to create a new § 49.13(c) that would incorporate current § 49.15(c) [128] but also expand it to require SDRs to promptly notify the Commission of any swap transaction for which the SDR is aware that it did not receive swap data according to part 45, or data according to part 46, in addition to the current requirement to notify the Commission of any swap transaction and pricing data not received according to part 43.

The Commission is providing the following list of examples of monitoring, screening, and analyzing tasks that the Commission could request in the future pursuant to proposed § 49.13(a)(1). All of the examples would fall under at least one of the topic areas included in proposed § 49.13(a)(1). The Commission emphasizes that the following list is merely examples, is not exhaustive, and does not limit the Commission's ability to request that SDRs perform other monitoring, screening, and analyzing tasks that would fall under the topics listed in proposed § 49.13(a).

Examples of potential future monitoring, screening, and analyzing activities include reports or information concerning: (i) The reporting (or corrected non-reporting) of swap transactions and any subsequent changes related to the swap, such as life cycle events, as defined in part 45; (ii) the timeliness of reporting through the tracking of execution and reporting timestamps; (iii) the altering or amending of swap terms after the initial public reporting of the swap transaction and pricing data; (iv) the application of the SDR's data validation procedures and information regarding data validation errors; (v) the identification and treatment of duplicate records; (vi) net and gross positions relating to unique product identifiers; (vii) positions of swap counterparties on an aggregate basis, including futures-equivalent positions identified with the legal entity to which a legal entity identifier is assigned; (viii) swap cancellations; (ix) accuracy and quality of reported SDR data; and (x) the positions of swap counterparties.

The Commission notes that an information request under § 49.13(a)(1) could require an SDR to review a market participant's open swap positions for swaps where that market participant elected a clearing exemption. Such a request would combine categories in § 49.13(a)(1)(iii) and (x). Proposed § 49.13(a)(1) also states that such monitoring, screening, and analyzing requests could require SDRs to provide information comparing certain metrics over a period of time. For instance, an information request could require SDRs to compare the accuracy, timeliness, and quality of SDR data submitted by one or more SEFs, DCMs, or reporting counterparties over a defined period of time. Finally, information requests could require SDRs to compare two or more categories of information across a defined period of time.

The Commission understands that SDRs can only be expected to perform monitoring, screening, and analyzing tasks based on the SDR data available to each SDR and that the results of any task would be limited to the SDR data for swaps reported to each SDR. The Commission also expects that SDRs and Commission staff would work together

[123] Current and proposed § 49.2 limit ''swap data'' to data reported to an SDR pursuant to part 45. *See* 17 CFR 49.2(a)(15). The proposed amendments to § 49.2(a) do not substantively change the definition of ''swap data'' for the purposes of part 49.

[124] As discussed further below, proposed § 49.13(a) would more closely track the language of CEA section 21(c)(5) that requires SDRs to at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individual and affiliated entities.

[125] The Commission notes that the Commission regulations currently require SDRs to establish policies and procedures to calculate swap positions in § 49.12(e). The Commission is proposing to incorporate the current § 49.12(e) into proposed § 49.13(a), without substantively modifying the requirements for SDRs to calculate swap positions.

[126] The Commission, as discussed below in section II.U, is proposing to adopt § 49.30 to establish a ''form and manner'' regulation applicable to how information reported to, and maintained by, SDRs would be formatted and delivered to the Commission. The term ''formatted'' refers to how the information would be presented and could include, but is not limited to, attributes such as data messaging standards, allowable values, and levels of precision, as well as instructions on how the information would be transmitted, including, but not limited to, direct electronic access by Commission staff or by the SDR sending the information to the Commission, and the frequency and timing of delivery.

[127] The Commission anticipates working with the SDRs and providing a reasonable time to fulfill each request based on the specific circumstances, including the volume of information requested and the complexity of the request.

[128] *See* 17 CFR 49.15(c) (Duty to Notify the Commission of Untimely Data. A registered swap data repository must notify the Commission of any swap transaction for which the real-time swap data was not received by the swap data repository in accordance with part 43 of this chapter.). As discussed further below, the Commission believes moving § 49.15(c) to § 49.13 would help consolidate the information SDRs need to send to the Commission into one part.

to design each task before a task is prescribed, as is current practice.

Finally, the Commission believes that expanding the notice requirements of current § 49.15(c) under new proposed § 49.13(c) would improve the Commission's ability to monitor compliance with its regulations and increase the Commission's ability to efficiently respond to compliance issues by helping the Commission learn of compliance issues as soon as possible so that the issues can be remedied. SDRs are often in the best position to know of non-compliance with the data reporting requirements because of the information they receive from market participants. For example, SDRs would quickly know if a reporting counterparty has reported swap data pursuant to part 45 in an untimely manner because the SDR receives the swap data, including the execution timestamp, and can quickly compare when the swap was executed and when the swap data was received. The Commission acknowledges that SDRs can only identify and notify the Commission of SDR data reporting non-compliance based on the SDR data they receive and does not expect SDRs to inform the Commission of reporting issues of which they are not aware. Expanding the notice requirement to noncompliance with parts 45 and 46 would help the Commission to learn of a wider range of compliance issues when they first arise, which in turn would help the Commission to work with market participants and SDRs to fix issues as quickly as possible.

Request for Comment. The Commission requests comment on all aspects of proposed § 49.13. The Commission also invites specific comment on the following:

(11) Should the Commission require SDRs to calculate positions for market participants? Are there technological and/or regulatory limitations that would make such tasks difficult to perform and unlikely to achieve the desired results? Please be specific.

(12) Should the SDRs create a process whereby the counterparties whose positions have been calculated based on data contained in the SDR have the opportunity to review and subsequently challenge and/or correct the results? Please explain why or why not.

(13) Are there specific reports or sets of data that the Commission should consider obtaining from SDRs to monitor risk exposures of individual counterparties to swap transactions, to monitor concentrations of risk exposures, or for other purposes? Please be specific.

(14) Are there specific reports or sets of data that the Commission should consider obtaining from SDRs to evaluate systemic risk or that could be used for prudential supervision? Are there any other reports or sets of data that the Commission should consider obtaining from SDRs that would not be included in the categories listed in proposed § 49.13(a)(1)? Please be specific.

(15) Are there any other tasks or functions that SDRs could perform related to swap data that could help the Commission better assess individual market participant risks and market risks generally? Please be specific.

(16) Would any of the specific monitoring, screening, or analyzing topic areas enumerated under proposed § 49.13(a)(1) impose new or substantial costs on SDRs that are not present under the requirements of current § 49.13 and section 21(c)(5) of the CEA? If so, please describe and quantify these costs.

(17) Is it sufficiently clear in this proposal that the Commission intends for SDRs to provide data and information under proposed § 49.13 solely to assist the Commission in performing its regulatory functions, rather than expecting SDRs to perform any direct oversight of market participants? If not, how should the Commission clarify that proposed § 49.13 would require SDRs to provide data and information solely to assist the Commission in performing its regulatory functions?

J. § 49.15—Real-Time Public Reporting by Swap Data Repositories

The Commission proposes to amend § 49.15 to conform to the proposed amended definitions in § 49.2 as described in section II.A. As discussed above in section II.I, the Commission is also proposing to move current § 49.15(c) to § 49.13(c). The Commission also proposes to amend current § 49.15(a) and § 49.15(b) to remove the term ''swap data,'' which is defined as part 45 data, and replace it with language clarifying that § 49.15 pertains to swap transaction and pricing data submitted to a registered SDR pursuant to part 43. These non-substantive changes do not affect the existing requirements of § 49.15.

K. § 49.16—Privacy and Confidentiality Requirements of Swap Data Repositories

In connection with the proposed amendments to multiple definitions in § 49.2,[129] the Commission proposes to make conforming amendments to § 49.16. The Commission proposes to amend § 49.16(a)(1) to clarify that the policy and procedure requirements of § 49.16 apply to SDR information and to any SDR data that is not swap transaction and pricing data disseminated under part 43. Such policies and procedures must include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43) that the SDR shares with affiliates and non-affiliated third parties.

The Commission is also making conforming amendments related to the proposed removal of the term ''reporting entity'' and the proposed definitions of ''SDR data'' and ''swap data.''

The Commission notes that these proposed amendments are non-substantive and would not affect the existing requirements or applicability of § 49.16.

L. § 49.17—Access to SDR Data

The Commission is proposing to amend § 49.17 to clarify some of the regulation's requirements with respect to the Commission's access to SDR data. Current § 49.17 sets forth the procedures by which the CFTC and other regulators may access SDR data.

1. Direct Electronic Access Definition—§ 49.17(b)

The Commission proposes to amend the § 49.17(b)(3) definition of ''direct electronic access'' to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

Current § 49.17(b)(3) defines direct electronic access as an electronic system, platform or framework that provides internet or Web-based access to real-time swap transaction data and also provides scheduled data transfers to Commission electronic systems. Currently, § 49.17(b)(3) does not include the possibility of other types of technology and does not leave the Commission any discretion over access to the data. The Commission believes its proposed changes to the definition would allow more flexibility in regards to the potential methods and forms of direct electronic access that may be provided to the Commission, and would remove any confusion over the type of data to which the term ''direct electronic access'' applies.

The Commission believes that adding ''other technology'' to the existing list of methods would make clear that the Commission may decide to accept other

[129] *See* section II.A above.

methods of access, as long as the method is able to efficiently provide real-time access to SDR data and scheduled SDR data transfers to the Commission. The Commission believes flexibility in terms of the technology SDRs use to provide direct electronic access could accommodate rapid advances in technology and would not inadvertently prevent the use of future technological innovations that may provide more efficient direct electronic access to SDR data.

In addition, the Commission proposes to change the current § 49.17(b)(3) text that provides internet or Web-based access to real-time swap transaction data to that provides internet-based or other forms of access to real-time SDR data. The Commission considers the removal of ''Web-based'' to be a non-substantive change, as the term is redundant with ''internet-based.'' The addition of ''or other form of access'' is, as with the addition of ''other technology,'' intended to provide more flexibility for providing direct electronic access to the Commission by making clear that the Commission may decide to accept other forms of access that are not internet-based, as long as the access to SDR data is real-time and provides for scheduled SDR data transfers to the Commission.

The Commission believes that requiring that the method(s) and form(s) of direct electronic access be ''acceptable to the Commission'' would make it clear that the Commission anticipates working with SDRs to decide the acceptable methods and forms of direct electronic access. This amendment would codify the Commission's current practice of working with SDRs to implement changes, as discussed above in section II.E. The Commission and SDRs routinely work together to provide both real-time internet-based access to SDR data and scheduled transfers of SDR data to the Commission. The Commission believes that the most important consideration in whether a form of access may be acceptable to the Commission would be whether the Commission can successfully utilize the method or form of access. The Commission believes this is necessary to help ensure that the direct electronic access provided is useful to the Commission and to help ensure that an SDR cannot unilaterally change the method or form of direct electronic access in a way that may prevent the Commission from performing its regulatory functions. Though the Commission intends to be flexible in regards to the methods and forms of direct electronic access, especially in the context of technological advancement, the Commission believes it is important to retain the ability to decide the acceptable methods and forms for direct electronic access at its sole discretion.

Nothing in the proposed revisions to § 49.17(b)(3) would prevent the SDRs from incorporating new technology into their systems for collecting SDR data or maintaining the SDR data within their own systems, as long as the SDR data is collected by the SDRs and provided to the Commission as required. The Commission would however expect SDRs to provide reporting counterparties with commonly-used methods for reporting SDR data to the SDR and not to force reporting counterparties to unnecessarily expend resources on the latest technology by unreasonably limiting available reporting methods. The Commission would also expect SDRs to be particularly accommodating of non-SD/MSP/DCO reporting counterparties that may not have the resources to spend on technology.

Finally, the current definition of ''direct electronic access'' includes an SDR providing access to ''real-time swap transaction data.'' [130] The correct defined term for the data being referenced is ''SDR data.'' In order to remove any confusion and increase the consistent use of terms, the Commission proposes to remove the word ''transaction'' and replace ''swap'' with ''SDR'' so that the phrase is instead ''real-time SDR data.'' [131] This non-substantive change does not change the current requirements or current SDR practice for providing the Commission with direct electronic access to SDR data.

2. Commission Access—§ 49.17(c)

The Commission proposes to amend § 49.17(c) by incorporating the requirements of current § 45.13(a),[132] along with additional clarifications to consolidate the requirements for Commission access to SDR data and to describe the SDRs' responsibilities to provide SDR data to the Commission. The Commission is also proposing non-substantive edits to § 49.17 to conform terms used in the section with the rest of the Commission's regulations (*e.g.,* replacing ''swap data and SDR Information'' with ''SDR data and SDR Information'').

Proposed § 49.17(c) would require SDRs to provide access to the Commission for all SDR data maintained by the SDR.[133] Proposed § 49.17(c) would also incorporate all of the current requirements of § 49.17(c)(1). Current § 49.17(c)(1) requires SDRs to provide direct electronic access to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations. The proposal would retain current § 49.17(c)(1) as § 49.17(c) and incorporate a modified version of current § 45.13(a).

Specifically, proposed § 49.17(c)(1) would also require SDRs to maintain all SDR data reported to the SDR in a format acceptable to the Commission, and to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Proposed § 49.17(c)(1) would also provide that the instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted.

Proposed § 49.17(c)(1) would change the requirements of current § 45.13(a) from maintaining and transmitting ''swap data'' to maintaining and transmitting ''SDR data,'' to make clear that the SDRs must maintain all SDR data reported to the SDRs in a format acceptable to the Commission and transmit all SDR data requested by the Commission, not just swap data.[134]

Proposed § 49.17(c)(1) would also broaden the requirements of current § 45.13(a) from transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission [135] to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission, and

[130] 17 CFR 49.17(b)(3).

[131] The Commission notes that the phrase ''real-time'' is often used to reference swap transaction and pricing data that is publicly reported pursuant to part 43. In this instance, the term refers to direct electronic access requiring that SDR data be available in real time to the entity granted direct electronic access (*i.e.,* the Commission or its designee).

[132] The Commission is not proposing to modify current § 45.13(a) in this rulemaking. The Commission expects that subsequent rulemakings based on the Roadmap would modify the requirements of § 45.13 in ways that are not inconsistent with proposed § 49.17.

[133] *See* 17 CFR 49.17(c)(1) (Direct Electronic Access. A registered swap data repository shall provide direct electronic access to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations.).

[134] The Commission does not believe this revision is a change from current SDR practice.

[135] 17 CFR 45.13(a).

explains what these instructions may include.

The Commission believes that these revisions would make clear that the Commission's ability to set the parameters of SDR data transmission is not limited to requiring electronic transfers in a particular format, as could be inferred from current § 45.13(a).[136] The Commission believes it needs the ability to instruct SDRs as to all aspects of SDR data transfers to the Commission. These instructions could include, but are not necessarily limited to, method of transmission (*e.g.,* electronic or non-electronic transmission and file types used for transmission), the timing of data transmission, the frequency of data transmission, the formatting of the data to be transmitted (*e.g.,* data feeds or batch transmission), and the actual SDR data to be transmitted.

While these revisions may appear to broaden the scope of the Commission's ability to define the terms of data transfer to the Commission, current § 45.13(a) gives the Commission broad discretion in instructing SDRs on how to send data to the Commission to enable the Commission to perform its regulatory functions, increase market transparency, and mitigate systemic risk.[137] Current SDR practice also reflects the Commission's wide discretion in instructing SDRs in how to send data to the Commission, as the SDRs currently send large amounts of data to the Commission on a regular basis in various formats, based on instructions provided by the Commission. The Commission also believes incorporating the current § 45.13(a) requirements in § 49.17(c) would help SDRs by locating more of their SDR responsibilities located in part 49.

Though SDRs may need to update their systems in response to changing Commission instructions over time, the Commission expects to work with the SDRs to ensure that any changes are practical and reasonable, and provide time for the SDRs to adjust their systems.

3. Technical Correction—§ 49.17(f)(2)

The Commission proposes to amend § 49.17 to replace an incorrect reference to ''37.12(b)(7)'' at the end of paragraph (f)(2) with the correct reference to ''39.12(b)(7)'' of the Commission's regulations, as there is no § 37.12(b)(7) in the Commission's regulations.[138] The Commission also proposes non-substantive amendments to § 49.17(f)(2) to incorporate proposed changes in terminology used in § 49.17(f)(2) in order for the terms used to be consistent with the terms listed in proposed § 49.2(a).

4. Delegation of Authority—§ 49.17(i)

The Commission proposes to move the delegation of authority in current § 49.17(i) to § 49.31(a)(7). Current § 49.17(i) delegates to the Director of DMO the authority reserved to the Commission in current § 49.17. This includes the authority to instruct SDRs on how to transmit SDR data to the Commission. As discussed further below in section II.V, the Commission is proposing to include as many delegations of authority as possible for part 49 in proposed § 49.31, including the delegation of authorities reserved to the Commission in § 49.17, to improve consistency within the part and remove confusion that may arise from listing delegations of authority in multiple sections. The Commission emphasizes that this change would not affect the current delegation of authority, as all functions reserved to the Commission in § 49.17 would still be delegated to the Director of DMO in proposed § 49.31.

Request for Comment. The Commission requests comment on all aspects of proposed § 49.17. The Commission also invites specific comment on the following:

(18) Is there a need to further clarify any of the requirements of the revised paragraphs of proposed § 49.17? If so, which requirements and what information need to be clarified? Please be specific.

(19) Are there any aspects of current or proposed § 49.17 that would inhibit or in any way prevent experimentation with or development of new technological approaches to SDR operations or providing SDR data to the Commission? If so, what are these inhibitors and how can they be mitigated?

M. § 49.18—Confidentiality Arrangement

The Commission is proposing to move the delegation of authority in current § 49.18(e) to § 49.31(a)(8). Current § 49.18(e) delegates to the Director of DMO all functions reserved to the Commission in § 49.18, including the authority to specify the form of confidentiality arrangements required prior to disclosure of swap data by an SDR to an appropriate domestic or foreign regulator, and the authority to limit, suspend, or revoke such appropriate domestic or foreign regulators' access to swap data held by an SDR.

As discussed further below in section II.V, the Commission believes market participants would benefit by being able to locate most delegations of authority in proposed § 49.31. All functions reserved to the Commission in current § 49.18 would continue to be delegated to the Director of DMO under this proposed amendment.

N. § 49.20—Governance Arrangements (Core Principle 2)

The Commission proposes to amend citations to § 49.2 within § 49.20 to conform to proposed changes in the numbering of the definitions contained in proposed § 49.2, as discussed above in section II.A. The Commission also proposes to make conforming changes to reflect the proposed changes to definitions in § 49.2. The Commission is proposing to amend current citations to § 49.2(a)(14) in § 49.20(b)(2)(v) and to § 49.2(a)(1) in § 49.20(c)(1)(ii)(B) to citations to § 49.2(a). The Commission also proposes to update these paragraphs and § 49.20(b)(2)(vii) to reflect proposed changes related to the definitions of ''SDR data,'' ''SDR information,'' ''registered swap data repository,'' and ''reporting entity.'' These non-substantive changes do not affect the existing requirements of § 49.20.

O. § 49.22—Chief Compliance Officer

The Commission is proposing to amend § 49.22 to clarify obligations, make technical corrections and non-substantive changes, and remove unnecessary requirements.

The Commission is proposing to define senior officer in § 49.22(a) as the chief executive officer or other equivalent officer of the SDR.[139]

Proposed § 49.22(b)(1)(i) would specify that the chief compliance officer (''CCO'') of an SDR shall have the authority and resources to develop, in consultation with the board of directors or senior officer, the policies and procedures of the SDR and enforce such policies and procedures to fulfill the

[136] *See id.* (stating that SDRs shall transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission.).

[137] *See* Part 45 Adopting Release at 2169 (requiring an SDR to maintain all swap data reported to it in a format acceptable to the Commission, and to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission); *see also* Part 49 Adopting Release at 54552 (stating that the Commission does not believe that SDRs should have the discretion or ability to determine the appropriate data sets that should be provided to the Commission).

[138] *See* 17 CFR 37.12(b).

[139] The Commission notes that this amendment would define a term that is currently used throughout § 49.22.

duties set forth for CCOs in the CEA and Commission regulations.

Proposed § 49.22(c)(1) would clarify that only the SDR's board of directors or senior officer may appoint the CCO, and require that SDRs notify the Commission within two business days of the appointment, whether interim or permanent. Proposed § 49.22(c)(2) would require that the CCO report directly to the board of directors or the senior officer of the SDR. Proposed § 49.22(c)(3) would specify that only the board of directors or the senior officer may remove the CCO, and that the SDR shall notify the Commission within two business days of the removal, whether interim or permanent.

Proposed § 49.22(c)(4) would contain the requirement currently found in § 49.22(c)(1) for the CCO to meet with the board of directors or senior officer of the SDR at least annually.

Proposed § 49.22(d)(2) would provide more detail on conflicts of interest obligations by making clear that CCOs must take ''reasonable steps,'' in consultation with the board of directors or the senior officer of the SDR, to resolve any ''material'' conflicts of interest that may arise, and would no longer list specific types of conflicts. Proposed § 49.22(d)(4) would remove an unnecessary reference to § 49.18. Proposed § 49.22(d)(5)–(6) would specify that SDRs must establish procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the CCO through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated compliant, and establish and administer a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the SDR designed to prevent ethical violations and to promote honesty and ethical conduct by SDR personnel.

Proposed § 49.22(e) would streamline, clarify, and rearrange the requirements of the SDR annual compliance report. The Commission is proposing to streamline and combine current § 49.22(e)(1) and (2) into proposed § 49.22(e)(1). The Commission is also proposing to remove many of the examples of how material compliance issues can be identified from current § 49.22(e)(5) so as not to imply any limits on the material compliance matters that must be described. Finally, the Commission proposes to add ''in all material aspects'' to the end of current § 49.22(e)(6) in proposed § 49.22(e)(5), in order to reduce CCOs' concerns with certifying the annual compliance report's accuracy.

Proposed § 49.22(f)(1) would remove the requirement for any discussion of the annual compliance report after submission to the board of directors or senior officer to be recorded in the board minutes or other similar record as evidence of compliance with the submission requirement.[140]

Proposed § 49.22(f)(2) would increase the amount of time that SDRs have to submit the annual compliance report to the Commission from 60 days to 90 calendar days after the end of the SDR's fiscal year. As discussed above in section II.B, the Commission is also proposing to remove the annual amendment requirement in § 49.3(a)(5). The Commission is therefore also proposing to remove the reference to § 49.3(a)(5) from § 49.22(f)(2).

Proposed § 49.22(f)(3) would include a requirement that, where an amendment to the annual compliance report must be submitted to the Commission, the CCO also submit the amended annual compliance report to the SDR's board of directors or the senior officer.[141]

Proposed § 49.22(f)(4) would allow the Commission to more easily grant requests for an extension of time to file the annual compliance report by removing the requirement that SDRs must show ''substantial, undue'' hardship.

Proposed § 49.22(g) would simplify the language and organization of the recordkeeping requirements for records related to the SDRs' policies and records created related to the annual compliance report, and would no longer contain specific examples of records, but would still require the same records be maintained in accordance with proposed § 49.12.

Current § 49.22 sets forth the requirements for SDR CCOs, including: Their designation and qualifications; their appointment, supervision, and removal; their duties; and their responsibilities with respect to the annual compliance report and recordkeeping.

The Commission believes that the amendments discussed above would clarify and streamline the requirements for, and responsibilities of, CCOs in a manner that balances the Commission's interest in providing CCOs discretion in fulfilling their duties against clearly specifying their responsibilities. The large majority of proposed amendments are non-substantive changes that would clarify the requirements, simplify the wording of the requirements, reorganize the requirements into a more logical order, or remove unnecessary text.

Proposed § 49.22(d)(2) would change the duties for CCOs related to conflicts of interest to a more practical requirement. Current § 49.22(d)(2) implies that a CCO should resolve all conflicts of interest, regardless of their potential effect on the operations of the SDR.[142] The Commission does not believe a CCO should be required to expend resources to resolve every conceivable conflict of interest that may affect an SDR and instead proposes to require CCOs to take reasonable steps to resolve any material conflicts of interest that may arise. This proposed requirement for taking reasonable steps to resolve material conflicts of interest reflects the CCO's practical ability to detect and resolve conflicts. Moreover, the proposed amendment reflects the Commission's belief that a CCO is well positioned to assess whether a potential conflict of interest is material to his or her SDR's ability to comply with the Act and the Commission's regulations. The Commission believes that proposed § 49.22(d)(2) would allow SDRs to address conflicts of interest while mitigating the burdens associated with addressing the conflicts.

The Commission notes that, while proposed § 49.22(d)(2) removes the three examples of potential conflicts of interest from current § 49.22(d)(2)(i)–(iii),[143] these three examples would still need to be addressed if they rise to the level of a material conflict of interest.

The Commission also proposes to streamline the requirements on SDRs in preparing the annual compliance report in proposed § 49.22(e)(1). Proposed § 49.22(e)(1) would remove the current § 49.22(e)(2)[144] required comparison of all applicable Commission regulations and CEA requirements with each SDR

[140] The Commission notes that, even with the removal of this requirement, the Commission may still require an SDR to provide a demonstration of compliance with the requirements of proposed § 49.22(f) under proposed § 49.29. *See* section II.T below.

[141] The Commission is also proposing a change to § 49.22(f)(3) to correct the inaccurate reference to § 49.22(e)(67). There is no § 49.22(e)(67) and the proposed amendment would instead reference the correct § 49.22(e)(5). This technical amendment does not affect the existing requirements of § 49.22(f)(3).

[142] *See* 17 CFR 49.22(d)(2) (requiring the CCO to, in consultation with the board of directors or senior officer, resolve any conflicts of interest that may arise).

[143] *See id.* (including conflicts between (i) business considerations and compliance requirements, (ii) business considerations and the requirement that the SDR provide fair and open access, and (iii) SDR management and members of the SDR's board of directors as examples of conflicts of interest to be addressed by the SDR's CCO).

[144] *See* 17 CFR 49.22(e)(2).

policy designed to satisfy each requirement and assessment of the effectiveness of each policy and areas for improvement. Proposed § 49.22(e)(1) would replace this requirement with a more targeted requirement to describe and assess the effectiveness of SDR policies and procedures designed to reasonably ensure compliance with the Act and applicable Commission regulations. Based on its experience in reviewing annual compliance reports, the Commission believes this more targeted requirement would focus on the most important and useful information in the annual compliance report and reduce the burden on SDRs in creating the assessment for the annual compliance report without any detrimental effects on SDR compliance or the Commission's ability to perform its oversight functions.

The Commission notes that it would also have the ability to request copies of any SDR policies and procedures and to request a demonstration of compliance with any SDR obligations under the Act or Commission regulations under proposed § 49.29.

The Commission also believes that multiple proposed changes to § 49.22(f) would simplify requirements and reduce compliance burdens on SDRs related to submitting the annual compliance reports. The proposed amendments would remove the requirement to record the submission of the annual compliance report and any subsequent discussion of the report in the board minutes (proposed § 49.22(f)(1)) as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g); extend the time to submit the annual compliance report to the Commission from 60 to 90 days (proposed § 49.22(f)(2)) in recognition that the CCO has to prepare other year-end reports, such as the fourth quarter financial report; and allow reasonable requests for additional time to file an annual compliance report to be granted (proposed § 49.22(f)(4)) to provide more flexibility. Each of these amendments would simplify requirements or reduce compliance burdens on SDRs, without any substantial effect on the Commission's ability to oversee SDRs.

Finally, the Commission notes that the proposed changes to § 49.22(g) would simplify the wording of the recordkeeping requirement by removing the lengthy examples of records to be kept.[145] This proposed change does not, however, in any way limit the records that must be preserved under proposed § 49.22(g). All of the records listed in current § 49.22(g) would still be required to be kept pursuant to proposed § 49.22(g) and proposed § 49.12(b)(1), along with any other qualifying records that are not listed.

Request for Comment. The Commission requests comment on all aspects of the proposed amendments to § 49.22. The Commission also invites specific comment on the following:

(20) Has the § 49.22(b)(2)(ii) prohibition on a CCO also serving as an SDR's general counsel or as a member of the SDR's legal department presented SDRs with any challenges or raised concerns that could be fixed by a change to the prohibition?

(21) Does proposed § 49.22(d)(2) provide CCOs with sufficient clarity as to the conflicts of interest that are within the scope of their responsibilities under the proposed rule?

(22) Does proposed § 49.22(d)(2) provide CCOs with sufficient authority to resolve any conflicts of interest that may arise as required by section 21(e)(2)(C) of the Act?

P. § 49.24—System Safeguards

The Commission proposes to make non-substantive amendments to § 49.24. Current § 49.24(d) governs SDR BC–DR plans, resources, and procedures. The proposed amendments to § 49.24 provide more detail as to the duties and obligations that SDRs must fulfill by expanding the non-exhaustive list of duties and obligations to include specific reference to §§ 49.10 to 49.21, § 49.23, and §§ 49.25 to 49.27. The Commission emphasizes that this list is provided merely for clarity purposes and would not in any way excuse any SDR from any of the duties and obligations included in other sections of the Commission's regulations. As the duties and obligations of these sections currently apply to SDRs and would continue to apply to SDRs, this non-substantive change would not affect the requirements applicable to SDRs.

The Commission also proposes to make technical amendments to § 49.24(i), to remove a reference to § 45.2. As described above in section II.H, the Commission is moving the SDR recordkeeping requirements contained in current § 45.2(f) and (g) to § 49.12 for consistence and clarity purposes. This proposed technical change would conform § 49.24(i) to the proposed changes to § 45.2 and § 49.12, but would not change any of the requirements applicable to SDRs.

Q. § 49.25—Financial Resources

As discussed above in section II.E, the Commission proposes conforming changes to § 49.25 to remove the reference to § 49.9 and to core principle obligations identified in § 49.19. Proposed § 49.25(a) would instead refer to SDR obligations under ''this chapter,'' to be broadly interpreted as any regulatory or statutory obligation specified in part 49. These technical changes do not impact existing obligations on SDRs.

The Commission is proposing one specific change to § 49.25(f)(3). Current § 49.25(f)(3) requires SDRs to submit their financial resources reports no later than 17 business days after the end of the SDR's fiscal quarter, or a later time that the Commission permits upon request. The Commission is proposing to amend § 49.25(f)(3) to extend the time SDRs have to submit their quarterly financial resources reports to not later than 40 calendar days after the end of the SDR's first three fiscal quarters, and not later than 90 calendar days after the end of the SDR's fourth fiscal quarter, or such later time as the Commission may permit in its discretion.

The Commission believes aligning the 90 calendar day deadline with the amended timeframe for SDRs submitting CCO reports in § 49.22(f)(2)[146] would help SDRs in planning their yearly compliance obligations.

Request for Comment. The Commission requests comment on all aspects of the proposed amendments to § 49.25.

R. § 49.26—Disclosure Requirements of Swap Data Repositories

The Commission proposes to amend § 49.26 to conform defined terms with the proposed amendments to § 49.2 discussed above in section II.A. The Commission also proposes to make updates to the introductory paragraph of § 49.26 to reflect updates to the terms ''SDR data,'' ''registered swap data repository,'' and ''reporting entity.'' Current § 49.26 requires SDRs to furnish SEFs, DCMs, and reporting counterparties with an SDR disclosure document that sets forth the risks and costs associated with using the services of the SDR, and contains the information enumerated in § 49.26(a) through (i). These non-substantive amendments would not change the current requirements of § 49.26.

The Commission also proposes to add new § 49.26(j), which would require that the SDR disclosure document set forth the SDR's policies and procedures regarding the reporting of SDR data to the SDR, including the SDR data validation procedures, swap data verification procedures, and procedures

[145] *See* 17 CFR 49.22(g).

[146] Discussed above in section II.O.

for correcting SDR data errors and omissions.

The Commission believes that § 49.26(j) would assist market participants with acquiring information regarding SDR operations that would help inform their decision-making in regards to choosing which SDRs to use for swaps reporting. Disclosing the SDR data reporting policies and procedures, the SDR data validation procedures, the swap data verification procedures, and the SDR data correction procedures would also increase data quality by helping reduce the number of data errors and omissions by providing the SEFs, DCMs, and reporting counterparties with the information needed to properly design their reporting systems before any reporting occurs. The Commission notes that the requirements to provide the policies and procedures for reporting, validations, verification, and corrections would apply for all SDR data to be reported, as applicable.

Request for Comment. The Commission requests comment on all aspects of proposed § 49.26. The Commission also invites specific comment on the following:

(23) Should the Commission require any other specific information be disclosed by SDRs to facilitate market participants' informed decision making? If so, please describe what other information should be disclosed and why. Please be specific.

S. § 49.28—Operating Hours of Swap Data Repositories

The Commission is proposing to add new § 49.28 to provide more detail on SDRs' responsibilities with respect to hours of operation. The proposed amendments reflect the Commission's belief that SDRs should operate as continuously as possible while still being afforded the opportunity to perform necessary testing, maintenance, and upgrades of their systems.

1. General Requirements—§ 49.28(a)

Proposed § 49.28(a) would require an SDR to have systems in place to continuously accept and promptly record all SDR data reported to the SDR, and, as applicable, publicly disseminate all swap transaction and pricing data reported to the SDR as required under part 43.

Proposed § 49.28(a)(1) would allow an SDR to establish normal closing hours to perform system maintenance during periods when, in the SDR's reasonable estimation, the SDR typically receives the least amount of SDR data.[147] Under proposed § 49.28(a)(1), an SDR would also have to provide reasonable advance notice of its normal closing hours to market participants and to the public.

Proposed § 49.28(a)(2) would allow an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Similar to proposed § 49.28(a)(1), proposed § 49.28(a)(2) instructs SDRs to schedule special closing hours during periods when, in the SDR's reasonable estimation, the special closing hours would, to the extent possible given the circumstances prompting the special closing hours, be least disruptive to the SDR's SDR data reporting responsibilities. Proposed § 49.28(a)(2) would also require the SDRs to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to give notice to the public as soon as is reasonably possible after declaring special closing hours.

Current § 43.3(f) regulates the hours during which SDRs that accept and publicly disseminate swap transaction and pricing data must operate. Current § 43.3(f) reflects the Commission's beliefs that the global nature of the swaps market requires that SDRs be able to publicly disseminate swap transaction and pricing data at all times and that SDRs that publicly disseminate swap transaction and pricing data should generally be fully operational 24 hours a day, 7 days a week.[148] While the Commission strongly encourages SDRs to adopt redundant systems to allow public reporting during closing hours, current § 43.3(f) allows SDRs to schedule downtime to perform system maintenance. Current § 43.3(g) addresses SDRs' obligations regarding swap transaction and pricing data sent to an SDR for publicly reportable swap transactions during closing hours.

The Commission proposes to include the requirements of current § 43.3(f) and § 43.3(g) in proposed § 49.28 and to expand the operating hours requirement beyond public reporting of swap transaction and pricing data to also explicitly include fulfilling an SDR's responsibilities under parts 45, 46, and 49. This proposed change is intended to make clear that the obligations of SDRs to operate near continuously is not limited to the receipt and dissemination of swap transaction and pricing data pursuant to part 43, but instead SDRs must be able to continuously perform all of their data-related responsibilities required under the Commission's regulations.

The Commission also believes that it would help SDRs and market participants to move all SDR operating hours requirements to part 49. The proposed requirements discussed above would also include many of the requirements of the SEC's operating hours regulations governing SBSDRs to increase consistency between the regulations for SDRs and SBSDRs.[149]

2. Part 40 Requirement for Closing Hours—§ 49.28(b)

Proposed § 49.28(b) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal closing hours and special closing hours.[150] The Commission anticipates that, due to the unexpected and emergency nature of special closing hours, rule filings related to special closing hours would typically qualify for the emergency rule certification provisions of § 40.6(a)(6).[151] This requirement is already applicable to SDRs pursuant to current § 43.3(f)(3).[152]

[147] The Commission notes that this would be a minor change from the existing requirements of § 43.3(f)(2), which prescribes that SDRs avoiding scheduling closing hours during the time when the SDR reasonably estimates that the swaps markets are most active. The Commission believes times when SDRs receive less SDR data would be a better measure of when to schedule normal closing hours for SDRs.

[148] *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1204 (Jan. 9, 2012) (The Commission agrees that the global nature of the swaps market requires that an SDR be able to publicly disseminate swap transaction and pricing data at all times and believes that SDRs that publicly disseminate swap transaction and pricing data should be fully operational 24 hours a day, 7 days a week.).

[149] The SEC's operating hours regulations are contained in 17 CFR 242.904. While current § 43.3(f) allows SDRs to schedule closing hours while avoiding the times that, in an SDR's estimation, U.S. markets and major foreign markets are most active, and requires the SDRs to provide advance notice of closing hours to market participants and the public, current § 43.3(f) does not make a distinction between regular closing hours and special closing hours. The distinction is present, however, in operating hours requirements for SBSDRs, and proposed § 49.28(a)(1)–(2) would largely adopt the SBSDR requirement. These requirements would make clear that an SDR may establish both normal and special closing hours and would allow an SDR that also registers with the SEC as an SBSDR to effectively follow the same operating hours requirements.

[150] Closing hours would be considered ''rules'' for the purposes of part 40 requirements. *See* 17 CFR 40.1, *et. seq.*

[151] *See* 17 CFR 40.6(a)(6) (containing the requirements for establishing standards for responding to an emergency and for emergency rule filings); *see also* 17 CFR 40.1(h) (defining ''emergency'' for the purposes of part 40).

[152] *See* 17 CFR 43.3(f)(3) (A registered swap data repository shall comply with the requirements under part 40 of this chapter in setting closing hours and shall provide advance notice of its

3. Acceptance of SDR Data During Closing Hours—§ 49.28(c)

Proposed § 49.28(c) would require an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours. The Commission believes this requirement would help to avoid the loss of any SDR data that is reported to an SDR during closing hours and to facilitate the SDR's prompt fulfillment of its data reporting responsibilities, including public dissemination of swap transaction and pricing data, as applicable, once the SDR reopens from closing hours. Proposed § 49.28(c) would expand the similar existing requirements for swap transaction and pricing data in § 43.3(g)[153] to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.[154]

Proposed § 49.28(c)(1) would require an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, to publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours. Proposed § 49.28(c)(1) would expand the similar existing requirements for the SDRs to disseminate swap transaction and pricing data pursuant to § 43.3(g)(1)[155] to also include the prompt processing of all other SDR data received and held in queue during closing hours. The proposed requirements would also largely follow the SBSDR requirements for disseminating transaction reports after reopening following closing hours.[156]

The Commission believes SDR closing hours should disrupt the data reporting process as little as possible, and therefore believes that the SDRs should be responsible for receiving, holding, and then disseminating SDR data as required, as opposed to disrupting the reporting systems of SEFs, DCMs, and reporting counterparties.

Proposed § 49.28(c)(2) would require SDRs to immediately issue notice to all SEFs, DCMs, reporting counterparties, and the public in the event that an SDR is unable to receive and hold in queue any SDR data reported during normal closing hours or special closing hours. Proposed § 49.28(c)(2) would also require SDRs to issue notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening.[157] Proposed § 49.28(c)(2) would then require a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue any SDR data to immediately report the SDR data to the SDR.

Proposed § 49.28(c)(2) would expand the similar existing requirements for swap transaction and pricing data in § 43.3(g)(2)[158] to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.[159] The Commission emphasizes that it would expect SDRs to be able to accept and hold in queue SDR data that is reported during closing hours. The inability to accept and hold in queue SDR data would need to be a rare occurrence that results from unanticipated emergency situations. The provisions in § 49.28(c)(2) would only be included as a last resort to prevent data loss.

Though proposed § 49.28 would apply to all SDR data, as opposed to only swap transaction and pricing data reported pursuant to part 43, the Commission believes that proposed § 49.28 would have little impact on the operations of SDRs. Proposed § 49.28 largely encompasses the requirements of current § 43.3(f) and (g), which already apply to SDRs, and the sections that largely conform to SEC regulations governing SBSDRs would allow an SDR that also registers with the SEC as an SBSDR to effectively comply with one set of regulations. The Commission also understands that SDRs currently routinely receive and hold in queue all SDR data submitted during declared SDR closing hours, regardless of whether that data is being submitted pursuant to part 43 or another Commission regulation. As a result, the Commission believes that expanding the operating hours requirements to all SDR data would have little practical impact on current SDR operations.

Request for Comment. The Commission requests comment on all aspects of proposed § 49.28. The Commission also invites specific comment on the following:

(24) Does proposed § 49.28 provide SDRs sufficient flexibility to conduct necessary maintenance on their electronic systems while still facilitating the availability of SDR data for the Commission and the public? Please be specific.

T. § 49.29—Information Relating to Swap Data Repository Compliance

The Commission is proposing to add new § 49.29 to provide for information requests from the Commission to SDRs regarding information the Commission needs to perform its duties and regarding SDR compliance with regulatory duties and core principles.

Proposed § 49.29(a) would require SDRs, upon request by the Commission, to file certain information related to its business as an SDR or other such information as the Commission determines to be necessary or appropriate for the Commission to perform its regulatory duties. The SDRs would be required to provide the requested information in the form and

closing hours to market participants and the public.).

[153] *See* 17 CFR 43.3(g) (During closing hours, a registered swap data repository shall have the capability to receive and hold in queue any data regarding publicly reportable swap transactions pursuant to this part.).

[154] *See* 17 CFR 242.904(c) (During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909.).

[155] *See* 17 CFR 43.3(g)(1) (Upon reopening after closing hours, a registered swap data repository shall promptly and publicly disseminate the swap transaction and pricing data of swaps held in queue, in accordance with the requirements of this part.).

[156] *See* 17 CFR 242.904(d) (When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.).

[157] Consistent with the current requirements under part 43, an SDR may issue such notices to its participants and the public by publicizing the notices that the SDR is unable to receive and hold in queue any SDR data and that the SDR has resumed normal operations in a conspicuous place on the SDR's website. *See* 77 FR at 1205, n. 208 (allowing SDRs to provide reasonable advance notice of its closing hours to participants and the public by providing notices directly to its participants or publicizing its closing hours in a conspicuous place on its website).

[158] *See* 17 CFR 43.3(g)(2) (If at any time during closing hours a registered swap data repository is unable to receive and hold in queue swap transaction and pricing data pursuant to this part, then the registered swap data repository shall immediately upon reopening issue notice that it has resumed normal operations. Any registered swap execution facility, designated contract market or reporting party that is obligated under this section to report data to the registered swap data repository shall report the data to the registered swap data repository immediately after receiving such notice.).

[159] *See* 17 CFR 242.904(e) (If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.).

manner and within the time specified by the Commission in its request.

Proposed § 49.29(b) would require SDRs, upon request by the Commission, to demonstrate compliance with their obligations under the CEA and Commission regulations, as specified in the request. The Commission notes that the requests may include, but are not limited to, demonstrating compliance with the core principles applicable to SDRs under section 21(f) of the CEA and part 49. SDRs would be required to provide the requested information in the form and manner and within the time specified by the Commission in its request.

The Commission notes that these requests may be made for any Commission oversight purpose. For example, the Commission may request SDRs to provide information relating to their operations or their practices in connection with their compliance with particular regulatory duties and core principles, other conditions of their registration, or in connection with the Commission's general oversight responsibilities under the CEA. Proposed § 49.29 is based on existing Commission requirements applicable to SEFs and DCMs.[160]

The Commission notes that proposed § 49.29 facilitates the removal of the requirement for annual Form SDR updates from § 49.3(a)(5), as the Commission would be able to request the same information that would be contained in Form SDR and its exhibits as needed without the need for a regular full Form SDR update.

Request for Comment. The Commission requests comment on all aspects of proposed § 49.29.

U. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission

The Commission is proposing to add new § 49.30 to place the various requirements for form and manner requests to SDRs from the Commission in one section. The proposed changes to part 49 of the Commission's regulations set forth in this proposal contain various regulatory provisions that would require SDRs to provide reports and other information to the Commission in ''the form and manner'' requested or directed by the Commission. In particular, proposed §§ 49.13(a) and 49.29 would require SDRs to provide reports and certain other information to the Commission in the ''form and manner'' requested or directed by the Commission.

Proposed § 49.30 would establish the broad parameters of the ''form and manner'' requirement. Unless otherwise instructed by the Commission, an SDR would have to submit SDR data reports and any other information required under part 49 to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission. The ''form and manner'' requirement proposed in § 49.30 would not supplement or expand upon existing substantive provisions of part 49, but instead, would only allow the Commission to specify how existing information reported to, and maintained by, SDRs should be formatted and delivered to the Commission.

Proposed § 49.30 provides that the Commission would specify, in writing, the format, coding structure, and electronic data transmission procedures for various reports and submissions that are required to be provided to the Commission under part 49. The Commission notes that these written instructions would include the most recent, and any future, ''guidebooks'' or other technical specifications published on the Commission's website, as applicable.[161]

Request for Comment. The Commission requests comment on all aspects of proposed § 49.30. The Commission also invites specific comment on the following:

(25) Should the Commission provide a single format or coding structure for each SDR to deliver reports and other information in a consistent manner? Are existing standards and formats sufficient for providing the Commission with requested information? Please explain why or why not.

(26) Should the Commission require specific electronic data transmission methods and/or protocols for SDRs to disseminate reports and other information to the Commission? Please explain why or why not.

V. § 49.31—Delegation of Authority to the Director of the Division of Market Oversight Relating to Certain Part 49 Matters

The Commission is proposing to add new § 49.31 to consolidate delegations of authority for part 49. Current part 49 and many amendments to part 49 proposed in this release include provisions that require SDRs to perform various functions at the request of the Commission or to provide information as prescribed by the Commission or as instructed by the Commission. The Commission proposes to delegate the authority to exercise most of the listed part 49 functions to the Director of DMO to facilitate the Commission's ability to respond to changes in the swaps market and technological developments, and to ensure the Commission's ability to quickly and efficiently access information and data from the SDRs in order to efficiently fulfill its market surveillance responsibilities and other regulatory obligations.

The Commission is proposing to delegate the functions in the below current and proposed regulations to the Director of DMO, and to such members of the Commission's staff acting under his or her direction as he or she may see fit from time to time.

Proposed § 49.31(a)(1) would delegate to the Director of DMO the authority to request documentation related to an SDR equity interest transfer pursuant to § 49.5.[162]

Proposed § 49.31(a)(2) would delegate to the Director of DMO the authority to instruct SDRs on how to transmit open swaps reports to the Commission pursuant to § 49.9.[163]

Proposed § 49.31(a)(3) would delegate to the Director of DMO the authority to modify the requirement for an SDR to accept all data from all swaps in an asset class once the SDR includes the asset class in its application for registration pursuant to § 49.10.[164]

Proposed § 49.31(a)(4) would delegate to the Director of DMO the authority to request records pursuant to § 49.12.[165]

Proposed § 49.31(a)(5) would delegate to the Director of DMO the authority to request SDRs monitor, screen, and analyze SDR data pursuant to § 49.13.[166]

Proposed § 49.31(a)(6) would delegate to the Director of DMO the authority to request SDRs disclose aggregated SDR data in the form and manner prescribed by the Commission pursuant to § 49.16.[167]

Proposed § 49.31(a)(7) would delegate to the Director of DMO the authority to prescribe the form of direct electronic access that SDRs make available to the Commission, prescribe the format by which SDRs maintain SDR data, to request SDRs transmit SDR data to the

[160] *See, e.g.,* 17 CFR 37.5 and 38.5.

[161] The Commission's current published ''guidebooks'' include those published for reporting required by parts 15, 16, 17, 18, and 20 of the Commission's regulations relating to ownership and control reports, large traders reports, and data reporting. These guidebooks are available on the Commission's website at *http://www.cftc.gov/Forms/index.htm.*

[162] *See* section II.C above.

[163] *See* section II.E above.

[164] *See* section II.F above.

[165] *See* section II.H above.

[166] *See* section II.I above.

[167] *See* section II.K above.

Commission, and to instruct SDRs on transmitting SDR data to the Commission pursuant to § 49.17.[168]

Proposed § 49.31(a)(8) would delegate to the Director of DMO the authority to permit SDRs to accept alternative forms of confidentiality arrangements and the ability to direct SDRs to limit, suspend, or revoke access to swap data pursuant to § 49.18.[169]

Proposed § 49.31(a)(9) would delegate to the Director of DMO the authority to grant extensions to the annual compliance report deadline pursuant to § 49.22.[170]

Proposed § 49.31(a)(10) would delegate to the Director of DMO the authority to require SDRs to exercise emergency authority or provide the documentation underlying an SDR's decision to exercise its emergency authority pursuant to § 49.23.[171]

Proposed § 49.31(a)(11) would delegate to the Director of DMO the authority to determine an SDR to be a ''critical SDR'' and to request copies of BC–DR books and records, assessments, test results, plans, and reports pursuant to § 49.24.[172]

Proposed § 49.31(a)(12) would delegate to the Director of DMO the authority to determine the amount, value, and types of financial resources SDRs must maintain to perform their statutory duties set forth in part 49 and request reports of financial resources pursuant to § 49.25.[173]

Similar to provisions relating to demonstrations of compliance by SEFs,[174] proposed § 49.31(a)(13) would delegate to the Director of DMO the authority to request information from SDRs related to their business as SDRs or information the Commission determines is necessary or appropriate to perform its statutory and regulatory responsibilities in the form and manner specified by the Commission, as well as written demonstrations of compliance by in the form and manner specified by the Commission pursuant to § 49.29.[175]

Proposed § 49.31(a)(14) would delegate to the Director of DMO the authority to establish such format, coding structure, and electronic data transmission procedures for SDR data reports and any other information required by the Commission under part 49 pursuant to § 49.30.[176]

III. Proposed Amendments to Part 45

A. § 45.2—Swap Recordkeeping

The Commission is proposing a non-substantive change to remove current § 45.2(f) and (g). Current § 45.2 lists the general recordkeeping requirements of part 45, with § 45.2(f) and (g) applying specifically to SDRs.[177] Current § 45.2(f) contains the SDR recordkeeping requirements and current § 45.2(g) includes the SDR record retention requirements.

Part 45 generally focuses on duties to report swap data to SDRs, while part 49 addresses obligation of SDRs. Part 49 is therefore the more logical location for SDR recordkeeping requirements. As described above, the Commission is proposing to expand on the SDR recordkeeping requirements in § 49.12, which includes incorporating the requirements of current § 45.2(f) and (g), among other amendments.[178] Current § 45.2(f) and (g) would be redundant, as their provisions are subsumed in proposed § 49.12, and keeping the paragraphs in part 45 could cause confusion as to the recordkeeping requirements that apply to SDRs. The Commission notes that all of the actual requirements contained in current § 45.2(f) and (g) would continue to apply to SDRs, because the requirements are included in proposed § 49.12.

B. § 45.14—Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data

The Commission is proposing to amend § 45.14 to facilitate the verification of swap data by reporting counterparties and to simplify and improve the requirements for correcting errors and omissions in swap data previously reported or erroneously not reported as required by Commission regulations. As discussed above in section II.G, the Commission is also amending the SDRs' responsibilities to verify the accuracy and completeness of swap data reported to SDRs. The Commission believes that revised § 49.11 and proposed § 45.14(b) would provide SDRs, swap counterparties, SEFs, and DCMs with a clear understanding of their respective responsibilities in having errors or omissions in swap data corrected.

1. Verification of Swap Data Accuracy to a Swap Data Repository—§ 45.14(a)

The Commission is proposing to move the requirements in current § 45.14(a) to § 45.14(b). In its place, the Commission is proposing the new requirements for reporting counterparties to verify swap data.

Proposed § 45.14(a) would generally require that reporting counterparties verify the accuracy and completeness of swap data for swaps for which they are the reporting counterparty.[179] Proposed § 45.14(a)(1) would require that a reporting counterparty reconcile its internal books and records for each open swap for which it is the reporting counterparty with every open swaps report provided to the reporting counterparty by an SDR pursuant to proposed § 49.11. Proposed § 45.14(a)(1) would further require that reporting counterparties conform to the swap data verification policies and procedures created by an SDR pursuant to proposed § 49.11.

Proposed § 45.14(a)(2) would require that reporting counterparties submit either a verification of data accuracy or a notice of discrepancy in response to every open swaps report received from an SDR within the following timeframes: (i) 48 hours of the SDR providing the open swaps report if the reporting counterparty is an SD, MSP, or DCO; or (ii) 96 hours of the SDR providing the open swaps report for non-SD/MSP/DCO reporting counterparties.[180]

Proposed § 45.14(a)(3) would require that, if a reporting counterparty finds no discrepancies between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the SDR, the reporting counterparty submit a verification of data accuracy indicating

[168] *See* section II.L above.

[169] *See* section II.M above.

[170] *See* section II.O above.

[171] *See* 17 CFR 49.23.

[172] *See* 17 CFR 49.24.

[173] *See* 17 CFR 49.25.

[174] *See* 17 CFR 37.5 (containing requirements for demonstrations of compliance by SEFs and delegating the authority contained in the section to the Director of DMO).

[175] *See* section II.T above.

[176] *See* section II.U above.

[177] *See generally* 17 CFR 45.2.

[178] *See* section II.H above.

[179] This paragraph is the counterpart to the verification requirements for SDRs contained in proposed § 49.11. *See* section II.G above. The SDRs would provide their verification policies and procedures to their users and potential users pursuant to proposed § 49.26(j).

[180] As explained above in section II.G, non-SD/MSP/DCO reporting counterparties tend to be entities that are less active in the swaps markets and tend to have fewer resources that can be devoted to regulatory compliance, including verification systems, than would be expected for a larger registered entity such as an SD, MSP, or DCO. The Commission believes that requiring non-SD/MSP/DCO reporting counterparties to respond to an open swaps report within 96 hours would fulfill the Commission's needs to have swap data verified (and corrected, as needed) while also minimizing the burden on these reporting counterparties in a way that does not compromise swap data or the Commission's ability to perform its regulatory functions.

that the swap data is complete and accurate to the SDR in the form and manner required by the SDR's swap data verification policies and procedures created pursuant to § 49.11.

Finally, proposed § 45.14(a)(4) would require that, if a reporting counterparty finds any discrepancy between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the SDR, including, but not limited to, any over-reporting or under-reporting of swap data for any swap, the reporting counterparty submit a notice of discrepancy to the SDR in the form and manner required by the SDR's swap data verification policies and procedures created pursuant to § 49.11.

The Commission is proposing the new verification rules in § 45.14(a) to help improve swap data quality by facilitating the resolution of any discrepancies between the reporting counterparties' records of their open swaps and the swap data maintained by an SDR. The Commission believes the most effective way to accomplish verification is by having reporting counterparties compare their own records for each open swap as of the moment captured in the open swaps report with the swap data included for each swap in an open swaps report. The Commission believes that these requirements would help ensure that reporting counterparties perform the reconciliation promptly and provide a response to the SDR, which would ensure that swap data is reviewed in a timely manner and that SDRs can fulfill their verification responsibilities under proposed § 49.11.

The Commission notes that a reporting counterparty would be required to perform this reconciliation for every open swap included in each open swaps report provided to the reporting counterparty by any SDR.[181] The Commission also notes that not receiving an expected open swaps report from an SDR that the reporting counterparty believes maintains swap data for open swaps for which it is the reporting counterparty would constitute an error or omission that the reporting counterparty must correct with the SDR pursuant to proposed § 45.14(b). Likewise, receiving an open swaps report for swaps that are no longer open would also constitute an error that would require correction under proposed § 45.14(b).

The Commission also notes that for all reporting counterparties the timing requirement of proposed § 45.14(a) is based on when the SDR makes the open swaps report available to the reporting counterparty, not when the reporting counterparty receives or accesses the open swaps report. A reporting counterparty's failure to receive or access, and analyze, an open swaps report that was properly provided by an SDR would not excuse the reporting counterparty from the requirements of proposed § 45.14(a). This standard would help ensure that reporting counterparties maintain properly functioning systems for the timely receipt and review of open swaps reports that conform to SDR verification policies and procedures.

The Commission is not proposing a form or manner for the verification of data accuracy in proposed § 45.14(a)(3) or the notice of discrepancy in proposed § 45.14(a)(4), but is instead proposing that the reporting counterparty provide a verification or notice that meets the requirements of the SDR's verification policies and procedures created pursuant to § 49.11. This requirement would help ensure that reporting counterparties provide verifications of data accuracy or notices of discrepancy to the SDRs that the SDRs can use to complete the verification process. As reporting counterparties already report information to SDRs under other Commission regulations, the Commission expects that SDRs and reporting counterparties would work together to design the method for submitting verifications and notifications that is the most efficient and convenient for both parties, with particular attention to creating a system that is not unnecessarily burdensome for non-SD/MSP/DCO reporting counterparties.

The Commission notes that the notice of discrepancy is not the means by which the reporting counterparty would correct errors or omissions in swap data. The process of error correction would be governed by proposed § 45.14(b), as discussed below. The notice of discrepancy would merely be a notice that the reporting counterparty does not believe that one or more elements of swap data contained, or missing, in the open swaps report are correct. Finding any discrepancy in the swap data would however prompt a reporting counterparty's responsibility to correct all discrepancies in the swap data pursuant to proposed § 45.14(b).

The Commission emphasizes the importance of robust and thorough verification processes under proposed § 45.14(a). For clarity, examples of unsatisfactory verification would include, but are not limited to: (i) Failure to perform the verification in a timely manner as required by proposed § 45.14(a); and (ii) providing a verification of data accuracy indicating that the swap data was complete and accurate for swap data that was not correct when verified. The Commission would consider any error or omission that reasonably could have been discovered during the verification process to have been discovered by the reporting counterparty, and therefore providing a verification of data accuracy in response to an open swaps report that contains an error or omission would not comply with the proposed requirements. The Commission also notes that each incorrect verification, including the failure to recognize the same error or omission in swap data over time and allowing the error or omission to persist over multiple open swaps reports and verifications, would also not comply with the proposed requirements.

Finally, the Commission expects that a reporting counterparty repeatedly discovering errors or omissions in the open swaps reports, especially if there is a discernable pattern in the errors or omissions, would prompt the reporting counterparty to evaluate its reporting systems to discover any potential systemic errors or omissions, including working with the SDR to improve its data reporting, as needed. The Commission notes that a pattern of failures may implicate other requirements for further action and disclosure of non-compliance by registered entities, such as SDs, MSPs, SEFs, DCMs, or DCOs.

2. Corrections of Errors and Omissions in Swap Data—§ 45.14(b)

The Commission is proposing amendments to the § 45.14(b) requirements for correcting errors and omissions in swap data that was previously reported to an SDR or that was not reported as required.[182] These

[181] The SDRs would provide open swaps reports to the individual reporting counterparties in accordance with the frequency and timing requirements included in proposed § 49.11. An entity would only be required to verify the accuracy and completeness of swap data for open swaps to which it is the reporting counterparty, such that if a reporting counterparty did not have any open swaps with an SDR, it would not receive an open swaps report from that SDR and would not be required to verify swap data with that SDR.

[182] The Commission notes that the failure to perform the initial reporting of swap data as required under § 45.3 is an ''omission'' for the purposes of current and proposed § 45.14. The omission must be corrected pursuant to the same requirements as any other error or omission, regardless of the state of the swap, by reporting the swap data as soon as technologically practicable after discovery of the failure to report. This includes reporting the omitted swap data to the SDR as

error and omission correction requirements are effectively the same as the correction requirement in current § 45.14, but the Commission is proposing to clarify which entities have the correction reporting responsibilities.

Proposed § 45.14(b)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap data to the SDR.[183] Proposed § 45.14(b)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of any swap data not reported to an SDR by the SEF, DCM, or reporting counterparty as required to submit corrected swap data to the SDR.[184] Awareness of errors and omissions to be corrected would include, but would not be limited to, errors or omissions present in the swap data in the open swaps reports provided as part of the verification process specified in proposed § 45.14(a).[185] The error and omission correction requirements would apply regardless of the state of the swap, and include the correction of swaps that are no longer open or ''alive.''

Proposed § 45.14(b)(1)(i) would retain the current § 45.14(a)(2) requirement that SEFs, DCMs, and reporting counterparties correct swap data ''as soon as technologically practicable following discovery of the errors or omissions,'' but would backstop ''as soon as technologically practicable'' for corrections at three business days after discovery of the error or omission.

Proposed § 45.14(b)(1)(ii) would require that if a SEF, DCM, or reporting counterparty is unable to correct errors or omissions within three business days of discovery, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or such other Commission employees whom the Director of DMO may designate, in writing, of the errors or omissions and provide an initial assessment of the scope of the errors or omissions[186] and an initial remediation plan for correcting the errors or omissions.

Proposed § 45.14(b)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to the SDR's policies and procedures for corrections of errors and omissions that the SDRs would be required to create under proposed § 49.10.[187] By following the relevant SDR's policies and procedures for swap data correction, provided to users by the SDRs pursuant to proposed § 49.26(j), SEFs, DCMs, and reporting counterparties would be able to correct swap data with as little effort as necessary.

Proposed § 45.14(b)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to an SDR, or the omission of swap data for a swap that was not previously reported to an SDR as required, to notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 45.14(b)(2) would also specify that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap must notify the SEF or DCM where the swap was executed of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 45.14(b)(2) would also require that if the reporting counterparty, SEF, or DCM, as applicable, and the non-reporting counterparty agree that the swap data for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM, as applicable, must correct the swap data in accordance with proposed § 45.14(b)(1).[188]

Current § 45.14(a) generally requires that each registered entity and swap counterparty required to report swap data must also report any errors and omissions discovered in the swap data as soon as technologically practicable after the errors or omissions are discovered and contains specific instructions for reporting errors or omissions in continuation data reported using the snapshot method.

Current § 45.14(b) requires the non-reporting counterparty to promptly notify the reporting counterparty of any errors or omissions and requires the reporting counterparty to correct the errors or omissions under the terms of current § 45.14(a).

Current § 45.14(c) requires: (i) Registered entities or swap counterparties to report corrections in the same format as the original reporting of the swap data, unless otherwise approved by the Commission's Chief Information Officer (''CIO''); and (ii) the SDR to transmit the corrections for errors and omissions in swap data in the same format used to originally disseminate the swap data, unless otherwise approved by the Commission's CIO.

The Commission is proposing to clarify that swap data must be corrected ''regardless of the state of the swap that is the subject of the swap data'' so market participants are aware that all incorrect or omitted swap data must be corrected, even if the swap that the swap data described has been terminated, matured, or otherwise ceased to be an open swap. The Commission does not believe this is a new requirement, as the current correction requirements of § 45.14 do not have time restrictions. Many of the Commission's regulatory responsibilities involve using swap data for swaps that were executed months or years earlier, including terminated, matured, or otherwise no-longer-open swaps. Incorrect swap data for these swaps, or a lack of any required reporting, would interfere with the Commission's ability to generate holistic, accurate, data-driven policies, analyses, and reports.

The requirement to correct all swap data, regardless of status, also helps

required by the SDR for an initial report of swap data.

[183] *See* 17 CFR 45.14(a) (Each registered entity and swap counterparty required by this part to report swap data to a swap data repository, to any other registered entity or swap counterparty, or to the Commission shall report any errors and omissions in the data so reported.).

[184] The Commission notes that successful reporting of swap data that was not previously reported as required would entail the relevant SEF, DCM, or reporting counterparty completing the reporting process for the omitted swap data as instructed in the relevant SDR's policies and procedures for reporting omitted swap data created pursuant to proposed § 49.10(e).

[185] This would include any open swaps that should be in the open swaps report but were omitted or swaps that are no longer open but still remain listed in the report, in addition to any errors or omissions in the swap data contained in the report. The requirement would also include, for example, a SEF, DCM, or reporting counterparty being informed of errors or omissions by an outside source, such as a non-reporting counterparty, a SEF or DCM, or the Commission; errors or omissions discovered by a SEF, DCM, or reporting counterparty during a review of its own records or voluntary review of swap data maintained by the SDR, including the discovery of any over- or under-reporting of swap data; and the discovery of errors or omissions during the investigation of a separate issue.

[186] The Commission anticipates that this would include the causes of the errors or omissions, the number of swaps affected, the USIs for the affected swaps, and the date range for the affected swaps, among other information.

[187] *See* section II.F above. The Commission expects that SEFs, DCMs, reporting counterparties, and SDRs would work together to devise effective correction policies, with particular attention paid to minimizing the effort needed to correct swap data for non-SD/MSP/DCO reporting counterparties.

[188] This requirement is largely the same as the requirements of current § 45.14(b). *See* 17 CFR 45.14(b) (Upon receiving such notice, the reporting counterparty shall report a correction of each such error or omission to the swap data repository as provided in paragraph (a) of this section.).

ensure that SEFs, DCMs, and reporting counterparties would establish and maintain properly functioning reporting systems to prevent reporting errors or omissions, as correcting swap data for swaps, including terminated swaps, would require effort that can be avoided by initially reporting correct swap data. Proper and thorough system design and testing during the implementation process for these proposed rules would benefit market participants in the form of less time and resources spent on later error and omission corrections. The Commission expects that, as swap data reporting improves over time, the resources needed to correct swap data would decrease.

As with the verification requirements discussed above, the Commission also expects that a SEF, DCM, or reporting counterparty that repeatedly discovers errors or omissions, especially repeated errors or omissions that follow a pattern, such as the reporting for a certain type of swap regularly resulting in errors, would evaluate its reporting systems to discover and correct any issues. This would include working with the relevant SDR to address any reporting issues. A SEF, DCM, or reporting counterparty that fails to perform such an evaluation and improvement in light of repeated errors may not be in compliance with the Commission's regulations.

The Commission is aware that some errors or omissions may not be able to be corrected within three business days of discovery, depending on the gravity and complexity of the reporting problems. The Commission believes having the SEF, DCM, or reporting counterparty notify the Commission of such errors and omissions pursuant to proposed § 45.14(b)(1)(ii), formulate a plan to correct the errors or omissions, and perform the corrections as soon as possible would help alert the Commission to swap data that is unreliable, particularly if it may be unreliable for an extended period of time, and facilitates the fastest correction of the swap data. The Commission also believes that the requirements of proposed § 45.14(b)(1)(ii) would incentivize SEFs, DCMs, and reporting counterparties to fix reporting errors and omissions as quickly as possible, and to invest the resources to prevent reporting errors and omissions from occurring in the first place. The Commission notes that these proposed requirements are similar to current industry practice, as SEFs, DCMs, and reporting counterparties regularly inform Commission staff of reporting errors or omissions and work with Commission staff as they correct the errors and omissions, which typically includes detailed remediation plans and specific timelines for completion.

The Commission is retaining the requirement from current § 45.14(b) that the non-reporting counterparty inform the reporting counterparty of the errors or omissions, instead of the non-reporting counterparty reporting the errors or omissions itself.[189] The Commission believes that it is not necessary for a non-reporting counterparty to undertake reporting corrections to an SDR because the non-reporting counterparty is often not a user of the SDR or any SDR, and may never serve as a reporting counterparty for swaps. In contrast, the reporting counterparties would already be users of the relevant SDR, and would have continuation data reporting responsibilities for the swap. The reporting counterparty is therefore the logical counterparty to perform the error and omission corrections without the need for the non-reporting counterparty to expend resources on error and omission reporting.

The Commission notes that the proposed requirement for the reporting counterparty and non-reporting counterparty to agree that the swap data is incorrect or incomplete before the reporting counterparty must correct errors discovered by the non-reporting counterparty is included in § 45.14(b)(2) to reduce the likelihood of the reporting of corrections when there is a legitimate dispute over whether swap data contains an error or omission. Neither party may arbitrarily or falsely withhold agreement that an error or omission exists, particularly if a reporting counterparty is withholding agreement in order to avoid its responsibility to correct errors or omissions. The parties would be expected to resolve any dispute before the error or omission is corrected.

Similarly, when the non-reporting counterparty does not know the identity of the reporting counterparty and instead reports the errors or omissions to the SEF or DCM, if the SEF or DCM and the non-reporting counterparty agree that the relevant swap data is incorrect or incomplete, then the SEF or DCM would correct the errors or omissions in accordance with proposed § 45.14(b)(2). Also, no SEF, DCM, or non-reporting counterparty may arbitrarily or falsely withhold agreement that an error or omission exists, particularly if the SEF or DCM is withholding agreement to avoid its responsibility to correct errors or omissions. The entities would be expected to resolve any dispute with each other before the error or omission is corrected. The Commission expects that a SEF of DCM, when necessary, would be capable of contacting a reporting counterparty to confirm whether the error or omission reported by the non-reporting counterparty exists without revealing the identity of the non-reporting counterparty to the reporting counterparty.

The Commission is also proposing to remove the Commission's ability under current § 45.14(c) to approve the use of different data formats for corrections because the Commission does not believe that the use of different data formats for corrections is necessary and believes that the possibility adds uncertainty and potential delays to the correction process. SEFs, DCMs, reporting counterparties, and SDRs are all capable of reporting corrections using the same format as initial swap data reporting and would all know the correct format in advance of reporting under the requirements of proposed §§ 49.17 [190] and 49.26(j).[191] Additionally, proposed § 45.14(b)(1)(iii) would require SEFs, DCMs, and reporting counterparties to report corrections of errors or omissions in conformity with the SDR's policies and procedures for correcting errors and omissions created pursuant to proposed § 49.10, which would include how to properly format swap data in order for the SDR to successfully complete the correction process. The Commission believes that this approach would be more flexible than the current requirements, as the SDRs would be able to require a different format for reporting errors and omissions without requiring approval from the Commission.

Finally, the current § 45.14(c) requirement for an SDR to transmit corrections to errors or omissions in swap data in the same format as the SDR typically transmits swap data to the Commission would be redundant, because the requirement does still effectively apply to all SDRs under proposed § 49.17, which requires SDRs to transmit all SDR data requested by the Commission to the Commission as instructed by the Commission.[192]

[189] *See* 17 CFR 45.14(b) (Each counterparty to a swap that is not the reporting counterparty . . . and that discovers any error or omission with respect to any swap data reported to a swap data repository for that swap, shall promptly notify the reporting counterparty of such error or omission.).

[190] *See* section II.L above.

[191] *See* section II.R above.

[192] *See* section II.L above (describing the proposed requirements for SDRs to transmit data to the Commission).

Request for Comment. The Commission requests comment on all aspects of proposed § 45.14. The Commission also invites specific comment on the following:

(27) Should the Commission be more prescriptive in how reporting counterparties must complete the verification process? If so, please describe in detail.

IV. Proposed Amendments to Part 43

A. § 43.3—Method and Timing for Real-Time Public Reporting

1. Correction of Errors and Omissions in Swap Transaction and Pricing Data—§ 43.3(e)

The Commission is proposing to amend the error and omission correction requirements for swap transaction and pricing data under § 43.3(e) to conform with the proposed amendments to § 45.14(b) for swap data discussed above in section III.B.

Proposed § 43.3(e)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors or omissions in swap transaction and pricing data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap transaction and pricing data to the SDR. Proposed § 43.3(e)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of the omission [193] of swap transaction and pricing data previously not reported to an SDR by the SEF, DCM, or reporting counterparty as required, to submit corrected swap transaction and pricing data to the SDR.[194] As with proposed § 45.14(b), the error and omission correction requirements would apply regardless of the state of the swap, and include the correction of swaps that are no longer open or ''alive.'' [195]

Proposed § 43.3(e)(1)(i) would adopt the same timing requirements as proposed § 45.14(b)(1)(i) for SEFs, DCMs, and reporting counterparties to correct swap transaction and pricing data ''as soon as technologically practicable following discovery of the errors or omissions,'' with a three business day backstop following the discovery of the errors or omissions.

Similar to proposed § 45.14(b)(1)(ii), proposed § 43.3(e)(1)(ii) would provide that if a SEF, DCM, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or such other employees of the Commission that the Director of DMO may designate, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions [196] and an initial remediation plan for correcting the errors or omissions.[197]

Proposed § 43.3(e)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to an SDR's policies and procedures for corrections of errors and omissions in previously reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data that the SDRs would be required to create under proposed § 49.10.[198] By following the relevant SDR's policies and procedures for swap data correction, which would be provided to users by the SDRs pursuant to proposed § 49.26(j), the Commission expects that SEFs, DCMs, or reporting counterparties would know how to correct swap data before correction is required and would be able to properly correct swap data with as little effort as necessary.[199]

Proposed § 43.3(e)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to an SDR, or the omission of swap transaction and pricing data for a swap that was not previously reported to an SDR as required, to notify the reporting counterparty for the swap of the errors and omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 43.3(e)(2) would also specify that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap must notify the SEF or DCM where the swap was executed of the errors and omissions as soon as technologically practicable after discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 43.3(e)(2) would also require that, if the reporting counterparty, SEF, or DCM, as applicable, and the non-reporting counterparty agree that the swap transaction and pricing data for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM, as applicable, must correct the swap transaction and pricing data in accordance with proposed § 43.3(e)(1).

The Commission believes that the amendments to § 43.3(e) would help ensure that errors or omissions in swap transaction and pricing data are corrected as soon as possible. The proposed rule would also clarify that swap transaction and pricing data must be corrected regardless of the state of the swap that is the subject of the swap transaction and pricing data to ensure that all incorrect or omitted swap transaction and pricing data is corrected, even if the swap that the swap transaction and pricing data relates to has been terminated, matured, or otherwise ceased to be an open swap. This is not a new requirement, as the current correction requirements in § 43.3(e) do not have time restrictions. The Commission also believes that proposed § 43.3(e) would help ensure that the public has access to the most accurate and complete swap transaction and pricing data possible. Incorrect swap transaction and pricing data harms market integrity and price discovery, long after the swap has been executed.

The requirement to correct all swap transaction and pricing data, regardless of status, also helps ensure that SEFs, DCMs, and reporting counterparties would maintain properly functioning reporting systems to prevent reporting errors or omissions, as correcting swap transaction and pricing data for swaps, including terminated swaps, would require effort that can be avoided by initially reporting correct swap transaction and pricing data. Proper and

[193] The Commission notes that the failure to perform the initial reporting of swap transaction and pricing data as required under current and proposed § 43.3 is an ''omission'' for the purposes of both current and proposed § 43.3(e). The omission must be corrected pursuant to the same requirements as any other error or omission, regardless of the state of the swap, by reporting the swap transaction and pricing data as soon as technologically practicable after discovery of the failure to report. This includes reporting the omitted swap transaction and pricing data to the SDR as required by the SDR for an initial report of swap transaction and pricing data.

[194] The Commission notes that successful reporting of swap transaction and pricing data that was erroneously not previously reported as required would entail the relevant SEF, DCM, or reporting counterparty completing the reporting process for the omitted swap data as instructed in the relevant SDR's policies and procedures created pursuant to proposed § 49.10(e).

[195] This requirement is effectively the same as current § 43.3(e)(1).

[196] The Commission anticipates that this would include the causes of the errors or omissions, the number of swaps affected, the USIs for the affected swaps, the date range for the affected swaps, among other information.

[197] The Commission needs to know as soon as possible if swap transaction and pricing data is unreliable, particularly if for an extended period of time, so that the Commission may alert the public as needed.

[198] *See* section II.F above.

[199] The Commission expects that SEFs, DCMs, reporting counterparties, and SDRs would work together to devise effective correction policies, with particular attention paid to minimizing the effort needed to correct swap data for non-SD/MSP/DCO reporting counterparties.

thorough system design and testing during the implementation process for these proposed regulations would benefit market participants in the form of less time and resources spent on error corrections in the future. The Commission expects that, as data reporting improves over time, the resources needed to correct swaps, including swaps that are no longer open, would diminish.

The Commission also notes that the discovery of errors under proposed § 43.3(e)(1) includes any errors or omissions revealed when reporting counterparties are reconciling swap data during the verification process required under proposed § 45.14(a) that would also be errors or omissions in swap transaction and pricing data. The means of discovery are unlimited, however, and would also include, for example, a SEF, DCM, or reporting counterparty being informed of errors or omissions by an outside source, such as a non-reporting counterparty, an exchange, or the Commission; errors or omissions discovered by a SEF, DCM, or reporting counterparty during a review of its own records or voluntary review of swap transaction and pricing data maintained by the SDR, including the discovery of any over- or under-reporting of swap transaction and pricing data; and the of discovery of errors or omissions during the investigation of a separate issue.

The Commission expects that a SEF, DCM, or reporting counterparty that repeatedly discovers errors or omissions, especially repeated errors or omissions that follow a pattern, such as the reporting for a certain type of swap regularly resulting in errors, would evaluate its reporting systems to attempt to find and promptly correct any issues discovered. This would include working with the relevant SDR to address any reporting issues. A SEF, DCM, or reporting counterparty that fails to perform such an evaluation and improvement in light of repeated errors may not be in compliance with the Commission's regulations.

The Commission is aware that some errors and omissions may not be able to be corrected within three business days of discovery. The Commission believes having the SEF, DCM, or reporting counterparty notify the Commission of such errors and omissions pursuant to proposed § 43.3(e)(1)(ii), formulate a plan to correct the errors and omissions, and to perform the corrections as soon as possible would help alert the Commission to swap transaction and pricing data that is unreliable, particularly if it may be unreliable for an extended period of time, and facilitates the fastest correction of swap transaction and pricing data. The Commission also believes that proposed § 43.3(e)(1)(ii) would incentivize SEFs, DCMs, and reporting counterparties to fix reporting errors and omissions as quickly as possible. The Commission notes that these proposed requirements are consistent with industry practice, as SEFs, DCMs, and reporting counterparties regularly inform Commission staff of reporting errors or omissions and work with Commission staff as they correct the errors and omissions, which typically includes remediation plans and timelines for completion.

The Commission is proposing to require, as with proposed § 45.14(b)(2), that the non-reporting counterparty inform the reporting counterparty of the errors or omissions. The Commission believes that it is not necessary for a non-reporting counterparty to undertake the burden of reporting corrections to an SDR because the non-reporting counterparty is often not a user of the SDR, and may never serve as a reporting counterparty for any swaps. In contrast, reporting counterparties would already by definition be users of the relevant SDR, and would have continuation data reporting responsibilities for the swap. The reporting counterparty is therefore the logical counterparty to perform the error and omission corrections without the need for the non-reporting counterparty to use additional resources on error and omission reporting.

The Commission notes that the proposed requirement for the reporting counterparty and non-reporting counterparty to agree that the swap transaction and pricing data is incorrect or incomplete before the reporting counterparty must correct errors discovered by the non-reporting counterparty is included to avoid the reporting of corrections when there is a legitimate dispute over whether the swap transaction and pricing data contains an error or omission. Neither party may arbitrarily or falsely withhold agreement that an error or omission exists, particularly if a reporting counterparty is withholding agreement in order to avoid its responsibility to correct errors or omissions. The parties would be expected to resolve any dispute with each other before the error or omission is corrected.

Similarly, in the instance where the non-reporting counterparty does not know the identity of the reporting counterparty and instead reports the errors or omissions to the SEF or DCM, if the SEF or DCM and the non-reporting counterparty agree that the relevant swap transaction and pricing data is incorrect or incomplete, then the SEF or DCM must correct the errors or omissions in accordance with proposed § 43.3(e)(1). No SEF, DCM, or non-reporting counterparty may arbitrarily or falsely withhold agreement that an error or omission exists, particularly if the SEF or DCM is withholding agreement to avoid its responsibility to correct errors or omissions. The entities would be expected to resolve any dispute with each other before the error or omissions is corrected. The Commission expects that a SEF or DCM, when necessary, would be capable of contacting a reporting counterparty to confirm whether the error or omission reported by the non-reporting counterparty exists without revealing the identity of the non-reporting counterparty to the reporting counterparty.

2. Proposed Deletions—§ 43.3(f) and (g)

The Commission is proposing to delete current § 43.3(f) and (g). The Commission is proposing to include the operating hours requirements for SDRs in new § 49.28,[200] which includes incorporating the requirements of current § 43.3(f) and (g). Current § 43.3(f) contains the hours of operations requirements [201] and current § 43.3(g) contains the requirements for SDRs to accept swap transaction and pricing data during closing hours.[202]

Keeping the paragraphs in part 43 could also cause confusion as to the requirements that apply to SDRs, because proposed § 49.28 would apply to all SDR data and also incorporates provisions from SBSDR operating hours requirements. The Commission notes that most of the requirements contained in current § 43.3(f) and (g) would continue to apply to SDRs, because the requirements are included in proposed § 49.28.

Request for Comment. The Commission requests comment on all aspects of proposed § 43.3.

V. Proposed Amendments to Part 23

A. § 23.204—Reports to Swap Data Repositories

Proposed § 23.204(c) would require each SD and MSP to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the SD or MSP complies with all obligations to report swap data to an SDR consistent with part 45. Proposed § 23.204(c) also would require an SD or MSP to review its policies and procedures on an annual basis and to update its policies and procedures as

[200] *See* section II.S above.

[201] *See* 17 CFR 43.3(f).

[202] *See* 17 CFR 43.3(g).

needed to reflect the requirements in part 45.

As part of the SD/MSP requirements set forth in part 23 of the Commission's regulations, the Commission currently requires SDs/MSPs to report all information and swap data required for swap transactions as set forth in part 45.[203] The Commission also currently requires that SDs/MSPs have in place the electronic systems and procedures necessary to transmit electronically all information and swap data required to be reported in accordance with part 45.[204]

The Commission notes that, pursuant to other Commission regulations, SDs and MSPs are already expected to establish policies and procedures related to their swap market activities, including but not limited to, swaps reporting obligations.[205] The proposed amendments would make that expectation explicit with respect to swap data reporting obligations.

The Commission believes that the annual review requirement in proposed § 23.204(c) would help ensure that SD/MSP policies and procedures remain current and effective over time. The proposal is also substantially similar to the requirements that the SEC has enacted for SBSDs and SBS MSPs.[206]

As part of the goal to increase the reliability, accuracy, and completeness of SDR data reported to and maintained by SDRs, the Commission believes that it is important to make clear the responsibilities of SDs and MSPs to ensure proper reporting of swaps for which they act as reporting counterparties. Accordingly, the Commission proposes that SDs/MSPs that report to an SDR should be explicitly required to adopt policies and procedures reasonably designed to ensure compliance with their reporting obligations under parts 43 and 45.[207]

The policies and procedures required by proposed § 23.204(c) should address how the SD or MSP would comply with the requirements of part 45, including, but not necessarily limited to: (i) The reporting process and designation of responsibility for reporting swap data; (ii) reporting system outages or malfunctions, and when and how back-up systems are to be used in connection with required reporting; (iii) verification of all swap data reported to an SDR pursuant to proposed § 45.14(a) and in accordance with the policies and procedures of such SDR established under proposed § 49.11; (iv) a training program for employees responsible for swap data reporting; (v) control procedures relating to swap data reporting and designation of personnel responsible for testing and verifying such policies and procedures; and (vi) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by part 45 on behalf of the SD or MSP.

These issues are also generally the issues that the SEC contemplated being addressed by SBSDs and SBS MSPs in their policies and procedures adopted pursuant to the SBSR Adopting Release.[208] In conjunction with ''know your counterparty'' obligations under current § 23.402(b), such policies should also ensure that the SD/MSP would have all necessary counterparty information, including, but not limited to, legal entity identifier (''LEI'') or acceptable counterparty identifier, U.S. Person status, and SD/MSP status, to accurately report all swap data required by part 45 for swaps for which the SD/MSP has reporting obligations.

B. § 23.205—Real-Time Public Reporting

Similar to the requirements of proposed § 23.204(c) discussed above in section V.A, the Commission is proposing § 23.205(c), which would require SDs and MSPs to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that the SD or MSP complies with any obligations to report swap transaction and pricing data to an SDR consistent with part 43 of the Commission's regulations. As with swap data under § 23.204(c), proposed § 23.205(c) is intended to promote complete and accurate reporting of swap transaction and pricing data by SDs and MSPs, consistent with their obligations under part 43 and the CEA.[209] The Commission believes that the addition of this proposed requirement would help to improve the extent and quality of overall compliance with the reporting requirements of part 43. Similar to proposed § 23.204(c), proposed § 23.205(c) would require an SD or MSP to review its policies and procedures on an annual basis and to update its policies and procedures as needed to reflect the requirements of part 43. The periodic review requirement would help ensure that these policies and procedures remain current and effective over time. The proposal is also substantially similar to the requirements that the SEC has enacted for SBSDs and SBS MSPs.[210]

The SD/MSP recordkeeping and reporting requirements in part 23 also currently require SDs/MSPs to report all information and swap transaction and pricing data required in accordance with the real-time public reporting requirements as set forth in part 43.[211] The Commission also requires that SDs/MSPs have in place the electronic systems and procedures necessary to transmit electronically all information and swap transaction and pricing data required to be reported in accordance with part 43.[212]

The policies and procedures required by proposed § 23.205(c) should address how the SD or MSP will comply with the requirements of part 43, including, but not necessarily limited to: (i) The reporting process and designation of responsibility for reporting swap transaction and pricing data; (ii) reporting system outages or malfunctions, and when and how back-up systems are to be used in connection with required reporting; (iii) a training program for employees responsible for real-time reporting; (iv) control procedures relating to real-time reporting and designation of personnel responsible for testing and verifying such policies and procedures; (v) reviewing and assessing the performance and operational capability of any third party that carries out any duty required by part 43 of the Commission's regulations on behalf of the SD or MSP; and (vi) the determination of whether a new swap transaction or amendment, cancelation, novation, termination, or other lifecycle event of an existing swap, is subject to the real time reporting requirements of part 43. These issues are a subset of the general issues that the SEC contemplated being addressed by SBSDs and SBS MSPs in their policies and procedures adopted pursuant to the SBSR Adopting Release.[213]

Request for Comment. The Commission requests comment on all

[203] *See* 17 CFR 23.204(a).

[204] *See* 17 CFR 23.204(b).

[205] *See, e.g.,* 17 CFR 3.3(d)(1)(requiring a chief compliance officer to administer each of the registrant's policies and procedures relating to its business as an SD/MSP that are required to be establish pursuant to the Act and the Commission's regulations); 17 CFR 3.2(c)(3)(ii) (requiring the National Futures Association to assess whether an entity's SD/MSP documentation demonstrates compliance with the Section 4s Implementing Regulation to which it pertains which includes § 23.204 and § 23.205).

[206] *See* SBSDR Adopting Release at 14647–14648; *see also* 17 CFR 242.906(c).

[207] The amendments for part 43 reporting are discussed below in section IV.A.

[208] *See* SBSDR Adopting Release at 14648; *see also* 17 CFR 242.906(c).

[209] Section 2(a)(13) of the CEA directs the Commission to adopt regulations for the public availability of swap transaction and pricing data. *See* 7 U.S.C. 2(a)(13).

[210] *See* SBSDR Adopting Release at 14647–14648.

[211] *See* 17 CFR 23.205(a).

[212] *See* 17 CFR 23.205(b).

[213] *See* SBSDR Adopting Release at 14648.

aspects of proposed §§ 23.204(c) and 23.205(c). The Commission also invites specific comment on the following:

(28) Should proposed § 23.204(c) and § 23.205(c) specify the elements to be included in the required policies and procedures? If so, what specific elements should be included in the proposed regulation, and why? Please be specific.

VI. Request for Comments

The Commission requests comments concerning all aspects of the proposed regulations, including, without limitation, all of the aspects of the proposed regulations on which comments have been requested specifically herein. The Commission also invites comments on the following:

(29) Please describe the nature of any changes necessary, *i.e.,* operational, technological, administrative, etc., for SDRs, other registered entities, and swap counterparties to comply with the regulations proposed in this release, including the length of time needed to implement each type of change, whether a phase-in period is needed, and how any phase in of any final rules should be structured. Please describe how any changes to systems made by one type of entity, such as the SDRs, would require changes to systems by other entities within the swaps reporting environment, and what sequencing of changes would need to occur.

(30) Would the proposed amendments and additions to parts 23, 43, 45, and 49 adequately improve the data quality and accuracy of reported SDR data maintained by SDRs? If not, please explain.

(31) Are additional changes necessary to parts 23, 43, 45, and 49 (or other parts of the regulations) to ensure the quality of reported SDR data held and maintained by SDRs? If so, please explain.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[214] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[215] The amendments to part 49 proposed herein would have a direct effect on the operations of SDRs. The Commission has previously certified that SDRs are not small entities for purpose of the RFA.[216] Proposed §§ 23.204(c) and 23.205(c), which require SDs and MSPs to have policies and procedures to ensure compliance with requirements of parts 45 and 43, respectively, would have a direct impact on the operation of SDs and MSPs. The Commission has previously certified that SDs and MSPs are also not small entities for purpose of the RFA.[217]

Proposed § 45.14(a), which requires all reporting counterparties to verify the accuracy of swap data with the SDR, would have a direct impact on all reporting counterparties. These reporting counterparties may include SDs, MSPs, DCOs,[218] and non-SD/MSP/DCO counterparties. Regarding whether non-SD/MSP/DCO reporting counterparties are small entities for RFA purposes, the Commission notes that section 2(e) of the Act prohibits entities from entering into swaps unless the entity qualifies as an eligible contract participant (''ECP''), except for swaps executed on or pursuant to the rules of a DCM.[219] The Commission has previously certified that ECPs are not small entities for purposes of the RFA.[220] The vast majority of swap are not conducted on DCMs, and therefore must involve ECPs. A recent Commission staff review of swap data, including swaps executed on or pursuant to the rules of a DCM, identified nearly 1,600 non-SD/MSP/DCO reporting counterparties. Based on its review of publicly available data, the Commission believes that the overwhelming majority of these non-SD/MSP/DCO reporting counterparties are either ECPs or do not meet the definition of ''small entity'' established in the RFA. Accordingly, the Commission does not believe the proposed rule would affect a substantial number of small entities.

Therefore, the Chairman, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), hereby certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[221] imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. This proposed rulemaking would result in the collection of information within the meaning of the PRA, as discussed below. The proposed rulemaking contains collections of information for which the Commission has previously received three control numbers from OMB: (1) OMB Control Number 3038–0096 (relating to swap data recordkeeping and reporting by market participants); (2) OMB Control Number 3038–0070 (relating to real-time swap transaction and pricing data); and (3) OMB Control Number 3038–0086 (relating to obligations of SDRs).

The Commission is proposing to amend information collections 3038–0096, 3038–0070, and 3038–0086 to accommodate new information collection requirements for swap market participants and SDRs that require approval from OMB under the PRA. The following amendments to the obligations of market participants and SDRs are expected to modify the existing annual burden for complying with the requirements of parts 43, 45, and 49.

The proposed amendments to § 45.2 would move the requirements of paragraphs (f) and (g) to proposed § 49.12, in order to better organize regulations related to SDRs. The proposed amendments to § 45.14 would require reporting counterparties to verify swap data reported to an SDR pursuant to the policies and procedures established by that SDR and would require SEFs, DCMs, and reporting counterparties to provide additional information to the Commission regarding correction of errors and

[214] *See* 5 U.S.C. 601 *et seq.*

[215] *See* Policy Statement and Establishment of ''Small Entities'' for purposes of the Regulatory Flexibility Act, 47 FR 18618, 18618–21 (Apr. 30, 1982).

[216] *See* Swap Data Repositories, Proposed Rule, 75 FR 80898, 80926 (Dec. 23, 2010) (basing determination in part on the central role of SDRs in swaps reporting regime, and on the financial resource obligations imposed on SDRs).

[217] *See* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules, Final Rule, 77 FR 20128, 20194 (Apr. 3, 2012) (basing determination in part on minimum capital requirements).

[218] The Commission has previously certified that DCOs are not small entities for purposes of the RFA. *See* Derivatives Clearing Organization General Provisions and Core Principles, Final Rule, 76 FR 69334, 69428 (Nov. 8, 2011).

[219] *See* 7 U.S.C. 2(e).

[220] *See* Opting Out of Segregation, Final Rule, 66 FR 20740, 20743 (Apr. 25, 2001). The Commission also notes that this determination was based on the definition of ECP as provided in the Commodity Futures Modernization Act of 2000. The Dodd-Frank Act amended the definition of ECP as to the threshold for individuals to qualify as ECPs, changing an individual who has total assets in an amount in excess of to an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of. Therefore, the threshold for ECP status is currently higher than was in place when the Commission certified that ECPs are not small entities for RFA purposes, meaning that there are likely fewer entities that could qualify as ECPs than when the Commission first made the determination.

[221] *See* 44 U.S.C. 3501.

omissions in swap data in certain circumstances. The proposed amendments to § 43.3 would require SEFs, DCMs, and reporting counterparties to provide additional information to the Commission regarding correction of errors and omissions in swap transaction and pricing data in certain circumstances and would move the requirements of paragraphs (f) and (g) to proposed § 49.28. The proposed amendments to part 49 would require SDRs to: (i) Continue to amend Form SDR as required, but remove the annual amendment requirement and limit the amendment requirement to before an application for registration is granted, as set forth in proposed § 49.3(a)(5); (ii) provide notifications and certifications to the Commission related to equity interest transfers, as set forth in proposed § 49.5; (iii) request transfer of registration, as set forth in proposed § 49.6; (iv) provide open swaps reports to the Commission, as set forth in proposed § 49.9; (v) correct errors and omissions in SDR data and create policies and procedures to accomplish the corrections, as set forth in proposed § 49.10(e); (vi) compile and distribute to each applicable reporting counterparty an open swaps report and to receive a response to each open swaps report, as set forth in proposed § 49.11; (vii) establish automated systems for monitoring, screening, and analyzing all SDR data in their possession in the form and manner as may be directed by the Commission under proposed § 49.13(a); (viii) provide SDR users and potential users with SDR policies and procedures related to reporting SDR data, as provided in proposed § 49.26(j); (ix) operate continuously, except for normal closing hours and special closing hours, as provided in proposed § 49.28; and (x) provide the Commission with information related to their business as an SDR and such information as the Commission determines to be necessary to perform its duties under the CEA and Commission regulations and provide the Commission with information and/or SDR data as requested to demonstrate SDR compliance with the CEA and Commission regulations, as set forth in proposed § 49.29.

The Commission therefore is submitting this proposal to the Office of Management and Budget (''OMB'') for its review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act (''FOIA'') and 17 CFR 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the Act, from making public data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.[222] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[223]

1. Revisions to Collection 3038–0096 (Swap Data Reporting)

i. Amended § 45.2

The Commission is proposing to remove paragraphs (f) and (g) from § 45.2 in order to move the requirements of these paragraphs to proposed § 49.12. Paragraphs (f) and (g) contain recordkeeping requirements specific to SDRs. Current § 49.12 already incorporates the requirements of current § 45.2(f) and (g), and proposed § 49.12 would include the same requirements, but this proposed deletion and move is intended to better organize regulations for SDRs by locating as many SDR requirements as possible in part 49 of the Commission's regulations. Moving the requirements would however modify collection 3038–0096 because it would remove these recordkeeping requirements from part 45 of the Commission's regulations. As a result, the Commission estimates that moving these requirements would result in a reduction of 50 annual burden hours for each SDR in collection 3038–0096, for a total reduction of 150 annual burden hours across all three SDRs.

ii. Amended § 45.14

Proposed § 45.14(a) would require all reporting counterparties to verify the accuracy and completeness of all swap data for all open swaps to which they are the reporting counterparty. Reporting counterparties would comply with this provision by conforming to the verification policies and procedures of the relevant SDR(s) established pursuant to proposed § 49.11(a), including receiving and responding to the open swaps reports provided by the SDR(s). Section 21(c)(2)[224] of the Act requires SDRs to confirm the accuracy of reported swap data with the counterparties to the swap. Compliance with proposed § 45.14(a) would constitute a collection of information not currently included in collection 3038–0096, and therefore would require a revision of that collection.

Compliance with proposed § 45.14(a) would be based on compliance with SDR verification policies and procedures, but would require reporting counterparties to receive and respond to open swaps reports on a weekly or monthly basis, depending on the registration status of the reporting counterparty. The Commission expects that compliance with this section would include: (1) A one-time hours burden to establish internal systems needed to perform their verification responsibilities, and (2) an ongoing hours burden to complete the verification process for each report provided by an SDR.

In order to comply with the relevant SDR verification policies and procedures as required to complete the verification process, the Commission believes that reporting counterparties would be required to create their own verification systems or modify their existing connections to the SDRs. The Commission estimates that each reporting counterparty would incur an initial, one-time burden of 100 hours to build, test, and implement their verification systems based on SDR instructions. This burden may be reduced, if complying with SDR verification requirements only requires reporting counterparties to make small modifications to their existing SDR reporting systems, but the Commission is estimating the burden based on the creation of a new system. The Commission also estimates an ongoing annual burden of 10 hours per reporting counterparty to maintain their verification systems and to make any needed updates to verification systems to conform to any changes to SDR verification policies and procedures. As there are approximately 1,702 reporting counterparties based on data available to the Commission, the Commission estimates a one-time overall hours burden of 170,200 hours to build reporting counterparty verification systems and an ongoing annual overall hours burden of 17,020 hours to maintain the reporting counterparty verification systems.

Proposed § 45.14(a) would also require reporting counterparties to reconcile the swap data in their internal books and records with the swap data in each open swaps report provided by an SDR and to respond to each open swaps report with a verification of data accuracy or a notice of discrepancy, as instructed by the relevant SDR verification policies and procedures. For SD, MSP, or DCO reporting counterparties, data verification would

[222] 7 U.S.C. 12.

[223] 5 U.S.C. 552a.

[224] 7 U.S.C. 24a(c)(2).

be at most a weekly occurrence for each SDR where the reporting counterparty maintains any open swaps. For non-SD/MSP/DCO reporting counterparties, data verification would be at most a monthly occurrence for each SDR where the reporting counterparty maintains any opens swaps. The Commission also expects, based on discussions with SDRs and reporting counterparties, that the verification process will be largely automated for all parties involved. The Commission is therefore estimating an ongoing average burden of two hours per open swaps report per reporting counterparty.

As there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission, the Commission estimates[225] that these 117 reporting counterparties would, at maximum, be required to verify data 52 times per year, for an overall additional annual hours burden of 12,168 ongoing burden hours related to the verification process for these reporting counterparties. The Commission also estimates, based on data available to the Commission, that there are 1,585 non-SD/MSP/DCO reporting counterparties.[226] The Commission estimates that these 1,585 reporting counterparties would be required to, at maximum, verify data 12 times per year, for an overall additional annual hours burden of 38,040 burden hours related to verification process for these reporting counterparties.

Proposed § 45.14(b) would, similar to current § 45.14, require SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap data previously reported to an SDR, or erroneously not reported to an SDR as required, as soon as technologically practicable after discovery of the errors or omissions. Proposed § 45.14(b) would also require a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission.[227] These proposed requirements, being effectively the same as the requirements in current § 45.14, do not require amendments to the collection.

Proposed § 45.14(b)(1)(ii) does, however, include the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be corrected within three business days and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan. This requirement would constitute a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty would, on average need to provide notice and initial assessments to the Commission under proposed § 45.14(b)(1)(ii) once per year and that each instance would require 30 burden hours.[228] As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 51,870 hours related to this requirement. This estimate is based on the Commission's experience with the current practices of SEFs, DCMs, and reporting counterparties regarding the reporting of errors and omissions, including the initial assessments and remediation plans that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to proposed § 45.14(b)(1)(ii).

The Commission therefore estimates that the overall burden for updated Information Collection 3038–0096 will be as follows:

Estimated number of respondents affected: 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties.

Estimated annual number of responses per respondent: 257,595.

Estimated total annual responses: 446,154,518.

Estimated burden hours per response: 0.005.

Estimated total annual burden hours per respondent: 1,316.

Estimated aggregate total burden hours for all respondents: 2,279,202.

2. Revisions to Collection 3038–0070 (Real-Time Transaction Reporting)—Amended § 43.3

Proposed § 43.3(e) would, as with swap data under proposed § 45.14(b), require SEFs, DCMs, and reporting counterparties to correct errors and omissions in swap transaction and pricing data previous reported to an SDR or erroneously not reported to an SDR as soon as technologically practicable after discovery of the errors or omissions. Proposed § 43.3(e) would also require a non-reporting counterparty to report a discovered error or omission to the relevant SEF, DCM, or reporting counterparty as soon as technologically practicable after discovery of the error or omission. These proposed requirements are intend to match the requirements in proposed § 45.14(b), but are also effectively the same as the requirements of current § 43.3(e).[229] These proposed requirements therefore do not require amendments to the collection.

Proposed § 43.3(e)(1)(ii) does, however, include the new requirement for SEFs, DCMs, and reporting counterparties to notify the Director of DMO when errors or omissions cannot be corrected within three business days and, in such case, to provide the Director of DMO with an initial assessment of the errors and omissions and an initial remediation plan. This requirement would constitute a new collection of information. The Commission estimates that each SEF, DCM, and reporting counterparty would, on average need to provide notice and initial assessments to the Commission under proposed

[225] Though there are 117 SDs, MSPs, or DCOs that clear swaps registered with the Commission that could be a reporting counterparty, not all potential reporting counterparties would be performing data verification for any given verification cycle. Only those reporting counterparties with open swaps as of the moment the SDRs create the open swaps reports would perform data verification for that verification cycle.

[226] Though there are 1,585 non-SD/MSP/DCOs that could be a reporting counterparty, not all potential reporting counterparties would be performing data verification for any given verification cycle. Only those reporting counterparties with open swaps as of the moment the SDRs create the open swaps reports would perform data verification for that verification cycle.

[227] The Commission notes that proposed § 45.14(b)(2) does add provisions that are not present in current § 45.14(b) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 45.14(b) and proposed § 45.14(b)(2) does not change these responsibilities.

[228] The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but is estimating one notice and initial assessment here, as the proposed requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then prompt corrections pursuant to proposed § 45.14(b).

[229] The Commission notes that proposed § 43.3(e)(2) does add provisions that are not present in current § 43.3(e)(1) to address the situation where a non-reporting counterparty does not know the identity of the reporting counterparty. The Commission does not believe that these additions have PRA implications, as the amount of information the non-reporting counterparty must provide and the frequency with which it must be provided remain the same as the current requirement and are de minimis. The only change is the requirement that non-reporting counterparties inform the SEF or DCM of errors, instead of the reporting counterparty. SEFs and DCMs have correction responsibilities under current § 43.3(e)(1) and proposed § 43.3(e)(2) does not change these responsibilities.

§ 43.3(e)(1)(ii) once per year and that each instance would require 30 burden hours.[230] As there are approximately 1,729 SEFs, DCMs, and reporting counterparties that handle swaps, the Commission estimates an overall additional annual hours burden of 51,870 hours related to this requirement. This estimate is based on the Commission's experience with SEFs, DCMs, and reporting counterparties current practices regarding the reporting of errors and omissions, including the initial assessments and remediation plans that SEFs, DCMs, and reporting counterparties provide to the Commission under current practice. The Commission does not anticipate any one-time, initial burdens related to proposed § 43.3(e)(1)(ii).

The Commission is also proposing to remove paragraphs (f) and (g) from § 43.3 in order to move the requirements of these paragraphs to proposed § 49.28. Paragraphs (f) and (g) contain requirements for SDRs related to their operating hours. Proposed § 49.28 would include all of the current § 43.3(f) and (g) requirements, because this proposed deletion and move is intended to better organize regulations for SDRs by locating as many SDR requirements as possible in part 49 of the Commission's regulations. Moving the requirements would modify collections 3038–0070 and 3038–0086 because it will remove these recordkeeping requirements from part 43 of the Commission's regulations and add them to part 49 of the Commission's regulations. The Commission estimates that the public notice requirements of § 43.3(f) and (g) require SDRs to issue three notices per year and spend five hours creating and disseminating each notice, for a total of 15 hours annually for each SDR, for a total of 45 annual burden hours being moved across all three SDRs. As a result, the Commission estimates that moving these requirements would result in a total reduction of 45 annual burden hours for SDRs in collection 3038–0070.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038–0070 will be as follows:

Estimated number of respondents affected: 1,732 SEFs, DCMs, DCOs, SDRs, and reporting counterparties.

Estimated annual number of responses per respondent: 21,247.

Estimated total annual responses: 36,799,804.

Estimated burden hours per response: 0.033.

Estimated total annual burden hours per respondent: 701.

Estimated aggregate total burden hours for all respondents: 1,214,392.

3. Revisions to Collection 3038–0086 (SDR Registration and Regulatory Requirements)[231]

The Commission proposes to revise collection 3038–0086 to account for changes in certain SDR responsibilities under proposed amendments to §§ 49.3, 49.5, 49.6, 49.9, 49.10, 49.11, 49.13, and 49.26, and to the proposed addition of §§ 49.28, 49.29, and 49.30. The estimated hours burdens and costs provided below would be in addition to or subtracted from the existing hours burdens and costs in collection 3038–0086. The Commission also describes a number of proposed changes to sections that do not have PRA implications below, for clarity purposes.

The Commission will also reduce the estimated number of SDRs from four to three, as there are currently three SDRs provisionally registered with the Commission that would be subject to the proposed collection requirements.

i. Amended § 49.3

The proposed amendments to § 49.3(a)(5) would remove the requirement for each SDR to file an annual amendment to its Form SDR and, once an SDR's application for registration is granted, the requirement for SDRs to amend the Form SDR whenever any of the information in the Form SDR becomes inaccurate. The proposed amendments would reduce the PRA burden for SDRs by lowering the number of filings required for each SDR. The Commission estimates that the PRA burden for each SDR would remain at 15 hours per filing, but that the number of filings per year would be reduced from three to two, meaning that the proposed amendments to § 49.3(a)(5) would reduce the burden on SDRs by 15 hours per year, for a total reduction of 45 annual burden hours across all three SDRs. This estimate is based on the Commission's experience with current SDR practices and the original supporting statement for collection 3038–0086.[232] The Commission does not anticipate any one-time, initial burden changes related to proposed § 49.3(a)(5).

ii. Amended § 49.5

The proposed amendments to § 49.5 would require SDRs to file a notification with the Commission for each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR within ten business days of the firm obligation to transfer the equity interest, to provide the Commission with supporting documentation for the transaction on request, and to file a certification with the Commission that the SDR will meet all of its obligations under the Act and the Commission's regulations within two business days of the completion of the equity interest transfer. The Commission estimates that the requirements of proposed § 49.5 would create a burden of 15 hours per SDR for each qualifying equity interest transfer. Equity interest transfers for SDR are rare, so the Commission conservatively estimates that each SDR would provide information pursuant to proposed § 49.5 no more often than once every three years. As a result, the estimated average annual PRA burden related to proposed § 49.5 would be 5 hours per SDR, or 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to proposed § 49.5.

iii. Amended § 49.6

The proposed amendments to § 49.6 would require an SDR seeking to transfer its registration to another legal entity due to a corporate change to file a request for approval with the Commission before the anticipated corporate change, including the specific documents and information listed in proposed § 49.6(c). The Commission estimates that the requirements of proposed § 49.6 would create a burden of 15 hours per SDR for each transfer of registration. Transfers of registration for SDR are rare, so the Commission conservatively estimates that each SDR would provide information pursuant to proposed § 49.6 no more often than once every three years. As a result, the estimated average annual PRA burden related to proposed § 49.6 would be 5 hours per SDR, or 15 hours total for all three SDRs. The Commission does not anticipate any one-time, initial burdens related to proposed § 49.6.

[230] The Commission notes that, currently, it receives significantly less than one notice and initial assessment of reporting errors and omissions per SEF, DCM, or reporting counterparty per year, but is conservatively estimating one notice and initial assessment annually here, as the proposed requirements of § 45.14(a) may reveal more reporting errors to reporting counterparties that would then prompt corrections pursuant to proposed § 43.3(e).

[231] The Commission is also proposing to reduce the number of SDRs used in collection 3038–0086 to calculate burdens and costs from 4 to 3. There are currently three SDRs provisionally registered with the Commission. The Commission has not received any applications for SDR registration since 2012.

[232] The original supporting statement for collection 3038–0086 estimated that the requirements of current § 49.3(a)(5) would necessitate three filings per year and 15 hours per filing.

iv. Amended § 49.9

The proposed amendments to § 49.9 would remove the current text of the section and replace it with requirements related to SDRs providing open swaps reports to the Commission. The new § 49.9 would require SDRs to provide reports to the Commission with swap data for every open swap an SDR maintains, as instructed by the Commission. The instructions may include the method, timing, frequency, and format of the open swaps reports.

The Commission estimates that SDRs would incur a one-time initial burden of 250 hours per SDR for SDRs to create or modify their systems to provide the open swaps reports to the Commission as instructed, for a total estimated hours burden of 750 hours. This burden may be mitigated by the fact that SDRs currently have systems in place to provide similar information to the Commission, which would reduce the effort needed to create or modify SDR systems. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance or adjustments to SDR reporting systems.

The Commission expects that the process for providing the open swaps reports to the Commission would be largely automated and therefore estimates a burden on the SDRs of 2 hours per report. Though the Commission is not prescribing the frequency of the open swaps reports at this time, the Commission estimates, only for the purposes of this burden calculation, that the SDRs would provide the Commission with 365 open swaps reports per year, meaning that the estimated ongoing annual additional hours burden for generating the open swaps reports and providing the reports to the Commission is 730 hours per SDR.

The Commission therefore estimates a total ongoing additional annual hours burden related to proposed § 49.9 of 760 hours per SDR, for a total estimated ongoing annual burden of 2,280 hours.

v. Amended § 49.10

Proposed § 49.10(e) would require SDRs to accept, process, and disseminate corrections to SDR data errors and omissions. Proposed § 49.10(e) would also require SDRs to have policies and procedures in place to accomplish the corrections.

The Commission estimates that SDRs would incur a one-time initial burden of 100 hours per SDR to update and implement the systems, policies, and procedures necessary to complete the corrections process, for a total increased initial hours burden of 300 hours across all three SDRs. This burden may be mitigated by the fact that SDRs already have systems, policies, and procedures in place to accomplish corrections to SDR data and that the SDRs currently make such corrections on a regular basis. The Commission additionally estimates 30 hours per SDR annually to perform any needed maintenance on correction systems and to update corrections policies and procedures as needed.

The Commission anticipates that the process for SDRs to perform corrections would be largely automated, as this is the case with current SDR corrections. Based on swap data available to the Commission and discussions with the SDRs, the Commission estimates that an SDR would perform an average of approximately 2,652,000 data corrections per year. Based on the same information, the Commission estimates that performing each correction would require 2 seconds from an SDR. As a result, the Commission estimates that the ongoing burden of performing the actual corrections to SDR data would be approximately 1,473 hours per SDR annually, on average.

The Commission therefore estimates a total additional ongoing hours burden related to proposed § 49.10(e) of 1,503 hours per SDR annually, for a total estimated ongoing burden of 4,509 hours.

vi. Amended § 49.11

The proposed amendments to § 49.11 modify the existing obligations on SDRs to confirm the accuracy and completeness of swap data. Proposed § 49.11(b) would require SDRs to distribute open swaps reports to reporting counterparties on a weekly or monthly basis, depending on the registration status of a reporting counterparty. Proposed § 49.11(c) would require SDRs to receive a verification of data accuracy or a notice of discrepancy from the reporting counterparties in order to complete the verification process. Proposed § 49.11(a) and § 49.11(d) [233] do not have PRA implications beyond the burdens discussed for paragraphs (b) and (c) below.

While SDRs are already required to confirm the accuracy and completeness of swap data under current § 49.11, the Commission anticipates that the requirements in proposed § 49.11 would impose different burdens on the SDRs than the current regulation. The Commission estimates that each SDR would incur an initial, one-time burden of 500 hours to build, test, and implement updated verification systems that would generate and disseminate the open swaps reports and receive the verifications of data accuracy or notices of discrepancy, for a total of 1,500 initial burden hours across all SDRs. The Commission also estimates 50 hours per SDR annually for SDRs to maintain their verification systems and make any needed updates to verification policies and procedures required under proposed § 49.11(a) and (c).

Currently, SDRs are required to confirm swap data by contacting both counterparties for swaps that are not submitted by a SEF, DCM, DCO, or third-party service provider every time the SDR receives swap data related to the swap. For swaps reported by a SEF, DCM, DCO, or third-party service provider, the SDRs must currently assess the swap data to form a reasonable belief that the swap data is accurate every time swap data is submitted for a swap. Under proposed § 49.11(b) and (c), SDRs would only generate the open swaps reports at most once a week for any reporting counterparty, regardless of how often swap data is submitted for an open swap, and would only be required to provide the open swaps reports to the reporting counterparties, without needing to contact the non-reporting counterparty or evaluate the swap data. The Commission also anticipates, based on discussions with SDRs and other market participants, that the verification process would be largely automated once the processes are in place.

At maximum, the SDRs would be required to create open swaps reports for the 117 SD/MSP/DCO reporting counterparties every week (6,084 reports per year) and open swaps reports for the 1,585 non-SD/MSP/DCO reporting counterparties every month (19,020 reports per year) for a total of 25,104 reports per year overall. The Commission estimates that creating each report would require 2 hours, for a total of 50,208 hours per SDR per year or 150,624 hours overall across all SDRs.

vii. Amended § 49.12

Proposed amendments to § 49.12(a) and (b) would incorporate existing SDR recordkeeping obligations from § 45.2(f) and (g) respectively, which are already applicable to SDRs under current § 49.12(a). As the recordkeeping

[233] The Commission notes that requirements of part 40 of the Commission's regulations would apply to SDRs amending their verification policies and procedures regardless of proposed § 49.11(d), because verification policies and procedures would fall under the part 40 definition of a ''rule.'' *See* 17 CFR 40.1(i) (definition of rule for the purposes of part 40). PRA implications for proposed § 49.11(d) would be included under the existing approved PRA collection for part 40 of the Commission's regulations.

requirements being moved from § 45.2 already apply to SDRs under current § 49.12, the Commission does not believe that amended § 49.12(a) or (b) would require any revision to hours burden related to § 49.12 already included in collection 3038–0086. Proposed amendments to § 49.12(c) would require SDRs to maintain records of data validation errors and of data reporting errors, which would include records of data subsequently corrected by a SEF, DCM, or reporting counterparty pursuant to parts 43, 45, and 46. Proposed § 49.12(c) does not however add any new requirement to part 49, as all of the records to be kept would already be required to be kept by existing recordkeeping obligations as data submitted under parts 43, 45, or 46. As a result, the Commission does not believe that amended § 49.12(c) would require an additional PRA burden beyond that already included in collection 3038–0086.

viii. Amended § 49.13

Proposed § 49.13(a) would require SDRs to monitor, screen, and analyze SDR data in the form and manner determined by the Commission. This would involve generating reports and other information at the request of the Commission by calculating or compiling information and SDR data maintained by the SDR. Proposed § 49.13(b) would require SDRs to have sufficient resources to perform such obligations. The Commission proposes to amend existing collection 3038–0086 to account for any burdens associated with responding to Commission requests to monitor, screen, and analyze SDR data. While SDRs are currently required to perform monitoring, screening, and analyzing tasks as required by the Commission, the proposed amendments would facilitate more frequent requests from the Commission, which may increase the burden on SDRs. The Commission anticipates that requests would be both one-time requests and requests to establish periodic reports. The Commission estimates that it would make 10 new requests per SDR per year, and that each request would require an average of 40 hours to respond, for a total burden of 400 hours per SDR per year, or 1,200 hours per year overall. The Commission anticipates that the number of new requests would decrease over time as the Commission's resources for utilizing SDR data improve. The Commission does not anticipate any one-time, initial burdens related to proposed § 49.13(a).

Proposed § 49.13(c) would require SDRs to notify the Commission of any SDR data that the SDR receives that is not reported in accordance with parts 43, 45, or 46, as applicable. Currently, under § 49.15(c), SDRs are only required to notify the Commission when swap transaction and pricing data is not reported in compliance with the obligations under part 43. Proposed § 49.13(c) would expand this obligation to also include SDRs notifying the Commission when a transaction is reported that is not in accordance with part 45 or part 46. The Commission anticipates that the notification provisions in proposed § 49.13(c) would create little or no PRA burden on SDRs beyond those existing under current § 49.15(c), as the SDRs would already have the necessary systems and procedures in place due to the existing requirements in current § 49.15(c).

ix. Amended § 49.26

Proposed new § 49.26(j) would require SDRs to provide their users and potential users with the SDR's policies and procedures on reporting SDR data, including SDR data validation procedures, swap data verification procedures, and SDR data correction procedures. The Commission anticipates that SDRs would incur a one-time burden of 20 burden hours to draft written documents that they would provide to their users and potential users, for a total increase of 60 one-time burden hours across SDRs. The Commission also anticipates that SDRs would update their policies once per year and incur a recurring burden of 10 hours annually from providing any updated reporting policies and procedures to their users and potential users, as needed, for a total increase of 30 ongoing burden hours across SDRs.

x. New § 49.28

Proposed new § 49.28 incorporates existing provisions of § 43.3(f) and (g) with respect to hours of operation with minor changes and clarifications. Proposed § 49.28 extends the provisions of current § 43.3(f) and (g) to include all SDR data and clarifies the different treatment of regular closing hours and special closing hours. SDRs currently have closing hours systems, policies, and procedures that apply to all SDR functions and all SDR data under the current requirements. The proposed requirements related to declaring regular closing hours and special closing hours would also effectively follow current requirements, without necessitating changes to current SDR systems or practices. The Commission does however anticipate that the SDRs would need to issue notices to the public related to closing hours under proposed § 49.28(a) and (c). The Commission estimates that each SDR would issue three notices per year and spend five hours creating and disseminating each notice, for a total of 15 hours per year preparing and providing public notices per SDR, and a total of 45 hours per year across all SDRs.

xi. New § 49.29

Proposed new § 49.29 would require each SDR to provide, upon request by the Commission, information relating to its business as an SDR, and such other information that the Commission needs to perform its regulatory duties. This provision also requires each SDR, upon request by the Commission, to provide a written demonstration of compliance with the SDR core principles and other regulatory obligations. The PRA burden associated with such responses is dependent on the number of requests made and the complexity of such requests. Based on its experience with requests to DCMs, the Commission would estimate that each SDR would likely receive on average between three and five requests per year, considering that an SDR is a newer type of registered entity than a DCM. The Commission anticipates that the number of requests would decrease over time. The Commission also anticipates that each such request would require the SDR to spend 20 hours to gather information and formulate a response, and bases its estimate of burden hours assuming five such requests per year, for a total additional hours burden of 100 hours per SDR per year, or 300 hours per year across all SDRs. The Commission does not anticipate that SDRs would incur any one-time hours burden or costs in complying with this regulation.

The Commission therefore estimates that the total overall burdens for updated Information Collection 3038–0086 will be as follows:

Estimated number of respondents affected: 3 SDRs.

Estimated annual number of responses per respondent: 154,327,169.

Estimated total annual responses: 462,981,508.

Estimated burden hours per response: 0.0006.

Estimated total annual burden hours per respondent: 99,197.

Estimated aggregate total burden hours for all respondents: 297,526.

4. Request for Comment

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will

consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160 or from *http://RegInfo.gov.* Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this Release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this Release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) [234] of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

In this release, the Commission is proposing revisions to existing regulations in parts 23, 43, 45, and 49. The Commission also is proposing new regulations in part 49. Together, these proposed revisions and additions are intended to address swap data verification and to improve the quality of data reporting generally. Some of the proposed amendments are substantive. A number of amendments, however, are non-substantive or technical, and therefore would not have associated cost-benefits implications.[235]

To the extent costs are quantifiable, they have been discussed in two places: The PRA section in this release and in the PRA-related information collection requests filed with OMB. In general, however, given the small number of existing SDRs and their differences in size and operations, many of the costs associated with this proposed rulemaking were not readily quantifiable without relying on and potentially divulging confidential information. The Commission therefore specifically requests comments to help quantify the costs of this rulemaking.

2. Background

In 2011, the Commission issued the Part 49 Adopting Release. The duties and requirements included in the Part 49 Adopting Release require SDRs to, among other requirements, accept and confirm data reported to the SDRs. The Commission also believed that the Commission would be better able to monitor the overall swaps market and individual market participants through SDR collection and maintenance of swap data as required in parts 45 and 49. Before the adoption of the Dodd-Frank Act and its implementing regulations, the swaps market generally, and transactions and positions of individual market participants in particular, were not transparent to regulators or to the public.

Due to these requirements for SDRs to collect and maintain SDR data, the Commission has now had the opportunity to work directly with SDR data reported to, and held by, SDRs. Based on its experience working with SDR data, along with extensive feedback received from market participants, the Commission believes that improving data quality would help enhance the data's usefulness. In this release, the Commission has focused on the operation and implementation of CEA section 21,[236] which contains requirements related to SDRs, including the requirement to confirm data.[237] The Commission is also proposing to modify a number of other regulations for clarity and consistency and to enhance the Commission's ability to monitor and supervise the swaps market.

Prior to discussing the proposed rule changes, the Commission describes below the current environment that would be impacted by these changes. Three SDRs are currently provisionally registered with the Commission: CME, DDR, and ICE.

Each SDR has unique characteristics and structures that determine how the proposed rule changes would impact its operations. For example, SDRs affiliated with DCOs tend to receive a large proportion of their SDR data from swaps cleared through those affiliated DCOs, while independent SDRs tend to receive SDR data from a wider range of market participants.

The current reporting environment also involves third-party service providers. These entities assist market participants with fulfilling the applicable data reporting requirements, though the reporting requirements do not apply to third-party service providers directly.

Given that data quality depends on the underlying data reporting requirements, the proposed changes should be considered in context with other planned improvements to parts 43 and 45. As discussed in the Roadmap, the Commission is in the process of improving data reporting requirements, including modifying the requirements to be more clear and consistent with other regulators' requirements. The amendments proposed in this

[234] 7 U.S.C. 19(a).

[235] The Commission believes there are no cost-benefit implications for proposed §§ 49.2, 49.15, 49.16, 49.18, 49.20, 49.24, and 49.31.

[236] *See* 7 U.S.C. 24a.

[237] *See* 7 U.S.C. 24a(c)(2).

rulemaking are one part of this larger effort to ensure that better-quality data is available to market participants and the Commission.

Current regulations have not created results that meet the Commission's expectations for data quality. For example, current regulations do not include a specific affirmative obligation for swap counterparties to review reported swap data for errors, but instead require swap counterparties to correct errors and omissions only after the discovery of inaccurate data.[238] The result has been that market participants too often have not acted to review and correct reported swap data. It is not uncommon for Commission staff to find discrepancies between open swaps information available to the Commission and reported data for the same swaps. In the processing of swap data to generate the CFTC's Weekly Swaps Report,[239] for example, there are instances when the notional amount differs between the Commission's open swaps information and the swap data reported for the same swap. Other common examples of discrepancies include incorrect references to an underlying currency, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen. These examples, among others, strongly suggest a need for better verification of reported swap data. Improved verification could lead to these errors being discovered and corrected in a timely manner.

SDR policies and procedures have also created additional challenges for swap data accuracy. As discussed above, certain SDR policies and procedures for swap data have been based on negative affirmation, *i.e.,* predicated on the concept that reported swap data is accurate and confirmed if a reporting counterparty does not inform the SDR of errors or omissions, or otherwise make subsequent modifications to data reported for a swap within a certain period of time.[240] As reporting counterparties are typically not reviewing their reported swap data maintained by the SDRs, the data is effectively assumed to be accurate and errors and omissions are not sufficiently discovered and corrected. As described in more detail in the section VII.C.8.iii discussion of price discovery below, the volume of inaccurate swap data that is discovered by market participants or the Commission shows that current regulations are insufficient to produce the quality of swap data the Commission expects and needs to fulfill its regulatory responsibilities.

Based on its experience with data reporting, the Commission believes that certain regulations, particularly in parts 43, 45, and 49, should be amended to improve swap data accuracy and completeness. The regulatory changes being proposed to meet this objective include requiring SDRs and reporting counterparties to verify the accuracy and completeness of reported swap data. Many of the proposed regulations have costs and benefits that must be considered. These will be discussed individually below.

This release also includes amendments to part 49 to improve and streamline the Commission's oversight of SDRs. These proposed regulations include allowing the Commission to request demonstrations of compliance and other reports from SDRs.

For each proposed amendment discussed below, the Commission summarizes the changes,[241] and identifies and discusses the costs and benefits attributable to the proposed changes. The Commission then considers alternatives to the rules proposed in this release. Finally, the Commission considers the costs and benefits of all of the proposed rules jointly in light of the five public interest considerations in CEA section 15(a).

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally. Many swaps transactions involving U.S. firms occur across international borders and some Commission registrants are organized outside of the United States, with leading industry members often conducting operations both within and outside the United States, and with market participants commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits refers to the proposed rules' effects on all swaps activity, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[242] The Commission contemplated this cross-border perspective in 2011 when it adopted § 49.7, which applies to trade repositories located in foreign jurisdictions.[243]

3. Baseline

There are separate baselines for the costs and benefits that might arise from the proposed regulations in this release. The Commission believes that for proposed paragraphs (c) added to §§ 23.204 and 23.205, the baseline is the current practice. The baseline for proposed § 45.14 is current § 45.14. The baseline for proposed amendments to current part 49 regulations is the existing part 49 and current practices. For proposed § 49.12, the baseline is current § 49.12, as well as § 45.2(f) and (g), which would be replaced by proposed § 49.12. For proposed § 49.17, the baseline is current §§ 49.17 and 45.13.

In this release, the Commission is proposing to adopt four new regulations: §§ 49.28, 49.29, 49.30, and 49.31. For proposed new § 49.28 the baseline is current § 43.3(f) and (g), because the requirements in § 43.3(f) and (g) are being moved to proposed § 49.28. For proposed new §§ 49.29 and 49.30, the baselines are current practices. Proposed new § 49.31 concerns internal Commission practices and is not subject to consideration of costs and benefits.

4. Costs and Benefits of Proposed Amendments to Part 49

i. § 49.3—Procedures for Registration

The Commission is proposing to amend § 49.3 to remove the requirements for SDRs to: (i) file an annual amendment to Form SDR; and (ii) amend Form SDR after the Commission grants the application for registration under § 49.3(a), as required in current § 49.3(a)(5). The Commission believes the annual filing requirement and the requirement to continuously update Form SDR once the application

[238] *See* 17 CFR 43.3(e); 17 CFR 45.14.

[239] *See* CFTC's Weekly Swaps Report, *https://www.cftc.gov/MarketReports/SwapsReports/index.htm.*

[240] *See* 17 CFR 49.11(b)(1)(ii) and (b)(2)(ii).

[241] As described throughout this release, the Commission is also proposing a number of non-substantive, conforming rule amendments in this release, such as renumbering certain provisions and modifying the wording of existing provisions. Non-substantive amendments of this nature may be described in the cost-benefit portion of this release, but the Commission will note that there are no costs or benefits to consider.

[242] *See* 7 U.S.C. 2(i). CEA section 2(i) limits the applicability of the CEA provisions enacted by the Dodd-Frank Act, and Commission regulations promulgated under those provisions, to activities within the U.S., unless the activities have a direct and significant connection with activities in, or effect on, commerce of the U.S.; or contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA enacted by Dodd-Frank Act. Application of section 2(i)(1) to the existing regulations under part 45 with respect to SDs/MSPs and non-SD/MSP counterparties is discussed in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

[243] *See* 17 CFR 49.7.

for registration has been granted currently in § 49.3(a)(5) are unnecessary for the Commission to successfully perform its regulatory functions.

(A) Costs and Benefits

The proposed amendments to § 49.3(a)(5) would benefit SDRs by reducing the amount of information that SDRs must provide to the Commission and the frequency with which the SDRs must provide the information. By removing the annual Form SDR amendment requirement and the requirement to update Form SDR after registration is granted, SDRs would be required to expend fewer resources to provide this information to the Commission. The Commission believes that current § 49.3(a)(5) is unnecessary as SDRs already submit much of the information in Form SDR in rule filings under part 40 or as required per other SDR regulations. The Commission also believes that this requirement would be unnecessary with new proposed § 49.29, which would provide the Commission with the ability to request the same information on an as-needed basis.

The costs of proposed § 49.3(a)(5) would not be significant and would largely be associated with any needed adjustments to SDRs policies and procedures related to reducing the number of updates to Form SDR.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.3(a)(5). Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.3(a)(5). Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

ii. § 49.5—Equity Interest Transfers

Proposed § 49.5(a) would require that SDRs: (i) Notify the Commission of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the SDR; and (ii) provide the Commission with supporting documentation upon request.

Proposed § 49.5(b) would require that the notice in § 49.5(a) be filed electronically with the Secretary of the Commission and DMO at the earliest possible time but in no event later than the open of business ten business days following the date upon which a firm obligation is made for the equity interest transfer.

Proposed § 49.5(c) would require that upon the transfer, whether directly or indirectly, the SDR shall file electronically with the Secretary of the Commission and DMO a certification that the SDR meets all of the requirements of section 21 of the CEA and the Commission regulations, no later than two business days following the date on which the equity interest was acquired.

(A) Costs and Benefits

The Commission believes that the proposed amendments would benefit SDRs by lowering the burdens related to notifying the Commission of equity interest transfers and by extending the time SDRs have to file transfer-related materials with the Commission. The proposed changes lower the burdens by removing the obligations in current § 49.5(a) to update Form SDR for an SDR that has been granted registration under § 49.3(a) and in current § 49.5(b) to provide specific information to the Commission with the equity interest transfer notification and replacing them with the ability for the Commission to request supporting documentation for the transfer as needed under proposed § 49.5(a). This would likely result in SDRs only providing the information the Commission deems necessary for any particular equity interest transfer, which may not include all of the documents or information required by current § 49.5. The proposed amendments also lower the burdens on SDRs by extending the notification timing requirement under current § 49.5(a) from one business day to ten business days. More time would allow SDRs more flexibility in time and resources needed to file the required notice.

The costs of proposed § 49.5 would be lower than the current requirements and would largely be associated with any needed adjustments to SDRs policies and procedures related to notification of equity interest transfer and the resources needed to provide the Commission with requested documentation. The costs would also include any additional costs stemming from the inclusion of ''indirect transfers'' of equity ownership in proposed § 49.5. This could increase the costs to SDRs, if the inclusion of indirect transfers results in more frequent equity interest transfers and the associated need to provide information to the Commission, but the inclusion of indirect transfers would benefit the Commission by providing more insight into equity interest transfers that could affect the business of an SDR, even though the equity interest transfer does not involve the SDR directly. As equity interest transfers are rare occurrences and the Commission does not anticipate that including indirect transfers would result in substantially more equity interest transfers, the Commission expects these potential additional costs to be small.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.5. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comment on its consideration of alternatives to proposed § 49.5. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

iii. § 49.6—Request for Transfer of Registration

Proposed § 49.6(a) would require an SDR seeking to transfer its SDR registration following a corporate change to file a request for approval to transfer the registration with the Secretary of the Commission in the form and manner specified by the Commission.

Proposed § 49.6(b) would specify that an SDR file a request for transfer of registration as soon as practicable before the anticipated corporate change. Proposed § 49.6(c) would set forth the information that must be included in the request for transfer of registration, including the documentation underlying the corporate change, the impact of the change on the SDR, governance documents, updated rulebooks, and representations by the transferee entity, among other things.

Proposed § 49.6(d) would specify that upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

(A) Costs and Benefits

The Commission believes that proposed § 49.6 would benefit SDRs by reducing the burdens on SDRs for successfully transferring an SDR registration to a successor entity. Proposed § 49.6 would require a more limited scope of information and representations from the transferor and

transferee entities than current § 49.6, which requires a full application for registration on Form SDR, including all Form SDR exhibits. This limited scope of information and representations would require less time and resources to prepare and submit than the current requirements.

The Commission does not believe that proposed § 49.6 would impose any additional costs on SDRs compared to the current requirement.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.6. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.6. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

iv. § 49.9—Open Swaps Reports Provided to the Commission

Proposed § 49.9(a) would require SDRs to provide the Commission with open swaps reports that contain an accurate reflection of the swap data for every swap data field required to be reported under part 45 for every open swap maintained by the SDR. Proposed § 49.9(b) would require SDRs to transmit all open swaps reports to the Commission as instructed by the Commission.

(A) Costs and Benefits

The costs imposed by this proposed requirement would include the resources SDRs must use to develop the infrastructure to create and deliver the open swaps reports as instructed by the Commission. In practice, the costs are expected to be mitigated by the fact that SDRs currently send open swaps reports to the Commission on a regular basis, which would help limit the costs. The SDRs may incur some costs from needing to provide open swaps reports in the standardized format required by the Commission, but the Commission does not expect the format of these reports to change frequently.

The Commission believes the proposed amendments would standardize the reports SDRs already provide, which would ensure that the reports will be delivered in a usable format, which will assist the Commission's regulatory oversight efforts. The Commission believes the largest cost imposed by these amendments would be the upfront costs to implement open swaps reporting systems, with incremental costs to maintain or modify SDR systems on an ongoing basis. The underlying information contained in the reports would also be similar to information SDRs would be required to send to reporting counterparties for verification purposes under proposed § 49.11(b).

The Commission currently uses open swaps reports to create and publish Commission papers and reports, including the weekly swaps report. These reports benefit market participants by analyzing SDR data sourced directly from the SDRs. This information on open swaps is unique because it is not available to the public until the Commission publishes its reports. The Commission also believes that market participants would indirectly benefit from the improved data quality of open swaps that would result from proposed § 49.9, as the information in the reports would help the Commission to better perform its regulatory functions.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.9. Are there additional costs or benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.9. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

v. § 49.10—Acceptance of Data

New § 49.10(e) would require SDRs to correct errors and omissions in SDR data that was previously reported, or erroneously not reported, to SDRs. Proposed § 49.10(e)(1)–(4) would set forth the specific requirements SDRs would need to meet to fulfill the general requirement in § 49.10(e): (i) Accept corrections for errors and omissions reported to, or erroneously not reported to, the SDR; (ii) correct errors and omissions as soon as technologically practicable after receiving a report of the errors or omissions; (iii) disseminate corrected SDR data to the public and the Commission, as applicable, as soon as technologically practicable after correcting the SDR data; and (iv) establish, maintain, and enforce policies and procedures designed to fulfill its correction responsibilities under § 49.10(e)(1)–(3).

(A) Costs and Benefits

Proposed § 49.10(e) could impose some costs on SDRs, but the Commission believes that the costs would not be significant and largely related to any needed updates to their error and omission correction systems. SDRs are currently required to identify cancellations, corrections, and omissions under parts 43 and 45.[244] Proposed § 49.10(e) is largely clarifying the SDRs' existing duties, and, for organizational purposes, placing the obligations in part 49, which is the Commission's main regulations governing SDRs. The costs of the proposed paragraph would be mitigated by the fact that SDRs currently routinely correct data errors and omissions and disseminate the corrections as required.

The Commission also expects there would be costs associated with establishing, maintaining, and enforcing the policies and procedures required by the proposed paragraph, but believes that these costs would not be significant and would be limited to initial creation costs and update costs for the policies and procedures as needed.

The Commission believes that one of the benefits from proposed § 49.10(e) is improved data quality resulting from collecting and disseminating accurate swap data. Proposed § 49.10(e) is intended to work in concert with proposed § 45.14 and proposed § 49.11, along with the data correction requirements of § 43.3(e). The Commission believes that market participants and the public would benefit from more complete and accurate swap transaction and pricing data that enhances price discovery. In addition, the Commission uses swap transaction and pricing data to produce public information on the swaps markets, such as the weekly swaps reports. The Commission also believes that market participants would benefit from the Commission using more accurate data to inform swaps markets policy and perform its other regulatory functions. SDRs would also benefit from greater clarity in their requirements to correct errors and omissions in SDR data.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.10. Are there additional costs and benefits that the Commission should

[244] *See* 17 CFR 43.3(e)(1), (3), (4); 17 CFR 45.14(c).

consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.10. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

vi. § 49.11—Verification of Swap Data Accuracy

Proposed § 49.11(a) would generally require that SDRs: (i) Verify the accuracy and completeness of swap data that the SDRs receive from SEFs, DCMs, and reporting counterparties, or third-party service providers acting on their behalf; and (ii) establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of that swap data.

Proposed § 49.11(b) would require SDRs to regularly distribute to each reporting counterparty an open swaps report detailing the swap data maintained by the SDR that contains the same information provided to the Commission in an open swaps report under proposed § 49.9. Proposed § 49.11(b)(1) would require SDRs to distribute open swaps reports that accurately reflect the swap data the SDR maintains for each of a particular reporting counterparty's open swaps, unless other Commission regulations prohibit the disclosure of certain swap data.

Proposed § 49.11(b)(2) would require SDRs to distribute the open swaps reports to SD/MSP/DCO reporting counterparties on a weekly basis, no later than 11:59 p.m. Eastern Time on the day of the week that the SDR chooses to regularly distribute the open swaps reports. Proposed § 49.11(b)(3) would require SDRs to distribute the open swaps reports to non-SD/MSP/DCO reporting counterparties on a monthly basis, no later than 11:59 p.m. Eastern Time on the day of the month that the SDR chooses to regularly distribute the open swaps reports.

Proposed § 49.11(c) would require SDRs to receive from each reporting counterparty to which it sends an open swaps report, in response to the open swaps report, either a verification of data accuracy signifying that the swap data contained in the distributed open swaps report is accurate and complete or a notice of discrepancy signifying that the swap data in the open swaps report contains one or more errors or omissions. Proposed § 49.11(c) would also require SDRs to establish, maintain, and enforce policies and procedures reasonably designed for the SDR to receive the notices.

Proposed § 49.11(d) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when creating and amending their verification policies and procedures.

(A) Costs and Benefits

The costs associated with the proposed amendments to § 49.11 would largely be borne by the three existing SDRs. The Commission expects that SDRs would incur initial costs from establishing systems to generate open swaps reports and to successfully distribute these reports to all reporting counterparties. The Commission also expects SDR to incur recurring costs related to any needed adjustments to their systems over time and to accommodate the arrival or departure of reporting counterparties. SDRs would also incur the cost of generating and distributing the particular open swaps reports, and receiving the responses from the reporting counterparties, but does not believe these changes would be significant because, based on discussions with the SDRs and other market participants, the Commission believes SDRs would largely automate the verification process.

The Commission believes that the benefits of the proposed amendments to § 49.11 would result from verification improving data accuracy and completeness. When paired with the proposed requirements of § 45.14 and the correction requirements of § 43.3(e), verification would alert reporting counterparties to errors and omission in SDR data for their open swaps. Reporting counterparties would be required to correct any errors or omissions discoverable in the open swaps reports the SDRs provide, including errors in trade-specific details, such as notional amounts and price. The Commission believes that SDRs and reporting counterparties would benefit from having clearer regulations.

The Commission also believes that the proposed verification requirements would improve the Commission's ability to monitor, measure, and regulate the swaps market, such as using more accurate data to improve monitoring for potential systemic risks and surveillance for potential threats to market integrity.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.11. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.11. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

vii. § 49.12—Swap Data Repository Recordkeeping Requirements

Proposed § 49.12(a) would require that SDRs keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the SDR, including, but not limited to, all SDR information and all SDR data reported to the SDR.

Proposed § 49.12(b)(1) would require that an SDR maintain all SDR information received by the SDR in the course of its business. Proposed § 49.12(b)(2) would require an SDR to maintain all SDR data and timestamps, and all messages to and from an SDR related to SDR data reported to the SDR throughout the existence of the swap to which the SDR data relates and for five years following final termination of the swap, during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access, and then for an additional period of at least ten years in archival storage from which such records are retrievable by the SDR within three business days.

Proposed § 49.12(c) would require SDRs to create and maintain records of errors related to SDR data validations and errors related to SDR data reporting. Proposed § 49.12(c)(1) would require an SDR to create and maintain an accurate record of all SDR data that fails to satisfy the SDR's data validation procedures. Proposed § 49.12(c)(2) would require an SDR to create and maintain an accurate record of all SDR data errors and omissions reported to the SDR and all corrections disseminated by the SDR pursuant to parts 43, 45, and 46. SDRs must make the records available to the Commission on request.

Proposed § 49.12(d) would contain the requirements of current § 49.12(c) and would require that: (i) All records required to be kept pursuant to part 49 must be open to inspection upon request by any representative of the Commission or any representative of the U.S. Department of Justice; and (ii) an SDR must produce any record required

to be kept, created, or maintained by the SDR in accordance with § 1.31.

Finally, the Commission is proposing a non-substantive change to incorporate the current requirements of § 49.12(e) into the revised requirements of SDRs to monitor, screen, and analyze SDR data under § 49.13. This non-substantive change does not have any cost or benefit implications.

(A) Costs and Benefits

The costs of proposed amendments to § 49.12 would primarily be incurred by the three existing SDRs as they make any needed adjustments to create and maintain all required records. The Commission does not believe these costs would be significant, as the recordkeeping requirements in proposed § 49.12 are largely similar to the requirements in current § 49.12 and current § 45.2(f) and (g). The proposed § 49.12(c) requirements are intended to serve as specific examples of records required to be created and maintained pursuant to current requirements and proposed § 49.12, in order to emphasize the importance of retaining records related to reporting errors, and would include such information as all reported SDR data and reports of errors and omissions. Proposed § 49.12(d) further specifies that SDRs must make all records included in proposed § 49.12 available to the Commission on request, which is the current requirement applicable to SDR in current § 45.2(h) and current § 49.12(c).

Finally, the proposed amendments to § 49.12 related to SDR information would be substantially similar to the SEC's requirements for its SBSDRs.[245] The Commission expects that there would be substantial overlap in these requirements for SDRs that are also SBSDRs and these entities would be able to leverage resources to reduce any duplicative costs.

The Commission believes that the proposed amendments to § 49.12 would provide greater clarity to SDRs in regards to their recordkeeping responsibilities and would allow for improvements in tracking errors in data reporting and the collecting of records related to SDR information. Better recordkeeping related to SDR data should lead to increased awareness for the SDRs and the Commission of any reporting issues experienced by reporting counterparties. Data recordkeeping should lead to better quality data by allowing the SDRs and the Commission to look for patterns in records that may lead to adjustments to SDR systems or future data reporting requirements. The availability of quality records is also crucial for the Commission to effectively perform its market surveillance and enforcement functions, which benefit the public by protecting market integrity and identifying risks within the swaps markets.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.12. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.12. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

viii. § 49.13—Monitoring, Screening, and Analyzing Data

Proposed § 49.13(a) would generally require: (i) SDRs to establish automated systems for monitoring, screening, and analyzing all relevant SDR data in their possession in the form and manner as directed by the Commission; and (ii) SDRs to routinely monitor, screen, and analyze relevant SDR data at the request of the Commission.

Proposed § 49.13(a)(1) would: (i) Specify that the requirements for monitoring, screening, and analyzing SDR data require SDRs to utilize relevant SDR data maintained by the SDR to provide information to the Commission concerning the SDR data; and (ii) state that monitoring, screening, and analyzing requests may require the SDRs to compile or calculate information within certain categories, or to compare information among categories, and lists the potential topic areas for requests. Proposed § 49.13(a)(1) also provides a list of topic areas for monitoring, screening, and analyzing tasks that the Commission may require.

Proposed § 49.13(a)(2) would specify that all monitoring, screening, and analyzing requests are at the discretion of the Commission and require that all information provided pursuant to a request conform to the form and manner requirements established for the request pursuant to proposed § 49.30. Proposed § 49.13(a)(3) would require that all monitoring, screening, and analyzing requests be fulfilled within a time specified by the Commission for the particular request.

Proposed § 49.13(b) would require SDRs to establish and at all times maintain sufficient technology, staff, and resources to fulfill the requirements in § 49.13 in the manner prescribed by the Commission.

Proposed § 49.13(c) would incorporate current § 49.15(c) but also expand it to require SDRs to promptly notify the Commission of any swap transaction for which the SDR is aware that it did not receive SDR data in accordance with the requirements of parts 43, 45, and 46.

(A) Costs and Benefits

The costs imposed by the proposed amendments to § 49.13 would largely be borne by the three SDRs. The Commission expects these SDRs to incur costs as they may need to develop or modify and maintain the requisite automated systems to monitor, screen, and analyze the reported SDR data to respond to requests from the Commission. Each requested task would need to be evaluated independently to determine the SDRs' ability to perform the task and then to determine the exact content of the report and the delivery requirements. The Commission is not prescribing any specific tasks with this proposal.

Section 21(c)(5) of the CEA currently requires SDRs to ''at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing'' the data maintained by the SDRs,[246] and current § 49.13(a) codifies this requirement by requiring the SDRs to monitor, screen, and analyze all data in their possession as the Commission may require for ongoing data surveillance activities or ad hoc requests.[247] Proposed § 49.13(a) retains this general requirement, but also provides broad topic areas for tasks that the Commission may request in order to provide SDRs with more information for the monitoring, screening, and analyzing requirement. The Commission expects that the costs for SDRs would vary depending on the scope and frequency of the data requested. The Commission also expects that the costs would be mitigated by the fact that SDRs currently perform monitoring, screening, and analyzing tasks at the request of Commission staff and therefore have systems and resources in place that may be leveraged for any new requests.

Current § 49.13(b) also requires SDRs to maintain sufficient information technology to carry out their duties to monitor, screen, and analyze the data

[245] *See* 17 CFR 240.13n–7 (detailing the SBSDR recordkeeping requirements).

[246] 7 U.S.C. 24a(c)(5).

[247] *See* 17 CFR 49.13(a).

they collect. SDRs also currently routinely perform monitoring, screening, and analyzing tasks at the request of Commission staff. While the Commission expects that the SDRs may incur costs to modify and maintain their systems to comply with the requirements of proposed § 49.13 and to respond to requests from the Commission, the Commission believes that the incremental costs would not be significant compared to the applicable baseline of the current requirements to perform monitoring, screening, and analyzing tasks. These costs would also be mitigated by the fact that SDRs are currently performing a variety of monitoring, screening, and analyzing tasks at the request of Commission staff, and therefore already have resources devoted to monitoring, screening, and analyzing SDR data that could be leveraged for any additional requests.

The Commission acknowledges that the cost burdens of the proposed changes for any specific SDR would depend on the current systems established and maintained by the SDR. While current § 49.13 includes requirements to monitor, screen, and analyze data and establish and maintain sufficient information technology, staff, and other resources, the resources expended by an SDR necessarily depends on the parameters of the specific requests. The Commission does not expect SDRs to expend resources without a pending request from the Commission. SDRs currently perform tasks, such as tracking the timeliness of swaps reporting, but costs from other tasks facilitated by the proposed rule may require new or modified systems to perform requested tasks.

The Commission further acknowledges that costs related to each task would likely vary with the complexity of the requested task. The costs associated with responding to each task would depend on the information requested and the frequency of the reports. The Commission expects the requests would be reasonable based on available SDR resources and would take into account an understanding of what is possible given the data maintained by the SDRs. The Commission understands that SDRs can only be expected to perform monitoring, screening, and analyzing tasks based on the SDR data available to each SDR and that the results of any task would be limited to the SDR data for swaps reported to each SDR. The Commission also expects that SDRs and Commission staff would work together to design each task before a task is prescribed, as is current practice.

This may also be a source of costs for SDRs, as each pending request may require multiple conversations between SDRs and the Commission to design each task based on the Commission's needs and what is feasible given the SDRs' abilities and the available SDR data.

After the costs have been incurred for any initial development or updates to SDR automated systems related to any specific task, the Commission expects recurring costs as SDRs' systems would need to be monitored and adjusted as needed. Given that the Commission expects most requested tasks would be largely automated, the per-report production costs would not be substantial.

In addition, because the information submitted to the Commission must reflect and adhere to established form and manner specifications pursuant to proposed § 49.30, the Commission anticipates many of the reports resulting from the tasks would share a common form and manner, which would result in reduced incremental costs for additional reports.

Proposed § 49.13(c) would not create any costs other than those associated with the requirement to promptly notify the Commission. The Commission believes those costs would not be significant, because SDRs have already established systems to send electronic information to the Commission and the Commission is not requiring SDRs to actively search for reporting noncompliance as part of this proposed section.

The Commission expects amended § 49.13 would improve data quality and enhance the Commission's surveillance and other regulatory capabilities. Market participants and the public would benefit from these improvements. As SDRs analyze the SDR data to complete requested tasks, for example, inconsistencies and anomalies within the data would become more apparent, which may lead to improvements in market practices, data quality, and Commission regulations. The reports may also assist the Commission with timely analyses that would help the Commission perform its regulatory functions. To the extent that the tasks enable the Commission to act more quickly, or with greater accuracy, to identify abusive market practices, compliance issues, or systemic risks, and address these concerns more quickly and with greater precision, market participants and the public would benefit. These monitoring, screening, and analyzing tasks should lead to more robust, improved analyses performed by or available to the Commission staff, and the findings from such analyses should help the Commission better perform its regulatory functions, improve its policy decisions, and allow the Commission to better inform the public about the swaps markets.

The Commission recognizes that not detailing specific tasks in the rule text may create certain costs for SDRs, as the tasks the Commission requests them to perform may change over time and therefore may not be perfectly predictable. At the same time, the Commission believes that not assigning tasks in the rule text itself would encourage the SDRs and the Commission to work together to devise the best approaches for any needed tasks. Adding specific tasks to the rule text would also curtail the Commission's ability to remove or modify the task in the future, as the Commission's needs and the SDRs' capabilities change. Allowing more flexibility by not including tasks in the proposed rulemaking would benefit both the SDRs and the Commission, and is the Commission's preferred approach. Additionally, the examples of the types of tasks the Commission envisions asking of SDRs provide above should help reduce any costs associated with uncertainty.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.13. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.13. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

Please describe the qualitative and quantitative costs (including, but not limited to, personnel costs, technological costs, and costs related to on-going discussions with Commission staff) that SDRs may incur in needing to make any updates to current systems related to the proposed changes to § 49.13.

Please describe (both qualitatively and quantitatively) how costs or benefits (including, but not limited to, personnel costs, technological costs, and costs related to on-going discussions with Commission staff) may change depending on whether more or fewer categories are included in § 49.13(a)(1). Are there additional categories that the Commission should include or are there

categories that the Commission should remove? If so, please explain in detail.

Please describe (both qualitatively and quantitatively) how costs and benefits (including, but not limited to, personnel costs, technological costs, and costs related to on-going discussions with Commission staff) may change depending on the length of time period to be analyzed for a task or the frequency of repetition for a task.

ix. § 49.17—Access to SDR Data

The Commission proposes to amend the § 49.17(b)(3) definition of ''direct electronic access'' to mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

Proposed § 49.17(c) would require SDRs to provide access to the Commission for all SDR data maintained by the SDR pursuant to the Commission's regulations. Proposed § 49.17(c)(1) would require that SDRs provide direct electronic access to the Commission or its designee in order for the Commission to carry out its legal and statutory responsibilities under the CEA and Commission regulations. Proposed § 49.17(c)(1) would also require that SDRs maintain all SDR data reported to the SDR in a format acceptable to the Commission, and transmit all SDR data requested by the Commission to the Commission as instructed by the Commission.

Proposed § 49.17(c)(1) would amend the requirements of current § 45.13(a) from maintaining and transmitting ''swap data'' to maintaining and transmitting ''SDR data,'' to make clear that the SDRs must maintain all SDR data reported to the SDRs in a format acceptable to the Commission and transmit all SDR data requested by the Commission, not just swap data.

Proposed § 49.17(c)(1) would also broaden the requirements of current § 45.13(a) from ''transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission'' to ''transmit all SDR data requested by the Commission to the Commission as instructed by the Commission,'' and explains what these instructions may include.

The Commission proposes to amend § 49.17(f) to correct the incorrect reference to ''37.12(b)(7)'' at the end of paragraph (f)(2) with a correct reference to ''39.12(b)(7)'' of the Commission's regulations, as there is no § 37.12(b)(7) in the Commission's regulations.

The Commission proposes to move the delegation of authority in current § 49.17(i) to proposed § 49.31(a)(7).

(A) Costs and Benefits

The costs imposed by the proposed changes to § 49.17(c) would fall mainly on SDRs, because the SDRs would incur costs to provide the Commission with direct electronic access to all SDR data and to provide access to SDR data as instructed. The costs associated with the use of the term ''direct electronic access'' in proposed § 49.17(c) are negligible, as the definition is being modified to allow the SDR's more flexibility in providing the Commission with direct electronic access to SDR data, subject to the Commission's approval. The other proposed amendments to § 49.17(c) grant the Commission greater flexibility to instruct SDRs on how to transfer SDR data to the Commission at the Commission's request. The SDRs may experience some costs based on the need to update systems to be able to transfer SDR data to the Commission as instructed. These incremental costs would not be significant because SDRs are already required to provide scheduled data transfers to the Commission under current § 49.17(b)(3) and (c)(1) and are required to transmit all swap data requested by the Commission to the Commission in an electronic file in a format acceptable to the Commission under current § 45.13(a). It is also current market practice for SDRs to regularly provide SDR data to the Commission as instructed by Commission staff. The Commission expects that the SDRs would continue to work with Commission staff to devise the most efficient and effective ways to meet the Commission's data needs.[248]

The Commission believes that the proposed amendments to § 49.17 would provide clarity and certainty to SDRs regarding their responsibilities to the Commission, by including the data access requirements in one section and by more clearly stating the Commission's ability to instruct SDRs on all aspects of providing SDR data to the Commission. This clarity would help the SDRs work with Commission staff to devise the most efficient and effective ways for the SDRs to transfer data to the Commission, ensuring that the Commission would have the SDR data that it needs to perform its regulatory functions without undue burden on SDRs.

The proposed changes to § 49.17(b)(3) that modify the definition of ''direct electronic access'' to allow for more technological flexibility would reduce future costs for SDRs because the amendment allows the Commission to consider any technology that may provide direct electronic access more efficiently than the current requirement. This would allow the Commission to adapt to changing technology more quickly and may allow the SDRs to save costs by having more efficient technology and processes approved in the future.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.17. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits, as well as other information to support such assessments.

The Commission requests comments on its consideration of alternatives to proposed § 49.17. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

x. § 49.22—Chief Compliance Officer

The Commission proposes to amend § 49.22 to reduce regulatory compliance burdens on SDRs and to make a number of non-substantive organizational and conforming changes.

The Commission is proposing a non-substantive change to define ''senior officer'' in proposed § 49.22(a). Both current § 49.22 and the CEA [249] use the term ''senior officer'' in the context of CCO requirements. Proposed § 49.22(a) also makes non-substantive organizational changes to the paragraph.

Proposed § 49.22(b) removes an unnecessary reference establishing the position of CCO from § 49.22(b)(1) and adds in consultation with the board of directors or senior officer to § 49.22(b)(1)(i), along with other conforming changes to terminology.

Proposed § 49.22(c) rearranges some parts of the section and simplifies the wording of current § 49.22(c) in order to clarify the requirements related to the appointment, supervision, and removal of the CCO, but makes few substantive changes to the current requirements. Proposed § 49.22(c)(3)(i) clarifies that the senior officer can also remove a CCO, in addition to the board of

[248] The proposed changes to § 49.17(f)(2) and (i) are non-substantive and do not have cost-benefit implications.

[249] *See* 7 U.S.C. 24a(e).

directors, in order to provide more flexibility to the SDRs.

Proposed § 49.22(d) rearranges some parts of the section and simplifies the wording of current § 49.22(d), while also making a few substantive changes related to CCO duties. Proposed § 49.22(d)(2) changes ''any conflicts of interest that may arise'' to ''any material conflicts of interest'' to contain a more practical requirement on SDRs than having CCOs resolve every potential conflict of interest, which would also reduce burdens. The proposed changes also remove the three examples of conflicts of interest from current § 49.22(d)(2) [250] in order to not imply a limit as to the types of material conflicts of interest that may arise. The Commission notes that material conflict of interest may still arise in the three areas listed in current § 49.22(d)(2), and the CCO would have to address such material conflicts, even with the examples removed from proposed § 49.22(d).

Proposed § 49.22(e) rearranges some parts of the section and simplifies the wording of current § 49.22(e), while making a few substantive changes related to the preparation of the annual compliance report. The Commission is proposing to curtail the line-by-line review of Commission regulations and the CEA requirements with SDR policies, as required by current § 49.22(e)(2), in order to streamline the SDRs' preparation of the annual compliance report. The Commission notes, however, that proposed § 49.22(e)(1) and (e)(2) would focus on the most important and useful information in the annual compliance report based on the Commission's experience. The Commission is also proposing to remove many of the examples of how material compliance issues can be identified from current § 49.22(e)(5) so as not to imply any limits on the material compliance matters that must be described. The Commission notes that removing the examples from current § 49.22(e)(5) in proposed § 49.22(e)(4) does not in any way limit the material compliance matters that must be described, regardless of how the matter are identified. Finally, the Commission proposes to add ''in all material aspects'' to the end of current § 49.22(e)(6) in proposed § 49.22(e)(5), in order to reduce CCOs' concerns with certifying the annual compliance report's accuracy.

The Commission is proposing to remove the requirement in current § 49.22(f)(1) that requires the submission of the annual compliance report to the SDR's board of directors or the senior officer and any subsequent discussion of the report to be recorded in the board minutes or other similar record as evidence of compliance with the submission requirement, as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g).

The Commission is proposing to amend § 49.22(f)(2) by increasing the amount of time that SDRs have to submit the annual compliance report to the Commission from 60 days to 90 calendar days after the end of the SDR's fiscal year. The Commission is also proposing to remove the annual Form SDR amendment requirement in § 49.3(a)(5) and is therefore proposing to remove the reference to § 49.3(a)(5) from § 49.22(f)(2).

The Commission proposes to amend § 49.22(f)(3) to include a requirement that, in the instance where an amendment to the annual compliance report must be submitted to the Commission, the CCO must also submit the amended annual compliance report to the SDR's board of directors or the senior officer.

The Commission is proposing to amend § 49.22(f)(4) to allow the Commission to more easily grant requests for an extension of time to file the annual compliance report by removing the requirement that SDRs must show ''substantial, undue'' hardship. The Commission believes this current requirement is too strict and is instead proposing to allow the Commission to grant extensions based on ''reasonable and valid requests.''

The Commission is proposing to amend § 49.22(g) to simplify the recordkeeping requirements for records related to the SDRs' policies and records created related to the annual compliance report. The Commission is removing the specific examples of records listed in current § 49.22(g) from proposed § 49.22(g), but proposed § 49.22(g) still requires all of the same records to be maintained in accordance with proposed § 49.12. As a result, the proposed amendments to § 49.22(g) are non-substantive.

(A) Costs and Benefits

The proposed amendments to § 49.22(a), (b), and (g) are non-substantive and therefore do not have cost-benefit implications. Similarly, the conforming amendments related to the terms proposed in § 49.2, the rearranging of paragraphs within proposed § 49.22, and other changes to text that do not substantively change the requirements of § 49.22 do not have cost-benefit implications.

The only substantive change in proposed § 49.22(c) is the addition of the senior officer's ability to remove the CCO. The Commission believes that adding the senior officer to this provision would benefit SDRs by allowing more flexibility in how the SDRs manage their personnel and their compliance activities. The Commission believes that any costs associated with proposed § 49.22(c) would not be significant and consist of any resources needed to update SDR policies and procedures, if the SDRs choose to enable the senior officer to remove the CCO.

The Commission believes that the proposed change to the conflicts of interest provision in proposed § 49.22(d)(2) would benefit SDRs by including a more practical requirement while still requiring important conflicts of interest to be addressed. By changing the requirement from ''resolving any conflicts of interest that may arise'' to ''taking reasonable steps . . . to resolve any material conflicts of interest that may arise,'' an SDR's CCO would not need to spend resources to address every conceivable conflict of interest and can instead concentrate resources on resolving conflicts of interest that have a material effect on an SDR's operations. The Commission does not expect the SDRs to incur any significant costs as a result of these proposed changes.

The Commission believes that the changes to the requirements for the information to be included in the annual compliance report in proposed § 49.22(e)(1) would benefit SDRs by allowing SDRs to focus on the most important and useful information in the annual compliance report, which would also reduce their burdens. The Commission believes that the proposed removal of the assessment of all applicable Commission regulations and CEA requirements with SDR policies and replacement with a more general requirement to describe and assess the SDR's policies and procedures would save SDRs effort without detrimental effects on the Commission's ability to perform its oversight functions. The Commission does not believe there are any incremental costs associated with this proposed amendment. The remaining changes to § 49.22(e) are not substantive and do not have cost-benefit implications.

The Commission believes that the proposed amendments to § 49.22(f) would benefit SDRs by simplifying requirements or reducing the costs on SDRs to submit annual compliance reports to the Commission. By providing

[250] *See* 17 CFR 49.22(d)(2)(i)–(iii).

more time to submit the annual compliance report and by reducing the burden to request a further extension in time to file an annual compliance report, the amendments to § 49.22(f)(2) and (4) would reduce the cost of complying and submitting the report for SDRs. Requirements are also simplified by removing the board or meeting minutes requirement in proposed § 49.22(f)(1), as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g). The requirement to submit an amended annual compliance report to the board of directors or senior officer may slightly increase costs for SDRs, but only in the sense of the time burden required to submit the amended report. This cost is further mitigated by the fact that CCOs are already capable of submitting the annual compliance reports to their board of directors or senior officer because of existing requirements.

The benefits of the proposed amendments for SDRs would result from the lower burdens related to annual compliance reports. The SDRs would have more time to complete the annual compliance reports and the Commission would be more able to grant requests for extensions of filing time, which should make complying and submitting annual compliance reports easier for SDRs. Removing the requirement to record the submission and discussions of the annual compliance reports from board of directors meeting minutes and similar documents would streamline the requirements as this requirement would be incorporated into the general recordkeeping requirement in proposed § 49.22(g). Overall, the amendments would make the submission process for annual compliance reports under § 49.22(f) easier for SDRs.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.22. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.22. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

xi. § 49.25—Financial Resources

The Commission proposes conforming changes to § 49.25 to remove the reference to § 49.9 and to core principle obligations identified in § 49.19. Proposed § 49.25(a) would instead refer to SDR obligations under ''this chapter,'' to be broadly interpreted as any regulatory or statutory obligation specified in part 49. The Commission considers these to be non-substantive changes that do not impact existing obligations on SDRs, and therefore have no cost-benefit implications.

The Commission is also proposing to amend § 49.25(f)(3) to extend the time SDRs have to submit their quarterly financial resources reports to 40 calendar days after the end of the SDR's first three fiscal quarters, and 90 days after the end of the SDR's fourth fiscal quarter, or a later time that the Commission permits upon request.

(A) Costs and Benefits

The Commission believes that giving SDRs more time to file their quarterly financial resources reports would benefit SDRs with little impact on the Commission's oversight of SDRs. In addition, the Commission notes that the 90 calendar day deadline for fourth quarter financial reports would align with the amended timeframe for SDRs submitting annual compliance reports in proposed § 49.22(f)(2). The Commission believes that SDRs would benefit from extended, harmonized deadlines.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.25. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.25. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

xii. § 49.26—Disclosure Requirements of Swap Data Repositories

The Commission proposes to amend § 49.26 to make updates to the introductory paragraph of § 49.26 to reflect updates to the terms ''SDR data,'' ''registered swap data repository,'' and ''reporting entity'' in proposed § 49.2. The Commission also proposes to update other defined terms used in the section to conform to the proposed amendments to § 49.2. These non-substantive amendments do not change the requirements of § 49.26 and do not have cost-benefit implications.

The Commission also proposes to add § 49.26(j) that would require that the SDR disclosure document set forth the SDR's policies and procedures regarding the reporting of SDR data to the SDR, including the SDR data validation and swap data verification procedures implemented by the SDR and the SDR's procedures for correcting SDR data errors and omissions (including the failure to report SDR data as required pursuant to the Commission's regulations).

(A) Costs and Benefits

The Commission believes that costs of proposed § 49.26 would not be significant. The costs would entail the costs of adding the information required under proposed § 49.26(j) to the required SDR disclosure document and updating the document as needed.

The Commission expects that the proposed addition of § 49.26(j) would benefit market participants by providing clearer information regarding data reporting to SDR users, which should improve data reporting by providing SDR users with information that would allow them to align their data reporting systems with the SDRs' data reporting systems before using the SDRs' services, thereby reducing reporting errors and potential confusion.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.26. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.26. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

xiii. § 49.28—Operating Hours of Swap Data Repositories

The Commission is proposing to add new § 49.28 to provide more detail on the SDRs' responsibilities with respect to hours of operation. Proposed § 49.28(a) would require an SDR to have systems in place to continuously accept, promptly record, and, as applicable pursuant to part 43, publicly disseminate all SDR data reported to the SDR. Proposed § 49.28(a)(1) would

allow an SDR to establish normal closing hours to perform system maintenance when, in the SDRs' reasonable estimation, the SDR typically receives the least amount of SDR data, as long as the SDR provides reasonable advance notice of its normal closing hours to market participants and the public.

Proposed § 49.28(a)(2) would allow an SDR to declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. Proposed § 49.28(a)(2) instructs SDRs to schedule special closing hours during periods when, in an SDR's reasonable estimation, the special closing hours would, to the extent possible, be least disruptive to the SDR's SDR data reporting responsibilities. Proposed § 49.28(a)(2) would also require the SDRs to provide reasonable advance notice of the special closing hours to market participants and the public whenever possible, and, if advance notice is not reasonably possible, to give notice to the public as soon as is reasonably possible after declaring special closing hours.

Proposed § 49.28(b) would require SDRs to comply with the requirements under part 40 of the Commission's regulations when adopting or amending normal closing hours or special closing hours.[251]

Proposed § 49.28(c) would require an SDR to have the capability to accept and hold in queue any and all SDR data reported to the SDR during normal closing hours and special closing hours [252] Proposed § 49.28(c)(1) would require an SDR, on reopening from normal or special closing hours, to promptly process all SDR data received during the closing hours and, pursuant to part 43, publicly disseminate swap transaction and pricing data reported to the SDR that was held in queue during the closing hours.[253] Proposed § 49.28(c)(2) would require SDRs to immediately issue notice to all SEFs, DCMs, reporting counterparties, and the public in the event that an SDR is unable to receive and hold in queue any SDR data reported during normal closing hours or special closing hours. Proposed § 49.28(c)(2) would also require SDRs to issue notice to all SEFs, DCMs, reporting counterparties, and the public that the SDR has resumed normal operations immediately on reopening. Proposed § 49.28(c)(2) would then require a SEF, DCM, or reporting counterparty that was not able to report SDR data to an SDR because of the SDR's inability to receive and hold in queue SDR data to immediately report the SDR data to the SDR.[254]

(A) Costs and Benefits

The Commission believes that the above requirements, which are largely based on existing rule text found in current § 43.3(f) and (g), would not have significant cost implications for SDRs. The costs would be those associated with any needed modification to SDR systems to accommodate all SDR data during closing hours, as opposed to only swap transaction and pricing data. These costs would not be significant because all SDRs currently have policies, procedures, and systems in place to accommodate all SDR data during closing hours because of the current requirements.

The SDRs, market participants, and the public benefit from proposed § 49.28 because the requirements for setting closing hours and handling SDR data during closing hours would be clearer. Proposed § 49.28 also removes discrepancies between current requirements for SDRs and SBSDRs related to closing hours, which would allow SDRs that are also registered as SBSDRs to comply with one requirement.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.28. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 49.28. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

xiv. § 49.29—Information Relating To Swap Data Repository Compliance

The Commission is proposing to add new § 49.29 to provide for information requests to SDRs regarding compliance with an SDR's regulatory duties and core principles.

Proposed § 49.29(a) would require SDRs, upon request of the Commission, to file certain information related to its business as an SDR or other such information as the Commission determines to be necessary or appropriate for the Commission to perform its regulatory duties. The SDRs would be required to provide the requested information in the form and manner and within the time specified by the Commission in its request.

Proposed § 49.29(b) would require SDRs, upon the request of the Commission, to demonstrate compliance with their obligations under the CEA and Commission regulations, as specified in the request. SDRs would be required to provide the requested information in the form and manner and within the time specified by the Commission in its request.

Proposed § 49.29 is based on existing Commission requirements applicable to SEFs and DCMs.[255]

(A) Costs and Benefits

The costs associated with responding to requests for information would include the staff hours required to prepare and submit materials related to the requests. These costs would vary among SDRs depending upon the nature and frequency of Commission inquiries. The Commission expects these requests to be limited in both size and scope, which would constrain the cost burden on SDRs. While proposed § 49.29 allows the Commission to make requests on an ad hoc basis, the Commission expects that the need for these requests would decrease over time as data quality and SDR compliance with Commission regulations improves.[256] The Commission acknowledges that there would be an incremental cost for each response, given the time required by the SDR to collect and/or summarize the requested information. The Commission believes that these costs would be mitigated by the fact that current practice is for SDRs to provide similar information to the Commission on

[251] This requirement already applies to SDRs pursuant to current § 43.3(f)(3). *See* 17 CFR 43.3(f)(3).

[252] Proposed § 49.28(c) would expand the similar existing requirements for swap transaction and pricing data in current § 43.3(g) to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.

[253] Proposed § 49.28(c)(1) would expand the similar existing requirements for the SDRs to disseminate swap transaction and pricing data pursuant to current § 43.3(g)(1) to also include the prompt processing of all other SDR data received and held in queue during closing hours. The proposed requirements would also largely follow the SBSDR requirements for disseminating transaction reports after reopening following closing hours.

[254] Proposed § 49.28(c)(2) would expand the similar existing requirements for swap transaction and pricing data in current § 43.3(g)(2) to all SDR data and would largely follow the SBSDR requirements to receive and hold in queue information regarding security-based swaps.

[255] *See, e.g.,* 17 CFR 37.5 and 38.5.

[256] The Commission currently exercises similar authority fewer than ten times per year in total with other registered entities, such as SEFs, DCMs, and DCOs.

request and that the SDRs do so regularly.

Information submitted to the Commission would be required to reflect and adhere to form and manner specifications established pursuant to proposed § 49.30. The Commission expects that clearly defining the form and manner for each response would mitigate the cost burden to the SDRs from any uncertainty as to the information to be provided.

Benefits attributed to proposed § 49.29 would include improving the Commission's oversight of SDRs. The Commission expects that this oversight would lead to improved data quality and SDR compliance with Commission regulations due to Commission inquiries. Better data quality should improve the Commission's ability to fulfill its regulatory responsibilities and help to increase the Commission's understanding of the swaps market. These improvements are expected to benefit the public through more accurate and complete SDR data reporting, improved Commission analyses and oversight of the swaps markets, and increased market integrity due to the Commission's improved ability to detect and investigate noncompliance issues and oversee their correction.

Proposed § 49.29 would also help the Commission to obtain the information it needs to perform its regulatory functions as needed, as opposed to requiring the information on a set schedule, such as with the proposed removal of the requirement for annual Form SDR updates in proposed § 49.3(a)(5). Proposed § 49.29 would allow the Commission to request the same information that would be contained in Form SDR and its exhibits when the Commission needs the information, as opposed to requiring the SDRs to update Form SDR and the exhibits annually. This would reduce the burden on SDRs from annual filings for any information that the Commission requests less frequently than annually.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.29. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits, as well as other information to support such assessments.

The Commission requests comments on its consideration of alternatives to proposed § 49.29. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

xv. § 49.30—Form and Manner of Reporting and Submitting Information to the Commission

The Commission is proposing to add new § 49.30 to address the form and manner of information the Commission requests from SDRs.

Proposed § 49.30 would establish the broad parameters of the ''form and manner'' requirements found throughout part 49 in different regulations. The ''form and manner'' requirement proposed in § 49.30 would not supplement or expand upon existing substantive provisions of part 49, but instead, would only allow the Commission to specify how existing information reported to, and maintained by, SDRs should be formatted and delivered to the Commission. Proposed § 49.30 would provide that the Commission would specify, in writing, the format, coding structure, and electronic data transmission procedures for various reports and submissions that are required to be provided to the Commission under part 49.

(A) Costs and Benefits

The Commission believes that the form and manner requirements would have costs associated with conforming reports and information to Commission specifications, including labor, time, and potentially technology costs for formatting reports. In practice, the incremental costs are not likely to be significant, because SDRs have extensive experience working with Commission staff to deliver data and reports in the form and manner requested by Commission staff. The Commission believes that, in practice, this experience would significantly mitigate the costs of this amendment.

The Commission believes that the Commission would benefit through increased standardization of information provided by SDRs, thereby aiding the Commission in the performance of its regulatory obligations by ensuring the provided information is useable by the Commission and allowing the Commission to alter the form and manner over time, as standards and technologies change. The ability to standardize the form and manner of information provided to the Commission would also help SDRs to efficiently fulfill their obligations to provide this information to the Commission.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 49.30. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of the costs and benefits, as well as other information to support such assessments.

The Commission requests comments on its consideration of alternatives to proposed § 49.30. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

5. Costs and Benefits of Proposed Amendments to Part 45

i. § 45.2—Swap Recordkeeping

The Commission is proposing to move current § 45.2(f) and (g) (SDR recordkeeping and SDR records retention, respectively) to proposed new § 49.12. As such, all costs and benefits associated with this change are discussed above in section 4.viii regarding proposed new § 49.12.

ii. § 45.14—Verification of Swap Data Accuracy and Correcting Errors and Omissions in Swap Data

Proposed § 45.14(a) would generally require that reporting counterparties verify the accuracy and completeness of swap data for swaps for which they are the reporting counterparty. Proposed § 45.14(a)(1) would require that a reporting counterparty reconcile its internal books and records for each open swap for which it is the reporting counterparty with every open swaps report provided to the reporting counterparty by an SDR pursuant to proposed § 49.11. Proposed § 45.14(a)(1) would further require that reporting counterparties conform to the verification policies and procedures created by an SDR pursuant to § 49.11 for swap data verification.

Proposed § 45.14(a)(2) would require that reporting counterparties submit either a verification of data accuracy or a notice of discrepancy in response to every open swaps report received from an SDR within the following timeframes: (i) 48 hours of the SDR providing the open swaps report if the reporting counterparty is an SD, MSP, or DCO; or (ii) 96 hours of the SDR providing the open swaps report for non-SD/MSP/DCO reporting counterparties.

Proposed § 45.14(a)(3) would require that when a reporting counterparty does

not find any discrepancies between the swap data it reported to an SDR according to its internal books and records for the swaps included in the open swaps report and the swap data provided by the SDR in the open swaps report, the reporting counterparty would submit a verification of data accuracy to the SDR indicating that the swap data is complete and accurate, within the timeframe applicable to the reporting counterparty under proposed § 45.14(a)(2).

Proposed § 45.14(a)(4) would require that when a reporting counterparty finds discrepancies between the swap data it reported to an SDR according to its internal books and records for the swap data included, or erroneously not included, in an open swaps report and the swap data provided by the SDR in the open swaps report, the reporting counterparty must submit a notice of discrepancy to the SDR in the form and manner required by the SDR's policies and procedures created pursuant to § 49.11, within the timeframe applicable to the reporting counterparty under proposed § 45.14(a)(2).

Proposed § 45.14(b)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors or omissions in swap data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap data to the SDR. Proposed § 45.14(b)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of any swap data not reported to an SDR by the SEF, DCM, or reporting counterparty as required to submit the omitted swap data to the SDR. The error and omission correction requirements include, but are not limited to, errors or omissions present during the verification process specified in § 45.14(a). These error and omission correction requirements also apply regardless of the state of the swap.

Proposed § 45.14(b)(1)(i) would require that SEFs, DCMs, and reporting counterparties correct swap data as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days after discovery of the error or omission.

Proposed § 45.14(b)(1)(ii) would require that if a SEF, DCM, or reporting counterparty is unable to correct errors or omissions within three business days of discovery, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or such other Commission employees whom the Director of DMO may designate, in writing, of the errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.

Proposed § 45.14(b)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to the SDR's policies and procedures for corrections of errors and omissions.

Proposed § 45.14(b)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to an SDR, or the omission of swap data for a swap that was not previously reported to an SDR as required, to notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 45.14(b)(2) would also specify that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap must notify the SEF or DCM where the swap was executed of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 45.14(b)(2) would also require that if the reporting counterparty and the non-reporting counterparty agree that the swap data for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM must correct the swap data in accordance with proposed § 45.14(b)(1).

(A) Costs and Benefits

The proposed changes to § 45.14 would result in administrative and compliance costs for reporting counterparties to establish technological systems to review and reconcile open swaps reports provided by SDRs. To verify open swaps, the reporting counterparties would be required to maintain records of all data elements reported pursuant to part 45. This is already a requirement under parts 23 (for SD and MSP reporting counterparties) and 45 of the Commission's regulations and as such, the Commission does not believe maintaining such records would produce additional costs.[257]

The Commission is not proposing to require particular methods for reporting counterparties to complete the verification process, but based on discussions with market participants, the Commission anticipates that the process would be largely automated. Reporting counterparties would incur costs in creating these automated systems to receive the open swaps reports and to complete the verification process in a timely fashion, but once the verification systems are in place, the additional costs stemming from the verification process would not be significant and would be confined to maintaining and updating the verification system as needed.

A few commenters to the Commission's Roadmap suggested that commercial end-users and other non-SD/MSP/DCO reporting counterparties would incur greater costs for reporting and verifying swap data because swaps are not their primary business.[258] The Commission has taken these comments into account and has proposed different requirements for non-SD/MSP/DCO reporting counterparties that would provide them with more time to complete the verification process than is permitted for SD or MSP reporting counterparties.

Reporting counterparties may also incur costs in meeting the requirements of proposed § 45.14(b)(1), which is largely similar to current § 45.14(a), but with more specific requirements related to timing. Additional costs may be incurred by SEFs, DCMs, or reporting counterparties from correcting errors and omissions within three business days of discovery and from informing the Director of DMO in writing with a remediation plan, if necessary. The Commission believes that these costs would not be significant, however, because the three business day requirement merely adds a timeframe to the current ''as soon as technologically practicable after discovery'' requirement,[259] and reporting counterparties already typically provide a remediation plan to the Commission for reporting errors and omissions as part of current practice, which would mitigate the costs of the proposed requirement, as many reporting counterparties will have experience with creating and providing remediation plans. SEFs, DCMs, and reporting counterparties may also incur costs from updating their error and omission reporting systems or practices in order to maintain consistency with SDR error and omission policies and procedures created pursuant to proposed § 49.10(e).

[257] *See* 17 CFR 23.201 (listing the recordkeeping requirements for SDs and MSPs, including transaction records); 17 CFR 45.2 (listing recordkeeping requirements for swaps, including requiring SDs and MSPs to keep all records required to be kept pursuant to part 23).

[258] *See, e.g.,* NRECA/APPA Letter at 3, 5; IECA Letter at 3. These commenters did not provide details on the additional costs.

[259] *See* 17 CFR 45.14(a).

Non-reporting counterparties may also incur additional costs related to the requirements in proposed § 45.14(b)(2), which are effectively the same as current § 45.14(b), except for the inclusion of the three business day time limit for informing the reporting counterparty or SEF or DCM of discovered errors or omissions and the additional requirement to inform the SEF or DCM when the non-reporting counterparty does not know the identity of the reporting counterparty. The time limit merely adds a boundary to the current ''promptly'' requirement for informing the reporting counterparty of discovered errors and omissions.[260] The additional requirement to inform a SEF or DCM is intended to accommodate the non-reporting counterparties in fulfilling their role in the data correction process for swaps executed anonymously and the Commission expects that non-reporting counterparties would not incur many costs for notifying a SEF or DCM of errors and omissions beyond the cost currently incurred when notifying reporting counterparties.

The Commission believes verification of swap data accuracy helps ensure that the Commission has access to the most accurate and complete swap data possible to fulfill its various regulatory responsibilities. Accurate swap data enables the Commission to monitor and surveil market activity and risks within the swaps markets, as well as provide assessments of the swaps markets to the public. Additionally, the Commission believes that complete and accurate swap data is necessary for effective risk management for swap counterparties, and the proposed verification and correction requirements would assist swap counterparties with ensuring that the data they possess is accurate and complete. The Commission believes that complete and accurate swap data would benefit market participants and the public by improving the Commission's ability to monitor the swaps markets and maintain market integrity through market oversight, analysis, and providing information to the public.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 45.14. Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 45.14. Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

6. Costs and Benefits of Proposed Amendments to Part 43

i. § 43.3—Method and Timing for Real-Time Public Reporting

The Commission is proposing to amend the error and omission correction requirements of current § 43.3(e) to make the requirements consistent with the error and omissions correction requirements in proposed § 45.14(b). The Commission believes these amendments would create consistency between the error and omission correction requirements for swap data and swap transaction and pricing data, which would reduce confusion surrounding the error and omissions corrections process.

Proposed § 43.3(e)(1) would require any SEF, DCM, or reporting counterparty that by any means becomes aware of any errors or omissions in swap transaction and pricing data previously reported to an SDR by the SEF, DCM, or reporting counterparty to submit corrected swap transaction and pricing data to the SDR, regardless of the state of the swap. Proposed § 43.3(e)(1) would also require any SEF, DCM, or reporting counterparty that by any means becomes aware of the omission of swap transaction and pricing data previously not reported to an SDR by the SEF, DCM, or reporting counterparty as required, to submit corrected swap transaction and pricing data to the SDR regardless of the state of the swap.

Proposed § 43.3(e)(1)(i) would require SEFs, DCMs, and reporting counterparties to correct swap transaction and pricing data as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the error or omission.

Proposed § 43.3(e)(1)(ii) would provide that if a SEF, DCM, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the SEF, DCM, or reporting counterparty must immediately inform the Director of DMO, or his or her designee, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.

Proposed § 43.3(e)(1)(iii) would require that a SEF, DCM, or reporting counterparty conform to an SDR's policies and procedures for corrections of errors and omissions in previously reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data.

Proposed § 43.3(e)(2) would require a non-reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to an SDR, or the omission of swap transaction and pricing data for a swap that was not previously reported to an SDR as required, to notify the reporting counterparty as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

Proposed § 43.3(e)(2) would also require that a non-reporting counterparty that does not know the identity of the reporting counterparty for a swap to notify the SEF or DCM where the swap was executed of the errors and omissions as soon as technologically practicable after discovery of the errors or omissions, but no later than three business days after the discovery. Proposed § 43.3(e)(2) would also require that, if the non-reporting counterparty and the reporting counterparty, SEF, or DCM, as applicable, agree that the swap transaction and pricing data for a swap is incorrect or incomplete, the reporting counterparty, SEF, or DCM, as applicable, must correct the swap transaction and pricing data in accordance with proposed § 43.3(e)(1).

The Commission is proposing to move all of the requirements of current § 43.3(f) and (g) to proposed new § 49.28. As such, all costs and benefits associated with this change are discussed above in section VII.C.4.xiii.

(A) Costs and Benefits

The costs and benefits for the proposed changes to § 43.3(e) are similar to the costs and benefits previously discussed for the proposed changes to § 45.14(b), as the proposed changes to each section are intended to be consistent in all respects, aside from the verification requirements. Therefore, the proposed changes to § 43.3(e) may also result in administrative and compliance costs for reporting counterparties. These costs would, however, be mitigated by the fact that the requirements of proposed § 43.3(e) are similar to the requirements of current § 43.3(e).

[260] *See* 17 CFR 45.14(b).

Additional costs may be incurred by SEFs, DCMs, or reporting counterparties from correcting errors and omissions within three business days of discovery and from informing the Director of DMO in writing with an initial assessment and initial remediation plan if necessary under proposed § 43.3(e)(1)(i) and (ii). The Commission believes that these costs would not be significant, however, because the three-day requirement merely adds a specific timeframe to the current ''promptly'' requirement,[261] and reporting counterparties typically provide a remediation plan to the Commission for reporting errors and omissions as part of current practice. SEFs, DCMs, and reporting counterparties may also incur costs from updating their error and omission reporting systems or practices in order to maintain consistency with SDR error and omission policies and procedures created pursuant to proposed § 49.10(e), as would be required under proposed § 43.3(e)(1)(iii).

Non-reporting counterparties may also incur additional costs related to the requirements in proposed § 43.3(e)(2), which are similar to the requirements of current § 43.3(e)(1)(i), except for the proposed inclusion of the three business day time limit for informing the reporting counterparty, SEF, or DCM of discovered errors or omissions and the additional requirement to inform the SEF or DCM when the non-reporting counterparty does not know the identity of the reporting counterparty. The time limit merely adds a boundary to the current ''promptly'' requirement for informing the reporting counterparty of discovered errors and omissions.[262] The additional requirement to inform a SEF or DCM is intended to accommodate the non-reporting counterparties in fulfilling their role in the data correction process for swaps executed anonymously and the Commission expects that non-reporting counterparties would not incur many costs for notifying a SEF or DCM of errors and omissions beyond the cost currently incurred when notifying reporting counterparties.

As with the benefits described above in section 5.ii, the Commission believes consistent error and omission correction requirements for swap data and swap transaction and pricing data helps ensure that the Commission has access to the most accurate and complete swap transaction and pricing data possible to fulfill its various regulatory responsibilities. Accurate swap transaction and pricing data helps the Commission to monitor and surveil market activity and risks within the swaps markets. Accurate and complete swap transaction and pricing data is also beneficial to market participants and the public who rely on the data in their swaps-related decision-making. Additionally, the Commission believes that complete and accurate swap transaction and pricing data is necessary for effective risk management for swap counterparties, and the proposed correction requirements would assist swap counterparties with ensuring that the swap transaction and pricing data they possess is accurate and complete.

SDRs and counterparties also benefit from proposed § 43.3(e) creating consistency between the error and omission correction requirements for swap data and for swap transaction and pricing data. Inconsistent requirements could lead to confusion, improper correction, and unnecessary effort for counterparties and SDRs. The consistency created by the proposed amendments to § 43.3(e) would help avoid those issues.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to § 43.3(e). Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed § 43.3(e). Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

7. Costs and Benefits of Proposed Amendments to Part 23

i. §§ 23.204 and 23.205—Reports to Swap Data Repositories and Real-Time Public Reporting

Proposed amendments to §§ 23.204 and 23.205 add a paragraph (c) to each section requiring SDs and MSPs to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that SDs and MSPs comply with their swap reporting obligations pursuant to parts 45 and 43, respectively. The proposed amendments also require SDs and MSPs to perform annual reviews of these policies and procedures.

For proposed § 23.204, the policies and procedures related to reporting under part 45 of the Commission's regulations would need to contain details related to their responsibilities to verify swap data. This would include policies and procedures related to regularly accepting open swap reports from SDRs, cross-checking with internal records to ensure the swap data is accurate and complete, and responding to the SDR, as required. SDs and MSPs are already responsible for keeping up-to-date records on all swaps to which they are a counterparty under parts 23 and 45 of the Commission's regulations.[263]

(A) Costs and Benefits

The Commission believes that the costs associated with the proposed amendment to §§ 23.204 and 23.205 for SDs and MSPs [264] would be associated with creating and enforcing the policies and procedures, and would consist mostly of administrative efforts to draft, review, implement, and update policies and procedures. The Commission expects that SDs and MSPs that are participants of more than one SDR may incur higher associated costs than those entities that are participants of only one SDR, as the SD and MSP policies and procedures would need to contemplate the reporting requirements for each SDR.[265]

Even though SDs and MSPs may incur upfront costs related to the proposed amendments, the Commission believes that these financial outlays would be mitigated for two reasons. First, SDs and MSPs have experience with establishing and enforcing policies and procedures related to other Commission regulations.[266] Second, the proposed amendments to §§ 23.204 and 23.205 are substantially similar to the SEC's requirements for its security-based SDs/MSPs.[267] While not all SDs and MSPs covered by the proposed amendments would be subject to these SEC requirements, the Commission expects that there would be significant overlap.

[261] *See generally* 17 CFR 43.3(e).

[262] *See* 17 CFR 43.3(e)(i).

[263] *See* 17 CFR 23.201–23.203 (detailing the recordkeeping requirements for SDs and MSPs); 17 CFR 45.2 (containing swap recordkeeping requirements for SDs and MSPs and referencing the part 23 recordkeeping requirements).

[264] There are 103 provisionally-registered SDs as of February 28, 2019, all of which are expected to be a participant on at least one of the three existing SDRs. *See https://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML.*

[265] For additional discussion of the costs and benefits related to part 23, *see generally* Part 23 Adopting Release.

[266] *See, e.g.,* 17 CFR 23.501 (confirmations with counterparty); 17 CFR 23.504 (counterparty onboarding documentation); 17 CFR 23.602 (supervision policies).

[267] *See* 17 CFR 242.906 (requiring security-based SDs and security-based MSPs to establish, maintain, and enforce policies and procedures reasonably designed to ensure compliance with reporting requirements).

Consequently, these SDs and MSPs should be able to leverage resources and reduce duplicative costs.

The Commission believes the proposed amendments would also provide important benefits. SD and MSP policies and procedures reasonably designed to ensure compliance with the reporting requirements of parts 43 and 45 would help improve compliance with the reporting rules. For example, policies and procedures designating the responsibility for reporting swap transactions should reduce confusion as to who within the organizations is responsible for reporting the required SDR data, according to the reporting procedures of the different SDRs. The Commission expects that there would also likely be fewer reporting errors (and less subsequent ad hoc work, with its associated costs, by SD/MSP staff to correct these errors) because SD/MSP employees would be able to follow the policies and procedures to perform their functions correctly.

The Commission also expects that the proposed amendments would help lead to enhanced communication between reporting counterparties and SDRs. Increased communication that is focused on improving the accuracy of SDR data would help to identify areas that require special attention that might not be specifically addressed in these proposed regulations. Hence, this enhanced working relationship between market participants and SDRs may lead to improved data reporting beyond that specifically contemplated by the regulations.

The Commission also believes that, because SDs and MSPs submit the large majority of the reported SDR data, the requirements for policies and procedures related to reporting would improve the overall quality of reported data. SDs and MSPs generate a considerable majority of the total number of transactions reported to SDRs and serve as the reporting counterparty for the overwhelming majority of swaps.[268] A Commission analysis of SDR data indicates that from January 1, 2017 through December 31, 2017, almost all swap transactions involved at least one registered SD as a counterparty—greater than 99 percent for interest rate, credit default, foreign exchange, and equity swaps. For non-financial commodity swaps, approximately 86 percent of transactions involved at least one registered SD as a counterparty. Overall, approximately 98 percent of transactions involved at least one registered SD.[269] The Commission expects that these additional requirements for SDs and MSPs, and the attendant benefits to data quality, would have a substantial impact on the overall quality of the data reported to SDRs because of the important role these reporting counterparties perform in the swaps market.

The Commission also expects that the requirement for SDs and MSPs to have policies and procedures relating to real-time reporting under part 43 would improve swap transaction and pricing information that SDRs would then provide the public. Hence, the Commission believes the proposed amendments would also improve transparency in the swaps markets and provide benefits to market participants and the public in general.

(B) Request for Comment

The Commission requests comment on its considerations of the costs and benefits of the proposed amendments to §§ 23.204(c) and 23.205(c). Are there additional costs and benefits that the Commission should consider? Commenters are encouraged to include both qualitative and quantitative assessments of these costs and benefits.

The Commission requests comments on its consideration of alternatives to proposed §§ 23.204(c) and 23.205(c). Are there any other alternatives that may provide preferable costs or benefits than the costs and benefits related to the proposed amendments?

8. Section 15(a) Factors

The Dodd-Frank Act sought to promote the financial stability of the United States, in part, by improving financial system accountability and transparency. More specifically, Title VII of the Dodd-Frank Act directs the Commission to promulgate regulations to increase swaps markets' transparency and thereby reduce the potential for counterparty and systemic risk.[270] Transaction-based reporting is a fundamental component of the legislation's objectives to increase transparency, reduce risk, and promote market integrity within the financial system generally, and the swaps market in particular. The SDRs and the SEFs, DCMs, and reporting counterparties that submit data to SDRs are central to achieving the legislation's objectives related to swap reporting.

Section 15(a) of the Act requires the Commission to consider the costs and benefits of the proposed amendments to parts 23, 43, 45, and 49 with respect to the following factors:

- Protection of market participants and the public;
- Efficiency, competitiveness, and financial integrity of markets;
- Price discovery;
- Sound risk management practices; and
- Other public interest considerations.

A discussion of these proposed amendments in light of section 15(a) factors is set out immediately below.

i. Protection of Market Participants and the Public

In the Part 49 Adopting Release, the Commission noted that it believed that the registration and regulation of SDRs would serve to better protect market participants by providing the Commission and other regulators with important oversight tools to monitor, measure, and comprehend the swaps markets. Inaccurate and incomplete data reporting hinders the Commission's ability to oversee the swaps market. The Commission believes that the adoption of all the proposed amendments to parts 23, 43, 45, and 49 would improve the quality of the data reported, increase transparency, and enhance the Commission's ability to fulfill its regulatory responsibilities, including its market surveillance and enforcement capabilities. In addition, the Commission believes that monitoring of potential risks to financial stability would be more effective with more accurate data. More accurate data would therefore lead to improved protection of market participants and the public.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the adoption of the proposed amendments to parts 23, 43, 45, and 49, together with the swap data recordkeeping and reporting requirements in parts 43 and 45, would provide a robust source of information on the swaps market that is expected to promote increased efficiency and competition. The Commission believes that more accurate swap transaction and pricing data would lead to greater efficiencies for market participants executing swap transactions due to a better understanding of their overall positions

[268] Based on the requirements of § 45.8, any swap with at least one SD or MSP counterparty will have an SD or MSP serving as the reporting counterparty. *See* 17 CFR 45.8 (detailing the requirements for determining which counterparty must report swap data).

[269] 83 FR at 56674.

[270] *See* Congressional Research Service Report for Congress, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010); Dep't of the Treasury, Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation 1 (June 17, 2009) at 47–48.

within the context of the broader market. This improved understanding would be facilitated by two distinct channels. First, amendments that result in improved part 43 swap transaction and pricing data being made available to the public would improve the ability of market participants to monitor real-time activity by other participants and to respond appropriately. Second, amendments that result in improved swap data would improve the Commission's ability to monitor the swaps markets for abusive practices and improve the Commission's ability to create policies that ensure the integrity of the swaps markets. This improvement would be facilitated by the Commission's oversight and enforcement capabilities and the reports and studies published by the Commission's research and information programs.

In particular, the proposed amendments to §§ 23.204, 45.14, 49.2, 49.10, 49.11, 49.12, 49.13, and 49.26 would help improve the financial integrity of markets. For example, the verification and correction of swap data would improve the accuracy and completeness of swap data available to the Commission and would assist the Commission with, among other things, improving monitoring of risk exposures of individual counterparties, monitoring concentrations of risk exposure, and evaluating systemic risk. In addition, the SDRs' requirement to perform monitoring, screening, and analyzing tasks, as proposed in the amendments to § 49.13, would support the Commission's other regulatory functions, including market surveillance. The efficient oversight and accurate data reporting enabled by these proposed amendments would improve the financial integrity of the swaps markets.

In the Part 49 Adopting Release, the Commission expected that the introduction of SDRs would further automate the reporting of swap data. The Commission expected that automation would benefit market participants and reduce transactional risks through the SDRs and other service providers offering important ancillary services, such as confirmation and matching services, valuations, pricing, reconciliation functions, position limits management, and dispute resolution. These benefits to market participants and related service providers also enhance the efficiency, competitiveness, and financial integrity of markets.[271] The proposed amendments would help to further enhance these benefits.

iii. Price Discovery

The CEA requires that swap transaction and pricing data be made publicly available. The CEA and its existing implementing regulations in part 43 also require swap transaction and pricing data to be available to the public in real-time. Combined, parts 23, 43, and 49 achieve the statutory objective of providing transparency and enhanced price discovery to swap markets in a timely manner. The proposed amendments to §§ 23.205, 43.3, 49.2, 49.10, 49.11, 49.12, 49.13, and 49.26 improve the fulfillment of these objectives. The proposed amendments would both directly and indirectly upgrade the quality of real-time public reporting of swap transaction and pricing data by improving the quality of information that is reported to the SDRs and disseminated to the public.

As with the swap data reported for use by regulators, the Commission believes that inaccurate and incomplete swap transaction and pricing data hinders the public's use of the data, which harms transparency and price discovery. The Commission is aware of at least three publicly available studies that support this point. The studies examined data and remarked on incomplete, inaccurate, and unreliable data. The first study analyzed the potential impact of the Dodd-Frank Act on OTC transaction costs and liquidity using real-time CDS trade data and stated that more than 5,000 reports had missing prices and more than 15,000 reports included a price of zero, leaving a usable sample of 180,149 reports.[272] The second study reported a number of fields that were routinely null or missing making it difficult to analyze swap market volumes.[273] The third study assessed the size of the agricultural swaps market and described problems identifying the underlying commodity as well as other errors in the reported data that made some data unusable, including, for example, swaps with a reported notional quantity roughly equal to the size of the entire U.S. soybean crop.[274] Market participants would be better able to analyze swap transaction and pricing data because it is more accurate and complete due to the proposed amendments, and as a result, transparency and price discovery should improve.

iv. Sound Risk Management Practices

In the Part 49 Adopting Release, the Commission stated that part 49 and part 45 would greatly strengthen the risk management practices of the swaps market.[275] Prior to the adoption of the Dodd-Frank Act, participants in the swaps markets operated without obligations to disclose transactions to regulators or to the public. The Dodd-Frank Act specifically changed the transparency of the swaps market with the adoption of CEA section 21 and the establishment of SDRs as the entities to which swap data and swap transaction and pricing data is reported and maintained for use by regulators or disseminated to the public. The Commission believes that the improved reporting of SDR data to SDRs would serve to improve risk management practices by market participants. To the extent that better swap transaction and pricing data improves the ability of market participants to gauge their risks in the context of the overall market, risk management practices should improve. Earlier and more informed discussions between relevant market participants and regulators regarding systemic risk facilitated by accurate swap data would also lead to improved risk management outcomes. Market participants should also see improvements in their risk management practices, as improved swap data allows for more accurate and timely market analyses that are publicly disseminated by the Commission.

The Commission believes that the proposed amendments to parts 23, 43, 45, and 49 would improve the quality of SDR data reported to SDRs and, hence, improve the Commission's ability to monitor the swaps market, react to potential market emergencies, and fulfill its regulatory responsibilities generally. The Commission believes that regulator access to high-quality SDR data is essential for appropriate risk management and is especially important for regulators' ability to monitor the swaps market for systemic risk. Moreover, the Commission expects that efforts to improve data quality would increase market participants' confidence in the SDR data and therefore their

[271] *See* Part 49 Adopting Release at 54573.

[272] Y.C. Loon, Z. (Ken) Zhong, ''Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time trade reports,'' *Journal of Financial Economics* (2016), *available at http://dx.doi.org/10.1016/j.jfineco.2016.01.019.*

[273] *See* Financial Stability Report, Office of Financial Research (Dec. 15, 2015) at 84–85, *available at https://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf.*

[274] Peterson, P.E. 2014. ''How Large is the Agricultural Swaps Market?'' Proceedings of the NCCC–134 Conference on Applied Commodity Price Analysis, Forecasting, and Market Risk Management. St. Louis, MO, *available at http://www.farmdoc.illinois.edu/nccc134.*

[275] *See* Part 49 Adopting Release at 54574.

confidence in any subsequent analyses based on the data.

v. Other Public Interest Considerations

The Commission believes that the increased transparency resulting from improvements to the SDR data collected by SDRs via the proposed amendments to parts 23, 43, 45, and 49 has other public interest considerations including:

- Creating greater understanding for the public, market participants, and the Commission of the interaction between the swaps market, other financial markets, and the overall economy;
- Improved regulatory oversight and enforcement capabilities; and
- More information for regulators so that they may establish more effective public policies to reduce overall systemic risk.

9. Request for Comment

The Commission requests comment on all aspects of the proposed rules. Beyond specific questions interspersed throughout this discussion, the Commission generally requests comment on all aspects of its consideration of costs and benefits, including: identification and assessment of any costs and benefits not discussed herein; the potential costs and benefits of the alternatives that the Commission discussed in this release; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the benefits and costs of the proposed rules; and substantiating data, statistics, and any other information to support statements by commenters with respect to the Commission's consideration of costs and benefits. Commenters also may suggest other alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and provide a superior cost-benefit profile.

D. Anti-trust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.

The Commission does not anticipate that the proposed amendments to parts 23, 43, 45, and 49 would result in anti-competitive behavior. However, the Commission encourages comments from the public on any aspect of the proposal that may have the potential to be inconsistent with the anti-trust laws or anti-competitive in nature.

List of Subjects

17 CFR Part 23

Swap dealers and major swap participants.

17 CFR Part 43

Real-time public swap reporting.

17 CFR Part 45

Swaps; data recordkeeping requirements; data reporting requirements.

17 CFR Part 49

Swap data repositories; registration and regulatory requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR parts 23, 43, 45, and 49 as set forth below:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b-1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 24a as amended by Pub. L. 111–203, 124 Stat. 1376 (2010)

PART 23 [AMENDED]

■ 2. In the table below, for each section indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section, and add in its place the term indicated in the right column:

Section	Remove	Add
23.204(a)	swap transaction data	swap data.
23.204(a)	information and data	swap data.
23.204(b)	swap transaction data	swap data.
23.204(b)	information and data	swap data.
23.205(a)	information and swap transaction and pricing data	swap transaction and pricing data.
23.205(a)	public recording	public reporting.
23.205(b)	swap transaction data	swap transaction and pricing data.
23.205(b)	information and data	swap transaction and pricing data.

■ 3. In § 23.204, add paragraph (c) to read as follows:

§ 23.204 Reports to swap data repositories.

* * * * *

(c) Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with all obligations to report swap data to a swap data repository in accordance with part 45 of this chapter. Each such swap dealer and major swap participant shall review its policies and procedures at least annually and update the policies and procedures to reflect the requirements of part 45 of this chapter as needed.

■ 4. In § 23.205, add paragraph (c) to read as follows:

§ 23.205 Real-time public reporting.

* * * * *

(c) Each swap dealer and major swap participant shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with all obligations to report swap transaction and pricing data to a swap data repository in accordance with part 43 of this chapter. Each such swap dealer and major swap participant shall review its policies and procedures at least annually and update the policies and procedures to reflect the requirements of part 43 of this chapter as needed.

PART 43—REAL-TIME PUBLIC REPORTING

■ 5. The authority citation for Part 43 continues to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5), and 24a, as amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 6. In § 43.3 revise paragraph (e) and remove and reserve paragraphs (f) and (g) to read as follows:

§ 43.3 Method and timing for real-time public reporting.

* * * * *

(e) *Correction of errors and omissions in swap transaction and pricing data.*

(1) Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to a swap data repository by the swap execution facility, designated contract market, or reporting counterparty, or of the omission of swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part by the swap execution facility, designated contract market, or reporting counterparty, shall, as applicable, submit corrected swap transaction and pricing data to the swap data repository that maintains the swap transaction and pricing data for the relevant swap or correctly report swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part, regardless of the state of the swap that is the subject of the swap transaction and pricing data.

(i) The swap execution facility, designated contract market, or reporting counterparty shall submit the corrections for errors or submit the omitted swap transaction and pricing data to the swap data repository as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

(ii) If the swap execution facility, designated contract market, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the swap execution facility, designated contract market, or reporting counterparty shall immediately inform the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.

(iii) In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors and omissions in previously-reported swap transaction and pricing data and reporting of omitted swap transaction and pricing data.

(2) Any non-reporting counterparty that by any means becomes aware of any error or omission in swap transaction and pricing data previously reported to a swap data repository, or of the omission of swap transaction and pricing data for a swap that was not previously reported to a swap data repository as required under this part, for a swap to which it is the non-reporting counterparty shall notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If, as applicable, the reporting counterparty and non-reporting counterparty, or the swap execution facility or designated contract market and non-reporting counterparty, agree that the swap transaction and pricing data for a swap is incorrect or incomplete, the reporting counterparty, swap execution facility, or designated contract market, as applicable, shall correct the swap transaction and pricing data in accordance with paragraph (e)(1) of this section.

* * * * *

PART 45—SWAP DATA RECORDKEEPING AND REPORTING REQUIREMENTS

■ 7. The authority citation for Part 45 continues to read as follows:

Authority: 7 U.S.C. 6r, 7, 7a-1, 7b-3, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

§ 45.2 [Amended].

■ 8. In § 45.2, remove and reserve paragraphs (f) and (g

■ 9. Revise § 45.14 to read as follows:

§ 45.14 Verification of swap data accuracy and correcting errors and omissions in swap data.

(a) *Verification of swap data accuracy to a swap data repository.* A reporting counterparty shall verify the accuracy and completeness of swap data for swaps for which it is the reporting counterparty in accordance with this paragraph (a).

(1) In order to verify the accuracy and completeness of swap data for swaps for which it is the reporting counterparty as required by this section, a reporting counterparty shall reconcile its internal books and records for each open swap for which it is the reporting counterparty with every open swaps report provided to the reporting counterparty by a swap data repository pursuant to § 49.11 of this chapter. In order to satisfy the requirements of this section, a reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.11 of this chapter for verification of swap data.

(2) For every open swaps report provided to a reporting counterparty by a swap data repository pursuant to § 49.11 of this chapter, the reporting counterparty shall submit to the swap data repository either a verification of data accuracy in accordance with paragraph (3) of this section or a notice of discrepancy in accordance with paragraph (4) of this section within:

(i) 48 hours of the swap data repository providing the open swaps report to the reporting counterparty pursuant to § 49.11 of this chapter, if the reporting counterparty is a swap dealer, major swap participant, or a derivatives clearing organization; or

(ii) 96 hours of the swap data repository providing the open swaps report to the reporting counterparty pursuant to § 49.11 of this chapter, if the reporting counterparty is not a swap dealer, major swap participant, or a derivatives clearing organization.

(3) If a reporting counterparty finds no discrepancies between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the swap data repository, the reporting counterparty shall submit a verification of data accuracy indicating that the swap data is complete and accurate to the swap data repository in the form and manner required by the swap data repository's policies and procedures created pursuant to § 49.11 of this chapter.

(4) If the reporting counterparty finds any discrepancy between the accurate and current swap data for a swap according to the reporting counterparty's internal books and records and the swap data for the swap contained in the open swaps report provided by the swap data repository, including, but not limited to, any over-reporting or under-reporting of swap data for any swap, the reporting counterparty shall submit a notice of discrepancy to the swap data repository

in the form and manner required by the swap data repository's policies and procedures created pursuant to § 49.11 of this chapter.

(b) *Correction of errors and omissions in swap data.* (1) Any swap execution facility, designated contract market, or reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to a swap data repository by the swap execution facility, designated contract market, or reporting counterparty, or of the omission of swap data for a swap that was not previously reported to a swap data repository as required under this part by the swap execution facility, designated contract market, or reporting counterparty, including, but not limited to, errors or omissions present during the verification process specified in paragraph (a) of this section, shall, as applicable, submit corrected swap data to the swap data repository that maintains the swap data for the relevant swap or correctly report swap data for a swap that was not previously reported to a swap data repository as required under this part, regardless of the state of the swap that is the subject of the swap data.

(i) The swap execution facility, designated contract market, or reporting counterparty shall submit the corrections for errors or submit the omitted swap data to the swap data repository as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions.

(ii) If the swap execution facility, designated contract market, or reporting counterparty is unable to correct the errors or omissions within three business days following discovery of the errors or omissions, the swap execution facility, designated contract market, or reporting counterparty shall immediately inform the Director of the Division of Market Oversight, or such other employee or employees of the Commission as the Director may designate from time to time, in writing, of such errors or omissions and provide an initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.

(iii) In order to satisfy the requirements of this section, a swap execution facility, designated contract market, or reporting counterparty shall conform to a swap data repository's policies and procedures created pursuant to § 49.10 of this chapter for correction of errors or omissions in previously-reported swap data and reporting of omitted swap data.

(2) Any non-reporting counterparty that by any means becomes aware of any error or omission in swap data previously reported to a swap data repository, or of the omission of swap data for a swap that was not previously reported to a swap data repository as required under this part, for a swap to which it is the non-reporting counterparty, shall notify the reporting counterparty for the swap of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If the non-reporting counterparty does not know the identity of the reporting counterparty, the non-reporting counterparty shall notify the swap execution facility or designated contract market where the swap was executed of the errors or omissions as soon as technologically practicable following discovery of the errors or omissions, but no later than three business days following the discovery of the errors or omissions. If, as applicable, the reporting counterparty and non-reporting counterparty, or the swap execution facility or designated contract market and non-reporting counterparty, agree that the swap data for a swap is incorrect or incomplete, the reporting counterparty, swap execution facility, or designated contract market, as applicable, shall correct the swap data in accordance with paragraph (b)(1) of this section.

PART 49—SWAP DATA REPOSITORIES

■ 10. The authority citation for Part 49 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2(a), 6r, 12a, and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010), unless otherwise noted.

PART 49 [AMENDED]

■ 11. In part 49:

■ a. Remove the phrase to ''registered swap data repository'' and add in its place ''swap data repository'';

■ b. Remove the phrase ''Registered Swap Data Repository'' and add in its place ''Swap Data Repository''; and

■ c. Remove the phrase ''registered swap data repositories'' and add in its place ''swap data repositories.''

■ 12. In the table below, for each section and paragraph indicated in the left column, remove the term indicated in the middle column from wherever it appears in the section or paragraph, and add in its place the term indicated in the right column:

Section	Remove	Add
49.3(d)	swap transaction data	SDR data
49.3(d)	§ 40.1(e)	§ 40.1
49.4(c) (heading)	*Revocation of Registration for False Application.*	*Revocation of registration for false application.*
49.16(a)(2)(i)	Section 8 Material	section 8 material
49.16(a)(2)(ii)	Other SDR Information	other SDR information or SDR data
49.16(a)(2)(iii)	Intellectual	intellectual
49.16(a)(2)(iii)	person associated with the swap data repository	person associated with a swap data repository
49.16(a)(2)(iii)(A)	Section 8 Material	section 8 material
49.16(a)(2)(iii)(A)	other SDR Information	SDR information or SDR data
49.16(a)(2)(iii)(B)	persons associated with the swap data repository	persons associated with a swap data repository
49.17(a)	swap data	SDR data
49.17(a)	Section 8 of the Act	section 8 of the Act
49.17(b)(1)(heading)	*Appropriate Domestic Regulator.*	*Appropriate domestic regulator.*
49.17(b)(1)	The term ''*Appropriate Domestic Regulator*'' shall mean:	The term ''*appropriate domestic regulator*'' shall mean:
49.17(b)(2)(heading)	*Appropriate Foreign Regulator.*	*Appropriate foreign regulator.*
49.17(b)(2)	The term ''*Appropriate Foreign Regulator*'' shall mean	The term ''*appropriate foreign regulator*'' shall mean
49.17(b)(2)	those Foreign Regulators	those foreign regulators
49.17(c)(2)	analyzing of swap data	analyzing of SDR data
49.17(c)(2)	transfer of data	transfer of SDR data
49.17(c)(3)	swap data provided	SDR data provided
49.17(c)(3)	authorizedusers	authorized users

Section	Remove	Add
49.17(d)(1)(heading)	*General Procedure for Gaining Access to Registered Swap Data Repository Data.*	*General procedure for gaining access to swap data repository swap data.*
49.17(d)(1)(i)	Appropriate Domestic Regulator	appropriate domestic regulator
49.17(d)(1)(i)	Appropriate Foreign Regulator	appropriate foreign regulator
49.17(d)(1)(ii)	Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking	Appropriate domestic regulators and appropriate foreign regulators seeking
49.17(d)(1)(ii)	applicable to Appropriate Domestic Regulators and Appropriate Foreign Regulators	applicable to appropriate domestic regulators and appropriate foreign regulators
49.17(d)(3)(heading)	*Foreign Regulator*	*Foreign regulator*
49.17(d)(3)	Foreign Regulator	foreign regulator
49.17(d)(3)	Foreign Regulator's	foreign regulator's
49.17(d)(4)(heading)	*requests for data access*	*requests for swap data access*
49.17(d)(4)(i)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(d)(4)(i)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.17(d)(4)(iii)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(d)(4)(iii)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.17(d)(5)(heading)	*Timing; Limitation, Suspension or Revocation of Swap Data Access.*	*Timing, limitation, suspension, or revocation of swap data access.*
49.17(d)(5)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(d)(6)(heading)	*Confidentiality Arrangement.*	*Confidentiality arrangement.*
49.17(d)(6)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.17(e)	swap data and SDR Information	SDR data and SDR information
49.17(e)(1)	swap data and SDR Information	SDR data and SDR information
49.17(e)(2)	swap data or SDR Information	SDR data or SDR information
49.17(e)(2)	swap data and SDR Information	SDR data and SDR information
49.17(f)(1)	swap data maintained	SDR data maintained
49.17(g) (heading)	Commercial uses of data	Commercial uses of SDR data
49.17(g)	Swap data accepted	SDR data accepted
49.17(g)(1)	swap data required	SDR data required
49.17(g)(2)(A)	The swap dealer, counterparty, or any other registered entity	The swap execution facility, designated contract market, or reporting counterparty
49.17(g)(2)(A)	swap data maintained	SDR data maintained
49.17(g)(2)(B)	swap transaction data	SDR data
49.17(g)(2)(B)	reporting party	swap execution facility, designated contract market, or reporting counterparty
49.17(g)(2)(B)	any reported data	any reported SDR data
49.17(g)(3)	real-time swap data	swap transaction and pricing data
49.17(h)(3)	CEA section 21(c)(7)	section 21(c)(7) of the Act
49.17(h)(4)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.18(a)(heading)	*Appropriate Domestic Regulator or Appropriate Foreign Regulator.*	*appropriate domestic regulator or appropriate foreign regulator.*
49.18(a)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.18(a)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.18(d)	Appropriate Domestic Regulator or Appropriate Foreign Regulator	appropriate domestic regulator or appropriate foreign regulator
49.18(d)	Appropriate Domestic Regulator's or Appropriate Foreign Regulator's	appropriate domestic regulator's or appropriate foreign regulator's
49.19(a)	paragraph	section
49.20(b)(heading)	*Transparency of Governance Arrangements.*	*Transparency of governance arrangements.*
49.20(c)(1)(i)	Regulation	section
49.20(c)(1)(i)(A)(2)	Independent Perspective	independent perspective
49.20(c)(1)(i)(B)	Independent Perspective	independent perspective
49.20(c)(5)	Regulation	section
49.23(a)	swap transaction data	SDR data
49.23(e)(heading)	commission	Commission
49.24(a)	all swap data in its custody	all SDR data in its custody
49.24(e)(3)(i)	dissemination of swap data	dissemination of SDR data
49.24(e)(3)(ii)	normal swap data reporting,	normal SDR data reporting,
49.24(f)(2)	all swap data contained	all SDR data contained
49.24(j)(1) Definition of ''Controls''.	data and information	SDR data and SDR information
49.24(j)(1) Definition of ''Enterprise technology risk assessment''.	data and information	SDR data and SDR information

Section	Remove	Add
49.24(j)(1) Definition of ''Security incident''.	integrity of data	integrity of SDR data
49.24(k)(1)	report swap data	report SDR data
49.24(k)(2)	report swap data	report SDR data
49.24(l)(3)	any data related to	any SDR data related to
49.24(m)	Board of Directors	board of directors
49.26(a)	swap data maintained	SDR data maintained
49.26(c)	safeguarding of swap data	safeguarding of SDR data
49.26(d)	any and all swap data	any and all SDR data
49.26(d)	reporting entity	swap execution facility, designated contract market, or reporting counterparty
49.26(e)	swap data that it receives	SDR data that it receives
49.26(e)	market participant, any registered entity, or any other person;	swap execution facility, designated contract market, or reporting counterparty;
49.26(h)	rebates; and	rebates;
49.26(i)	arrangements.	arrangements; and
49.27(a)(2)	Regulation	section
49.27(b)	reporting of swap data	reporting of SDR data
Part 49, App. B (heading)	Registered Swap Data Respositories	Swap Data Repositories

■ 13. Revise § 49.2 to read as follows:

§ 49.2 Definitions.

(a) As used in this part:

Affiliate. The term ''*affiliate*'' means a person that directly, or indirectly, controls, is controlled by, or is under common control with, the swap data repository.

As soon as technologically practicable. The term ''*as soon as technologically practicable*'' means as soon as possible, taking into consideration the prevalence, implementation, and use of technology by comparable market participants.

Asset class. The term ''*asset class*'' means a broad category of commodities including, without limitation, any ''excluded commodity'' as defined in section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity, and such other asset classes as may be determined by the Commission.

Commercial use. The term ''*commercial use*'' means the use of SDR data held and maintained by a swap data repository for a profit or business purposes. A swap data repository's use of SDR data for regulatory purposes and/or to perform its regulatory responsibilities would not be considered a commercial use regardless of whether the swap data repository charges a fee for reporting such SDR data.

Control. The term ''*control*'' (including the terms ''*controlled by*'' and ''*under common control with*'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Foreign regulator. The term ''*foreign regulator*'' means a foreign futures authority as defined in section 1a(26) of the Act, foreign financial supervisors, foreign central banks, foreign ministries, and other foreign authorities.

Independent perspective. The term ''*independent perspective*'' means a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved.

Market participant. The term ''*market participant*'' means any person participating in the swap market, including, but not limited to, designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, major swap participants, and any other counterparty to a swap transaction.

Non-affiliated third party. The term ''*non-affiliated third party*'' means any person except:

(1) The swap data repository;

(2) The swap data repository's affiliate; or

(3) A person jointly employed by a swap data repository and any entity that is not the swap data repository's affiliate (the term ''non-affiliated third party'' includes such entity that jointly employs the person).

Non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty. The term ''*non-swap dealer/major swap participant/derivatives clearing organization reporting counterparty*'' means a reporting counterparty that is not a swap dealer, major swap participant, derivatives clearing organization, or exempt derivatives clearing organization.

Open swap. The term ''*open swap*'' means an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated.

Person associated with a swap data repository. The term ''*person associated with a swap data repository*'' means:

(1) Any partner, officer, or director of such swap data repository (or any person occupying a similar status or performing similar functions);

(2) Any person directly or indirectly controlling, controlled by, or under common control with such swap data repository; or

(3) Any person employed by such swap data repository, including a jointly employed person.

Position. The term ''*position*'' means the gross and net notional amounts of open swap transactions aggregated by one or more attributes, including, but not limited to, the:

(1) Underlying instrument;

(2) Index, or reference entity;

(3) Counterparty;

(4) Asset class;

(5) Long risk of the underlying instrument, index, or reference entity; and

(6) Short risk of the underlying instrument, index, or reference entity.

Reporting counterparty. The term ''*reporting counterparty*'' means the counterparty responsible for reporting SDR data to a swap data repository pursuant to parts 43, 45, or 46 of this chapter.

SDR data. The term ''*SDR data*'' means the specific data elements and information required to be reported to a swap data repository or disseminated by a swap data repository pursuant to two or more of parts 43, 45, 46, and/or 49

of this chapter, as applicable in the context.

SDR information. The term ''*SDR information*'' means any information that the swap data repository receives or maintains related to the business of the swap data repository that is not SDR data.

Section 8 material. The term ''*section 8 material*'' means the business transactions, SDR data, or market positions of any person and trade secrets or names of customers.

Swap data. The term ''*swap data*'' means the specific data elements and information required to be reported to a swap data repository pursuant to part 45 of this chapter or made available to the Commission pursuant to this part, as applicable.

Swap transaction and pricing data. The term ''*swap transaction and pricing data*'' means the specific data elements and information required to be reported to a swap data repository or publicly disseminated by a swap data repository pursuant to part 43 of this chapter, as applicable.

(b) *Other defined terms.* Terms not defined in this part have the meanings assigned to the terms in § 1.3 of this chapter.

■ 14. In § 49.3, revise paragraph (a)(5) to read as follows:

§ 49.3 Procedures for registration.

(a) * * *

(5) *Amendments.* If any information reported on Form SDR or in any amendment thereto is or becomes inaccurate for any reason before the application for registration has been granted under this paragraph (a), the swap data repository shall promptly file an amendment on Form SDR updating such information.

* * * * *

■ 15. Revise § 49.5 to read as follows:

§ 49.5 Equity interest transfers.

(a) *Equity interest transfer notification.* A swap data repository shall file with the Commission a notification of each transaction involving the direct or indirect transfer of ten percent or more of the equity interest in the swap data repository. The Commission may, upon receiving such notification, request that the swap data repository provide supporting documentation of the transaction.

(b) *Timing of notification.* The equity interest transfer notice described in paragraph (a) of this section shall be filed electronically with the Secretary of the Commission at its Washington, DC headquarters at *submissions@cftc.gov* and the Division of Market Oversight at *DMOSubmissions@cftc.gov,* at the earliest possible time but in no event later than the open of business ten business days following the date upon which a firm obligation is made to transfer, directly or indirectly, ten percent or more of the equity interest in the swap data repository.

(c) *Certification.* Upon a transfer, whether directly or indirectly, of an equity interest of ten percent or more in a swap data repository, the swap data repository shall file electronically with the Secretary of the Commission at its Washington, DC headquarters at *submissions@cftc.gov* and the Division of Market Oversight at *DMOSubmissions@cftc.gov,* a certification that the swap data repository meets all of the requirements of section 21 of the Act and the Commission regulations adopted thereunder, no later than two business days following the date on which the equity interest of ten percent or more was acquired.

■ 16. Revise § 49.6 to read as follows:

§ 49.6 Request for transfer of registration.

(a) *Request for approval.* A swap data repository seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Secretary of the Commission in the form and manner specified by the Commission.

(b) *Timing for filing a request for transfer of registration.* A swap data repository shall file a request for transfer of registration as soon as practicable prior to the anticipated corporate change.

(c) *Required information.* The request for transfer of registration shall include the following:

(1) The underlying documentation that governs the corporate change;

(2) A description of the corporate change, including the reason for the change and its impact on the swap data repository, including the swap data repository's governance and operations, and its impact on the rights and obligations of market participants;

(3) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to swap data repositories and the Commission's regulations;

(4) The governance documents adopted by the transferee, including a copy of any constitution; articles or certificate of incorporation, organization, formation, or association with all amendments thereto; partnership or limited liability agreements; and any existing bylaws, operating agreement, or rules or instruments corresponding thereto;

(5) The transferee's rules marked to show changes from the current rules of the swap data repository; and

(6) A representation by the transferee that it:

(i) Will be the surviving entity and successor-in-interest to the transferor swap data repository and will retain and assume the assets and liabilities of the transferor, except if otherwise indicated in the request;

(ii) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's regulations; and

(iii) Will notify market participants of all changes to the transferor's rulebook prior to the transfer, including those changes that may affect the rights and obligations of market participants, and will further notify market participants of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting the transfer.

(d) *Commission determination.* Upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request for transfer of registration.

■ 17. Revise § 49.9 to read as follows:

§ 49.9 Open swaps reports provided to the Commission.

Each swap data repository shall provide reports of open swaps to the Commission in accordance with this section.

(a) *Content of the open swaps report.* In order to satisfy the requirements of this section, each swap data repository shall provide the Commission with open swaps reports that contain an accurate reflection of the swap data for every swap data field required to be reported for swaps pursuant to part 45 of this chapter for every open swap maintained by the swap data repository, organized by the unique identifier created pursuant to § 45.5 of this chapter associated with each open swap, as of the time the swap data repository compiles the open swaps report.

(b) *Transmission of the open swaps report.* A swap data repository shall transmit all open swaps reports to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission as well as the format of the swap data to be transmitted.

■ 18. In § 49.10, add paragraph (e) to read as follows:

§ 49.10 Acceptance of data.

* * * * *

(e) *Errors and omissions.* In accordance with this paragraph (e), a swap data repository shall correct errors and omissions in SDR data previously reported to the swap data repository pursuant to parts 43, 45, and 46 of this chapter and shall correct omissions in reporting SDR data for swaps that were not previously reported to the swap data repository as required under parts 43, 45, or 46 of this chapter, regardless of the state of the swap that is the subject of the SDR data.

(1) A swap data repository shall accept corrections for errors and omissions reported to the swap data repository pursuant to parts 43, 45, or 46 of this chapter.

(2) A swap data repository shall correct the reported errors and omissions as soon as technologically practicable after the swap data repository receives a report of errors or omissions.

(3) A swap data repository shall disseminate corrected SDR data to the public and the Commission, as applicable, in accordance with this chapter, as soon as technologically practicable after the swap data repository corrects the SDR data.

(4) A swap data repository shall establish, maintain, and enforce policies and procedures designed for the swap data repository to accept corrections for errors and omissions, to correct the errors and omissions as soon as technologically practicable after the swap data repository receives a report of errors or omissions, and to disseminate such corrected SDR data to the public and to the Commission, as applicable, in accordance with this chapter.

■ 19. Revise § 49.11 to read as follows:

§ 49.11 Verification of swap data accuracy.

(a) *General requirement.* Each swap data repository shall verify the accuracy and completeness of swap data that it receives from swap execution facilities, designated contract markets, or reporting counterparties, or third-party service providers acting on their behalf, in accordance with paragraph (b) of this section. A swap data repository shall also establish, maintain, and enforce policies and procedures reasonably designed to verify the accuracy and completeness of swap data that it receives from swap execution facilities, designated contract markets, or reporting counterparties, or third-party service providers acting on their behalf.

(b) *Distribution of open swaps reports.* In order to verify the accuracy and completeness of swap data as required by this section, a swap data repository shall, on a regular basis, distribute to each reporting counterparty an open swaps report detailing the swap data maintained by the swap data repository for all open swaps as of the time the swap data repository compiles the open swaps report for which the recipient of the open swaps report is the reporting counterparty.

(1) *Content of open swaps reports.* In order to satisfy the requirements of this section, the swap data repository shall distribute an open swaps report that contains an accurate reflection of the swap data for every swap data field required to be reported for swaps pursuant to part 45 of this chapter, unless access to a particular data field is prohibited by other Commission regulations, for every open swap maintained by the swap data repository for which the recipient of the report is the reporting counterparty, organized by the unique identifier created pursuant to § 45.5 of this chapter associated with every open swap, as of the time the swap data repository compiles the open swaps report.

(2) *Frequency of open swaps reports for swap dealer, major swap participant, and derivatives clearing organization reporting counterparties.* In order to satisfy the requirements of this section, the swap data repository shall distribute an open swaps report to all reporting counterparties that are swap dealers, major swap participants, or derivatives clearing organizations on a weekly basis, no later than 11:59 p.m. Eastern time on the day of the week that the swap data repository chooses to regularly distribute the open swaps reports. The swap data repository shall distribute all open swaps reports on the same day of the week.

(3) *Frequency of open swaps reports for non-swap dealer/major swap participant/derivatives clearing organization reporting counterparties.* In order to satisfy the requirements of this section, the swap data repository shall distribute an open swaps report to all non-swap dealer/major swap participant/derivatives clearing organization reporting counterparties on a monthly basis, no later than 11:59 p.m. Eastern time on the day of the month that the swap data repository chooses to regularly distribute the open swaps report. The swap data repository shall distribute all open swaps reports on the same day of the month.

(c) *Receipt of verification of data accuracy or notice of discrepancy.* In order to satisfy the requirements of this section, the swap data repository shall receive from each reporting counterparty for each open swaps report (i) a verification of data accuracy indicating that the swap data contained in an open swaps report distributed pursuant to paragraph (b) of this section is accurate and complete or (ii) a notice of discrepancy indicating that the swap data contained in an open swaps report contains one or more discrepancies, in accordance with § 45.14 of this chapter. The swap data repository shall establish, maintain, and enforce policies and procedures reasonably designed for the swap data repository to successfully receive the verification of data accuracy or notice of discrepancy.

(d) *Amending verification policies and procedures.* A swap data repository shall comply with the requirements under part 40 of this chapter in adopting or amending the policies and procedures required by this section.

■ 20. Revise § 49.12 to read as follows:

§ 49.12 Swap data repository recordkeeping requirements.

(a) *General requirement.* A swap data repository shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to the business of the swap data repository, including, but not limited to, all SDR information and all SDR data that is reported to the swap data repository pursuant to this chapter.

(b) *Maintenance of records.* A swap data repository shall maintain all records required to be kept by this section in accordance with this paragraph (b).

(1) A swap data repository shall maintain all SDR information, including, but not limited to, all documents, policies, and procedures required by the Act and the Commission's regulations, correspondence, memoranda, papers, books, notices, accounts, and other such records made or received by the swap data repository in the course of its business. All SDR information shall be maintained in accordance with § 1.31 of this chapter.

(2) A swap data repository shall maintain all SDR data and timestamps reported to or created by the swap data repository pursuant to this chapter, and all messages related to such reporting, throughout the existence of the swap that is the subject of the SDR data and for five years following final termination of the swap, during which time the records shall be readily accessible by the swap data repository and available to the Commission via real-time electronic access, and for a period of at least ten additional years in archival storage from which such records are retrievable by the swap data repository within three business days.

(c) *Records of data errors and omissions.* A swap data repository shall create and maintain records of data validation errors and SDR data reporting errors and omissions in accordance with this paragraph (c).

(1) A swap data repository shall create and maintain an accurate record of all reported SDR data that fails to satisfy the swap data repository's data validation procedures including, but not limited to, all SDR data reported to the swap data repository that fails to satisfy the data validation procedures, all data validation errors, and all related messages and timestamps. A swap data repository shall make these records available to the Commission on request.

(2) A swap data repository shall create and maintain an accurate record of all SDR data errors and omissions reported to the swap data repository and all corrections disseminated by the swap data repository pursuant to parts 43, 45, and 46 of this chapter. A swap data repository shall make these records available to the Commission on request.

(d) *Availability of records.* All records required to be kept pursuant to this part shall be open to inspection upon request by any representative of the Commission or the United States Department of Justice in accordance with the provisions of § 1.31 of this chapter. A swap data repository required to keep, create, or maintain records pursuant to this section shall provide such records in accordance with the provisions of § 1.31 of this chapter, unless otherwise provided in this part.

■ 21. Revise § 49.13 to read as follows:

§ 49.13 Monitoring, screening, and analyzing data.

(a) *Duty to monitor, screen, and analyze data.* A swap data repository shall establish automated systems for monitoring, screening, and analyzing all relevant SDR data in its possession in the form and manner as may be directed by the Commission. A swap data repository shall routinely monitor, screen, and analyze relevant SDR data at the request of the Commission.

(1) *Monitoring, screening, and analyzing.* Monitoring, screening, and analyzing requirements shall include utilizing relevant SDR data maintained by the swap data repository to provide information to the Commission concerning such relevant SDR data. Monitoring, screening, and analyzing requests may require the compiling and/or calculation of requested information within discrete categories and/or over periods of time, including the comparison of information from different categories and/or over multiple periods of time. Requests for monitoring, screening, and analyzing may require swap data repositories to provide information to the Commission related to:

(i) The accuracy, timeliness, and quality of SDR data reported pursuant to this chapter;

(ii) Updates and corrections to, and verification of the accuracy of, SDR data reported pursuant to this chapter;

(iii) Currently open swaps and the consistency of SDR data related to individual swaps;

(iv) The calculation of market participant swap positions, including for purposes of position limit compliance, risk assessment, and compliance with other regulatory requirements;

(v) Swap counterparty exposure to other counterparties and standard market risk metrics;

(vi) Swap valuations and margining activities;

(vii) Audit trails for individual swaps, including post-transaction events such as allocation, novation, and compression, and all related messages;

(viii) Compliance with Commission regulations;

(ix) Market surveillance;

(x) The use of clearing exemptions and exceptions; and/or

(xi) Statistics on swaps market activity.

(2) *Discretion of the Commission.* All monitoring, screening, and analyzing requests shall be at the discretion of the Commission. Such discretion includes, but is not limited to, the content, scope, and frequency of each required response. All information provided by a swap data repository pursuant to this section shall conform to the form and manner requirements established pursuant to § 49.30 for a particular request.

(3) *Timing.* All monitoring, screening, and analyzing requests shall be fulfilled within the time specified by the Commission for the particular request.

(b) *Capacity to monitor, screen, and analyze SDR data.* A swap data repository shall establish and at all times maintain sufficient information technology, staff, and other resources to fulfill the requirements in this section in the manner prescribed by the Commission.

(c) *Duty to notify the Commission of noncompliance.* A swap data repository shall promptly notify the Commission of any swap transaction for which the swap data repository is aware that:

(1) The swap transaction and pricing data was not received by the swap data repository in accordance with part 43 of this chapter;

(2) The swap data was not received by the swap data repository in accordance with part 45 of this chapter; or

(3) Data was not received by the swap data repository in accordance with part 46 of this chapter.

■ 22. Revise § 49.15 to read as follows:

§ 49.15 Real-time public reporting by swap data repositories.

(a) *Scope.* The provisions of this section apply to the real-time public reporting of swap transaction and pricing data submitted to a swap data repository pursuant to part 43 of this chapter.

(b) *Systems to accept and disseminate data in connection with real-time public reporting.* A swap data repository shall establish such electronic systems as are necessary to accept and publicly disseminate swap transaction and pricing data submitted to the swap data repository pursuant to part 43 of this chapter in order to meet the real-time public reporting obligations of part 43 of this chapter. Any electronic system established for this purpose shall be capable of accepting and ensuring the public dissemination of all data fields required by part 43 this chapter.

■ 23. Amend § 49.16 by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 49.16 Privacy and confidentiality requirements of swap data repositories.

(a) * * *

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of any and all SDR information and all SDR data that is not swap transaction and pricing data disseminated under part 43 of this chapter. Such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR information and all SDR data (except for swap transaction and pricing data disseminated under part 43 of this chapter) that the swap data repository shares with affiliates and non-affiliated third parties; and

* * * * *

(b) A swap data repository shall not, as a condition of accepting SDR data from any swap execution facility, designated contract market, or reporting counterparty, require the waiver of any privacy rights by such swap execution facility, designated contract market, or reporting counterparty.

(c) Subject to section 8 of the Act, a swap data repository may disclose aggregated SDR data on a voluntary basis or as requested, in the form and manner prescribed by the Commission.

■ 24. In § 49.17, revise paragraph (b)(3), the introductory text of paragraph (c), paragraphs (c)(1) and (f)(2) to read as follows and remove paragraph (i).

§ 49.17 Access to SDR data.

* * * * *

(b) * * *

(3) *Direct electronic access.* For the purposes of this section, the term ''*direct electronic access*'' shall mean an electronic system, platform, framework, or other technology that provides internet-based or other form of access to real-time SDR data that is acceptable to the Commission and also provides scheduled data transfers to Commission electronic systems.

(c) *Commission access.* A swap data repository shall provide access to the Commission for all SDR data maintained by the swap data repository pursuant to this chapter in accordance with this paragraph (c).

(1) *Direct electronic access requirements.* A swap data repository shall provide direct electronic access to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and the Commission's regulations thereunder. A swap data repository shall maintain all SDR data reported to the swap data repository in a format acceptable to the Commission, and shall transmit all SDR data requested by the Commission to the Commission as instructed by the Commission. Such instructions may include, but are not limited to, the method, timing, and frequency of transmission, as well as the format and scope of the SDR data to be transmitted.

* * * * *

(f) * * *

(2) *Exception.* SDR data and SDR information related to a particular swap transaction that is maintained by the swap data repository may be accessed by either counterparty to that particular swap. However, the SDR data and SDR information maintained by the swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is used in part 45 of this chapter) of the other counterparty to the swap, or the other counterparty's clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with §§ 1.74, 23.610, and 39.12(b)(7) of this chapter.

* * * * *

§ 49.18 [Amended]

■ 25. Amend § 49.18 by removing paragraph (e).

■ 26. In § 49.20, revise paragraphs (b)(2)(v), (b)(2)(vii), and (c)(1)(ii)(B) to read as follows:

§ 49.20 Governance arrangements (Core Principle 2).

* * * * *

(b) * * *

(2) * * *

(v) A description of the manner in which the board of directors, as well as any committee referenced in paragraph (b)(2)(ii) of this section, considers an independent perspective in its decision-making process, as § 49.2(a) defines such term;

* * * * *

(vii) Summaries of significant decisions impacting the public interest, the rationale for such decisions, and the process for reaching such decisions. Such significant decisions shall include decisions relating to pricing of repository services, offering of ancillary services, access to SDR data, and use of section 8 material, SDR information, and intellectual property (as referenced in § 49.16). Such summaries of significant decisions shall not require the swap data repository to disclose section 8 material or, where appropriate, information that the swap data repository received on a confidential basis from a swap execution facility, designated contract market, or reporting counterparty.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) A description of the relationship, if any, between such members and the swap data repository or any swap execution facility, designated contract market, or reporting counterparty user thereof (or, in each case, affiliates thereof, as § 49.2(a) defines such term); and

* * * * *

■ 27. In § 49.22 revise paragraph (a), (b)(1) introductory text, paragraphs (b)(1)(i), (c), (d)(2) through (6), (e), (f), and (g) to read as follows and remove paragraph (d)(7).

§ 49.22 Chief compliance officer.

(a) *Definitions.* For purposes of this section, the term—

Board of directors means the board of directors of a swap data repository, or for those swap data repositories whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

Senior officer means the chief executive officer or other equivalent officer of the swap data repository.

(b) * * *

(1) *Chief compliance officer required.* Each swap data repository shall designate an individual to serve as a chief compliance officer.

(i) The position of chief compliance officer shall carry with it the authority and resources to develop, in consultation with the board of directors or senior officer, the policies and procedures of the swap data repository and enforce such policies and procedures to fulfill the duties set forth for chief compliance officers in the Act and Commission regulations.

* * * * *

(c) *Appointment, supervision, and removal of chief compliance officer.* (1) *Appointment and compensation of chief compliance officer.* (i) Only the board of directors or senior officer may appoint the chief compliance officer.

(ii) The board of directors or senior officer shall approve the compensation of the chief compliance officer.

(iii) The swap data repository shall notify the Commission within two business days of the appointment, whether interim or permanent, of a chief compliance officer.

(2) *Supervision of chief compliance officer.* The chief compliance officer shall report directly to the board of directors or the senior officer of the swap data repository.

(3) *Removal of chief compliance officer.* (i) Only the board of directors or the senior officer may remove the chief compliance officer.

(ii) The swap data repository shall notify the Commission within two business days of the removal, whether interim or permanent, of a chief compliance officer.

(4) *Annual meeting with the chief compliance officer.* The chief compliance officer shall meet with the board of directors or senior officer of the swap data repository at least annually.

(d) * * *

(2) Taking reasonable steps, in consultation with the board of directors or the senior officer of the swap data repository, to resolve any material conflicts of interest that may arise;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations

created pursuant to section 21 of the Act;

(5) Establish procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated compliant; and

(6) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the swap data repository designed to prevent ethical violations and to promote honesty and ethical conduct by swap data repository personnel.

(e) *Preparation of annual compliance report.* The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report that covers the prior fiscal year. The report shall, at a minimum, contain:

(1) A description and self-assessment of the effectiveness of the written policies and procedures of the swap data repository, including the code of ethics and conflict of interest policies, designed to reasonably ensure compliance with the Act and applicable Commission regulations;

(2) A list of any material changes made to compliance policies and procedures during the coverage period for the report and any areas of improvement or recommended changes to the compliance program;

(3) A description of the financial, managerial, and operational resources set aside for compliance with the Act and applicable Commission regulations;

(4) A description of any material non-compliance matters identified and an explanation of the corresponding action taken to resolve such non-compliance matters; and

(5) A certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete in all material respects.

(f) *Submission of annual compliance report and related matters*—(1) *Furnishing the annual compliance report prior to submission to the Commission.* Prior to submission to the Commission, the chief compliance officer shall provide the annual compliance report for review to the board of directors of the swap data repository or, in the absence of a board of directors, to the senior officer of the swap data repository. Members of the board of directors and the senior officer shall not require the chief compliance officer to make any changes to the annual compliance report.

(2) *Submission of annual compliance report to the Commission.* The annual compliance report shall be submitted electronically to the Commission not later than 90 calendar days after the end of the swap data repository's fiscal year. The swap data repository shall concurrently file the annual compliance report with the fourth quarter financial report pursuant to § 49.25(f)(3).

(3) *Amendments to annual compliance report.* Promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the chief compliance officer shall file an amendment with the Commission to correct the material error or omission. The chief compliance officer shall submit the amended annual compliance report to the board of directors, or in the absence of a board of directors, to the senior officer of the swap data repository, pursuant to paragraph (f)(1) of this section. An amendment shall contain the certification required under paragraph (e)(5) of this section.

(4) *Requests for extension.* A swap data repository may request an extension of time to file its annual compliance report from the Commission. Reasonable and valid requests for extensions of the filing deadline may be granted at the discretion of the Commission.

(g) *Recordkeeping.* The swap data repository shall maintain all records demonstrating compliance with the duties of the chief compliance officer and the preparation and submission of annual compliance reports consistent with § 49.12(b)(1).

■ 28. In § 49.24, revise paragraphs (d), the introductory text of (i), and (i)(5) to read as follows:

§ 49.24 System safeguards.

* * * * *

(d) A swap data repository shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations. Such duties and obligations include, without limitation, the duties set forth in §§ 49.10 to 49.18, § 49.23, and the core principles set forth in §§ 49.19 to 49.21 and 49.25 to 49.27, and maintenance of a comprehensive audit trail. The swap data repository's business continuity-disaster recovery plan and resources generally should enable resumption of the swap data repository's operations and resumption of ongoing fulfillment of the swap data repository's duties and obligation during the next business day following the disruption. A swap data repository shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

* * * * *

(i) As part of a swap data repository's obligation to produce books and records in accordance with § 1.31 of this chapter and § 49.12, a swap data repository shall provide to the Commission the following system safeguards-related books and records, promptly upon the request of any Commission representative:

* * *

(5) Nothing in paragraph (i) of this section shall be interpreted as reducing or limiting in any way a swap data repository's obligation to comply with § 1.31 of this chapter or with § 49.12.

* * * * *

■ 29. In § 49.25, revise paragraphs (a)(1) and (f)(3) to read as follows:

§ 49.25 Financial resources.

(a) * * *

(1) A swap data repository shall maintain sufficient financial resources to perform its statutory and regulatory duties set forth in this chapter.

* * * * *

(f) * * *

(3) The reports and any supporting documentation required by this section shall be filed not later than 40 calendar days after the end of the swap data repository's first three fiscal quarters, and not later than 90 calendar days after the end of the swap data repository's fourth fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the swap data repository.

■ 30. In § 49.26,

■ a. Revise the introductory text; and

■ b. Add paragraph (j).

The revisions and additions read as follows:

§ 49.26 Disclosure requirements of swap data repositories.

Before accepting any SDR data from a swap execution facility, designated contract market, or reporting counterparty; or upon a swap execution facility's, designated contract market's, or reporting counterparty's request; a swap data repository shall furnish to the swap execution facility, designated contract market, or reporting counterparty a disclosure document that

contains the following written information, which shall reasonably enable the swap execution facility, designated contract market, or reporting counterparty to identify and evaluate accurately the risks and costs associated with using the services of the swap data repository:

* * * * *

(j) The swap data repository's policies and procedures regarding the reporting of SDR data to the swap data repository, including the swap data repository's SDR data validation procedures, swap data verification procedures, and procedures for correcting SDR data errors and omissions.

■ 31. Add § 49.28 to read as follows:

§ 49.28 Operating hours of swap data repositories.

(a) Except as otherwise provided in this paragraph (a), a swap data repository shall have systems in place to continuously accept and promptly record all SDR data reported to the swap data repository as required in this chapter and, as applicable, publicly disseminate all swap transaction and pricing data reported to the swap data repository as required in part 43 of this chapter.

(1) A swap data repository may establish normal closing hours to perform system maintenance during periods when, in the reasonable estimation of the swap data repository, the swap data repository typically receives the least amount of SDR data. A swap data repository shall provide reasonable advance notice of its normal closing hours to market participants and to the public.

(2) A swap data repository may declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A swap data repository shall schedule special closing hours during periods when, in the reasonable estimation of the swap data repository in the context of the circumstances prompting the special closing hours, the special closing hours will be the least disruptive to the swap data repository's SDR data reporting responsibilities. A swap data repository shall provide reasonable advance notice of its special closing hours to market participants and to the public whenever possible, and, if advance notice is not reasonably possible, shall provide notice of its special closing hours to market participants and to the public as soon as reasonably possible after declaring special closing hours.

(b) A swap data repository shall comply with the requirements under part 40 of this chapter in adopting or amending normal closing hours and special closing hours.

(c) During normal closing hours and special closing hours, a swap data repository shall have the capability to accept and hold in queue any and all SDR data reported to the swap data repository during the normal closing hours or special closing hours.

(1) Upon reopening after normal closing hours or special closing hours, a swap data repository shall promptly process all SDR data received during normal closing hours or special closing hours, as required pursuant to this chapter, and, pursuant to part 43 of this chapter, publicly disseminate all swap transaction and pricing data reported to the swap data repository that was held in queue during the normal closing hours or special closing hours.

(2) If at any time during normal closing hours or special closing hours a swap data repository is unable to receive and hold in queue any SDR data reported pursuant to this chapter, then the swap data repository shall immediately issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it is unable to receive and hold in queue SDR data. Immediately upon reopening, the swap data repository shall issue notice to all swap execution facilities, designated contract markets, reporting counterparties, and the public that it has resumed normal operations. Any swap execution facility, designated contract market, or reporting counterparty that was obligated to report SDR data pursuant to this chapter to the swap data repository, but could not do so because of the swap data repository's inability to receive and hold in queue SDR data, shall report the SDR data to the swap data repository immediately after receiving such notice.

■ 32. Add § 49.29 to read as follows:

§ 49.29 Information relating to swap data repository compliance.

(a) *Requests for information.* Upon the Commission's request, a swap data repository shall file with the Commission information related to its business as a swap data repository and such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Act and regulations thereunder. The swap data repository shall file the information requested in the form and manner and within the time period the Commission specifies in the request.

(b) *Demonstration of compliance.* Upon the Commission's request, a swap data repository shall file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with its obligations under the Act and the Commission's regulations thereunder, as the Commission specifies in the request. The swap data repository shall file the written demonstration in the form and manner and within the time period the Commission specifies in the request.

■ 33. Add § 49.30 to read as follows:

§ 49.30 Form and manner of reporting and submitting information to the Commission.

Unless otherwise instructed by the Commission, a swap data repository shall submit SDR data reports and any other information required under this part to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.

■ 34. Add § 49.31 to read as follows:

§ 49.31 Delegation of authority to the Director of the Division of Market Oversight relating to certain part 49 matters.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Market Oversight and to such members of the Commission staff acting under his or her direction as he or she may designate from time to time:

(1) All functions reserved to the Commission in § 49.5.

(2) All functions reserved to the Commission in § 49.9.

(3) All functions reserved to the Commission in § 49.10.

(4) All functions reserved to the Commission in § 49.12.

(5) All functions reserved to the Commission in § 49.13.

(6) All functions reserved to the Commission in § 49.16.

(7) All functions reserved to the Commission in § 49.17.

(8) All functions reserved to the Commission in § 49.18.

(9) All functions reserved to the Commission in § 49.22.

(10) All functions reserved to the Commission in § 49.23.

(11) All functions reserved to the Commission in § 49.24.

(12) All functions reserved to the Commission in § 49.25.

(13) All functions reserved to the Commission in § 49.29.

(14) All functions reserved to the Commission in § 49.30.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any

matter that has been delegated under paragraph (a) of this section.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated in this section.

■ 35. Revise Appendix A to Part 49 to read as follows:

Appendix A to Part 49—Form SDR

COMMODITY FUTURES TRADING COMMISSION

FORM SDR

SWAP DATA REPOSITORY APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

REGISTRATION INSTRUCTIONS

Intentional misstatements or omissions of material fact may constitute federal criminal violations (7 U.S.C. 13 and 18 U.S.C. 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form SDR have the same meaning as in the Commodity Exchange Act, as amended (''Act''), and in the General Rules and Regulations of the Commodity Futures Trading Commission (''Commission'') thereunder (17 CFR chapter I).

For the purposes of this Form SDR, the term ''Applicant'' shall include any applicant for registration as a swap data repository or any applicant amending a pending application.

GENERAL INSTRUCTIONS

1. This Form SDR, which includes instructions, a Cover Sheet, and required Exhibits (together ''Form SDR''), is to be filed with the Commission by all Applicants, pursuant to section 21 of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written comments concerning such application. No application for registration shall be effective unless the Commission, by order, grants such registration.
2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).
3. Signatures on all copies of the Form SDR filed with the Commission can be executed electronically. If this Form SDR is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it shall be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it shall be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association that is not a partnership, it shall be signed in the name of such organization or association by the managing agent, *i.e.,* a duly authorized person who directs manages or who participates in the directing or managing of its affairs.
4. If this Form SDR is being filed as an application for registration, all applicable items must be answered in full. If any item is inapplicable, indicate by ''none,'' ''not applicable,'' or ''N/A,'' as appropriate.
5. Under section 21 of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form SDR from any Applicant seeking registration as a swap data repository. Disclosure by the Applicant of the information specified in this Form SDR is mandatory prior to the start of the processing of an application for registration as a swap data repository. The information provided in this Form SDR will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant. The Commission may determine that additional information is required from an Applicant in order to process its application. A Form SDR that is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form SDR, however, shall not constitute a finding that the Form SDR has been filed as required or that the information submitted is true, current, or complete.
6. Except in cases where confidential treatment is requested by the Applicant and granted by the Commission pursuant to the Freedom of Information Act and Commission Regulation § 145.9, information supplied on this Form SDR will be included in the public files of the Commission and will be available for inspection by any interested person. The Applicant must identify with particularity the information in these exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

APPLICATION AMENDMENTS

1. An Applicant amending a pending application for registration as a swap data repository shall file an amended Form SDR electronically with the Secretary of the Commission in the manner specified by the Commission.
2. When filing this Form SDR for purposes of amending a pending application, an Applicant must re-file the entire Cover Sheet, amended if necessary, include an executing signature, and attach thereto revised Exhibits or other materials marked to show any amendments. The submission of an amendment to a pending application represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

WHERE TO FILE

This Form SDR shall be filed electronically with the Secretary of the Commission in the manner specified by the Commission.

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

FORM SDR

SWAP DATA REPOSITORY
APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

COVER SHEET

_____
Exact name of Applicant as specified in charter

_____
Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **AMENDMENT** to a pending application, complete in full, list all items that are amended and check here.

_____

_____

_____

_____

GENERAL INFORMATION

1. Name under which business is or will be conducted, if different than name specified above:

_____

2. If name of business is being amended, state previous business name:

_____

3. Contact information, including mailing address if different than address specified above:

_____
Number and Street

_____
City State Country Zip Code

_____
Main Phone Number Fax

_____
Website URL E-mail Address

4. List of principal office(s) and address(es) where swap data repositories activities are or will be conducted:

Office	Address

5. If the Applicant is a successor to a previously registered swap data repository, please complete the following:

a. Date of succession

_____

b. Full name and address of predecessor registrant

_____
Name

_____
Number and Street

_____
City State Country Zip Code

_____ _____ _____
Phone Number Fax Number E-mail Address

6. Furnish a description of the function(s) that the Applicant performs or proposes to perform:

_____

_____

_____

Please indicate which asset class(es) the Applicant intends to serve:

- ☐ Interest Rate
- ☐ Equity
- ☐ Credit
- ☐ Foreign Currency
- ☐ Commodity (Specify) _____
- ☐ Other (Specify) _____

BUSINESS ORGANIZATION

7. Applicant is a:

- ☐ Corporation
- ☐ Partnership
- ☐ Limited Liability Company

☐ Other (Specify) _____

8. Date of incorporation or formation: _____

9. State of incorporation or jurisdiction of organization: _____
List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

10. List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

_____

_____

11. Date of fiscal year end: _____

12. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with its application may be given by sending such notice by certified mail to the person named below at the address given.

_____
Print Name and Title

_____
Number and Street

_____
City State Zip Code

_____ _____ _____
Phone Number Fax Number E-mail Address

SIGNATURES

13. The Applicant had duly caused this application or amendment to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ day of _____, 20_____. The Applicant and the undersigned represent hereby that all information contained herein is true, current, and complete. It is understood that all required items and Exhibits are considered integral parts of this Form SDR and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____
Name of Applicant

_____
Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

EXHIBITS INSTRUCTIONS

The following Exhibits must be included as part of Form SDR and filed with the Commission by each Applicant seeking registration as a swap data repository pursuant to section 21 of the Act and the Commission's regulations thereunder. Such Exhibits must be labeled according to the items specified in this Form SDR. If any Exhibit is inapplicable, please specify the Exhibit letter and indicate by "none," "not applicable," or "N/A," as appropriate. The Applicant must identify with particularity the information in these Exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8 and § 145.9.

If the Applicant is a newly formed enterprise and does not have the financial statements required pursuant to Items 27 and 28 of this form, the Applicant should provide *pro forma* financial statements for the most recent six months or since inception, whichever is less.

EXHIBITS I – BUSINESS ORGANIZATION

14. Attach as **Exhibit A,** any person who owns ten (10) percent or more of Applicant's equity or possesses voting power of any class, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of Applicant. "Control" for this purpose is defined in Commission Regulation § 49.2(a).

    State in Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

15. Attach as **Exhibit B,** a narrative that sets forth the fitness standards for the board of directors and its composition including the number or percentage of public directors.

    Attach a list of the present officers, directors (including an identification of the public directors), governors (and, in the case of an Applicant not a corporation, the members of all standing committees grouped by committee), or persons performing functions similar to any of the foregoing, of the swap data repository or of the entity identified in Item 16 that performs the swap data repository activities of the Applicant, indicating for each:

    a. Name
    b. Title
    c. Date of commencement and, if appropriate, termination of present term of position
    d. Length of time each present officer, director, or governor has held the same position
    e. Brief account of the business experience of each officer and director over the last five (5) years
    f. Any other business affiliations in the securities industry or OTC derivatives industry
    g. A description of:

        (1) any order of the Commission with respect to such person pursuant to section 5e of the Act;

        (2) any conviction or injunction within the past 10 years;

        (3) any disciplinary action with respect to such person within the last five (5) years;

        (4) any disqualification under sections 8b and 8d of the Act;

        (5) any disciplinary action under section 8c of the Act; and

        (6) any violation pursuant to section 9 of the Act.

    h. For directors, list any committees on which they serve and any compensation received by virtue of their directorship.

16. Attach as **Exhibit C,** the following information about the chief compliance officer who has been appointed by the board of directors of the swap data repository or a person or group performing a function similar to such board of directors:

    a. Name
    b. Title

c. Dates of commencement and termination of present term of office or position
d. Length of time the chief compliance officer has held the same office or position
e. Brief account of the business experience of the chief compliance officer over the last five (5) years
f. Any other business affiliations in the derivatives/securities industry or swap data repository industry
g. A description of:

(1) any order of the Commission with respect to such person pursuant to section 5e of the Act;

(2) any conviction or injunction within the past 10 years;

(3) any disciplinary action with respect to such person within the last five (5) years;

(4) any disqualification under sections 8b, and 8d of the Act;

(5) any disciplinary action under section 8c of the Act; and

(6) any violation pursuant to section 9 of the Act.

17. Attach as **Exhibit D,** a copy of documents relating to the governance arrangements of the Applicant, including, but not limited to:
a. the nomination and selection process of the members on the Applicant's board of directors, a person or group performing a function similar to a board of directors (collectively, "board"), or any committee that has the authority to act on behalf of the board, the responsibilities of each of the board and such committee, and the composition of each board and such committee;
b. a description of the manner in which the composition of the board allows the Applicant comply with applicable core principles, regulations, as well as the rules of the Applicant; and
c. a description of the procedures to remove a member of the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the swap data repository.

18. Attach as **Exhibit E,** a narrative or graphic description of the organizational structure of the Applicant. Note: If the swap data repository activities are conducted primarily by a division, subdivision, or other segregable entity within the Applicant's corporation or organization, describe the relationship of such entity within the overall organizational structure and attach as Exhibit E only such description as applies to the segregable entity. Additionally, provide any relevant jurisdictional information, including any and all jurisdictions in which the Applicant or any affiliated entity is doing business and registration status, including pending application (e.g., country, regulator, registration category, date of registration). In addition, include a description of the lines of responsibility and accountability for each operational unit of the Applicant to (i) any committee thereof and/or (ii) the board.

19. Attach as **Exhibit F,** a copy of the conflicts of interest policies and procedures implemented by the Applicant to minimize conflicts of interest in the decision-making process of the swap data repository and to establish a process for the resolution of any such conflicts of interest.

20. Attach as **Exhibit G**, a list of all affiliates of the swap data repository and indicate the general nature of the affiliation. Provide a copy of any agreements entered into or to be entered by the swap data repository, including partnerships or joint ventures, or its participants, that will enable the Applicant to comply with the registration requirements and core principles specified in section 21 of the Act. With regard to an affiliate that is a parent company of the Applicant, if such parent controls the Applicant, an Applicant must provide (i) the board composition of the parent, including public directors, and (ii) all ownership information requested in Exhibit A for the parent. "Control" for this purpose is defined in Commission Regulation § 49.2(a).

21. Attach as **Exhibit H,** a copy of the constitution, articles of incorporation or association with all amendments thereto, and existing by-laws, rules or instruments corresponding thereto, of the Applicant. A certificate of good standing dated within one week of the date of the application shall be provided.

22. Where the Applicant is a foreign entity seeking registration or filing an amendment to an existing registration, attach as **Exhibit I,** an opinion of counsel that the swap data repository, as a matter of law,

is able to provide the Commission with prompt access to the books and records of such swap data repository and that the swap data repository can submit to onsite inspection and examination by the Commission.

23. Where the Applicant is a foreign entity seeking registration, attach as **Exhibit I-1,** a form that designates and authorizes an agent in the United States, other than a Commission official, to accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the swap data repository to enforce the Act and the regulations thereunder.

24. Attach as **Exhibit J**, a current copy of the Applicant's rules as defined in Commission Regulation § 40.1, consisting of all the rules necessary to carry out the duties as a swap data repository.

25. Attach as **Exhibit K**, a description of the Applicant's internal disciplinary and enforcement protocols, tools, and procedures. Include the procedures for dispute resolution.

26. Attach as **Exhibit L,** a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the Applicant or any of its affiliates is a party or to which any of its or their property is the subject. Include the name of the court or agency in which the proceeding(s) are pending, the date(s) instituted, and the principal parties thereto, a description of the factual basis alleged to underlie the proceeding(s) and the relief sought. Include similar information as to any such proceeding(s) known to be contemplated by the governmental agencies.

EXHIBITS II — FINANCIAL INFORMATION

27. Attach as **Exhibit M,** a balance sheet, statement of income and expenses, statement of sources and application of revenues and all notes or schedules thereto, as of the most recent fiscal year of the Applicant. If a balance sheet and statements certified by an independent public accountant are available, such balance sheet and statement shall be submitted as Exhibit M.

28. Attach as **Exhibit N,** a balance sheet and an income and expense statement for each affiliate of the swap data repository that also engages in swap data repository activities as of the end of the most recent fiscal year of each such affiliate.

29. Attach as **Exhibit O,** the following:

    a. A complete list of all dues, fees, and other charges imposed, or to be imposed, by or on behalf of Applicant for its swap data repository services and identify the service or services provided for each such due, fee, or other charge.

    b. Furnish a description of the basis and methods used in determining the level and structure of the dues, fees, and other charges listed in paragraph a of this item.

    c. If the Applicant differentiates, or proposes to differentiate, among its customers, or classes of customers in the amount of any dues, fees, or other charges imposed for the same or similar services, so state and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services, and any other factors, that account for such differentiations.

EXHIBITS III — OPERATIONAL CAPABILITY

30. Attach as **Exhibit P,** copies of all material contracts with any swap execution facility, designated contract market, clearing agency, central counterparty, or third party service provider. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used. In addition, include a list of swap execution facilities, designated contract markets, clearing agencies, central counterparties, and third party service providers with whom the Applicant has entered into material contracts. Where swap data repository functions are performed by a third-party, attach any agreements between or among the Applicant and such third party, and identify the services that will be provided.

31. Attach as **Exhibit Q,** any technical manuals, other guides or instructions for users of, or participants in, the market.

32. Attach as **Exhibit R,** a description of system test procedures, test conducted or test results that will enable the Applicant to comply, or demonstrate the Applicant's ability to comply, with the core principles for swap data repositories.

33. Attach as **Exhibit S,** a description in narrative form or by the inclusion of functional specifications, of each service or function performed as a swap data repository. Include in Exhibit S a description of all procedures utilized for the collection, processing, distribution, publication and retention (e.g., magnetic tape) of information with respect to transactions or positions in, or the terms and conditions of, swaps entered into by market participants.

34. Attach as **Exhibit T,** a list of all computer hardware utilized by the Applicant to perform swap data repository functions, indicating where such equipment (terminals and other access devices) is physically located.

35. Attach as **Exhibit U,** a description of the personnel qualifications for each category of professional employees employed by the swap data repository or the division, subdivision, or other segregable entity within the swap data repository as described in Item 16.

36. Attach as **Exhibit V,** a description of the measures or procedures implemented by Applicant to provide for the security of any system employed to perform the functions of a swap data repository. Include a general description of any physical and operational safeguards designed to prevent unauthorized access (whether by input or retrieval) to the system. Describe any circumstances within the past year in which the described security measures or safeguards failed to prevent any such unauthorized access to the system and any measures taken to prevent a reoccurrence. Describe any measures used to verify the accuracy of information received or disseminated by the system.

37. Attach as **Exhibit W,** copies of emergency policies and procedures and Applicant's business continuity-disaster recovery plan. Include a general description of any business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations.

38. Where swap data repository functions are performed by automated facilities or systems, attach as **Exhibit X,** a description of all backup systems or subsystems that are designed to prevent interruptions in the performance of any swap data repository function as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection, or as a result of any independent source. Include a narrative description of each type of interruption that has lasted for more than two minutes and has occurred within the six (6) months preceding the date of the filing, including the date of each interruption, the cause and duration. Also state the total number of interruptions that have lasted two minutes or less.

39. Attach as **Exhibit Y,** the following:

a. For each of the swap data repository functions:

(1) quantify in appropriate units of measure the limits on the swap data repository's capacity to receive (or collect), process, store or display (or disseminate for display or other use) the data elements included within each function (e.g., number of inquiries from remote terminals);

(2) identify the factors (mechanical, electronic or other) that account for the current limitations reported in answer to (1) on the swap data repository's capacity to receive (or collect), process, store or display (or disseminate for display or other use) the data elements included within each function;

b. If the Applicant is able to employ, or presently employs, the central processing units of its system(s) for any use other than for performing the functions of a swap data repository, state the

priorities of assignment of capacity between such functions and such other uses, and state the methods used or able to be used to divert capacity between such functions and such other uses.

EXHIBITS IV — ACCESS TO SERVICES

40. Attach as **Exhibit Z,** the following:

    a. As to each swap data repository service that the Applicant provides, state the number of persons who presently utilize, or who have notified the Applicant of their intention to utilize, the services of the swap data repository.

    b. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the Applicant as a swap data repository, indicate the name of each such person and the reason for the prohibition or limitation.

    c. Define the data elements for purposes of the swap data repository's real-time public reporting obligation. Appendix A to Part 43 of the Commission's Regulations (Data Elements and Form for Real-Time Reporting for Particular Markets and Contracts) sets forth the specific data elements for real-time public reporting.

41. Attach as **Exhibit AA,** copies of any agreements governing the terms by which information may be shared by the swap data repository, including with market participants. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used.

42. Attach as **Exhibit BB,** a description of any specifications, qualifications or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any swap data repository services furnished by the Applicant and state the reasons for imposing such specifications, qualifications, or other criteria, including whether such specifications, qualifications, or other criteria are imposed.

43. Attach as **Exhibit CC,** any specifications, qualifications, or other criteria required of participants who utilize the services of the Applicant for collection, processing, preparing for distribution, or public dissemination by the Applicant.

44. Attach as **Exhibit DD,** any specifications, qualifications, or other criteria required of any person, including, but not limited to, regulators, market participants, market infrastructures, venues from which data could be submitted to the Applicant, and third party service providers who request access to data maintained by the Applicant.

45. Attach as **Exhibit EE,** policies and procedures implemented by the Applicant to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the Applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.

EXHIBITS — OTHER POLICIES AND PROCEDURES

46. Attach as **Exhibit FF**, a narrative and supporting documents that may be provided under other Exhibits herein, that describe the manner in which the Applicant is able to comply with each core principle and other requirements pursuant to Commission Regulation § 49.19.

47. Attach as **Exhibit GG,** policies and procedures implemented by the Applicant to protect the privacy of any and all swap information that the swap data repository receives from reporting entities.

48. Attach as **Exhibit HH,** a description of safeguards, policies, and procedures implemented by the Applicant to prevent the misappropriation or misuse of (a) any confidential information received by the Applicant, including, but not limited to "section 8 material" and "SDR information," as those terms are defined in Commission Regulation § 49.2, about a market participant or any of its customers; and/or (c) intellectual property by Applicant or any person associated with the Applicant for their personal benefit or the benefit of others.

49. Attach **Exhibit II,** policies and procedures implemented by the Applicant regarding its use of the SDR data and SDR information that it receives from a market participant, any registered entity, or any person for non-commercial and/or commercial purposes.

50. Attach as **Exhibit JJ,** procedures and a description of facilities of the Applicant for effectively resolving disputes over the accuracy of the transaction data and positions that are recorded in the swap data repository.

51. Attach as **Exhibit KK,** policies and procedures relating to the Applicant's calculation of positions.

52. Attach as **Exhibit LL,** policies and procedures that are reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the procedures or operations of the Applicant.

53. Attach as **Exhibit MM,** a plan to ensure that the transaction data and position data that are recorded in the Applicant continue to be maintained after the Applicant withdraws from registration as a swap data repository, which shall include procedures for transferring the transaction data and position data to the Commission or its designee (including another swap data repository).

BILLING CODE 6351–01–C

Issued in Washington, DC, on April 25, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Proposed Amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo and Commissioners Quintenz and Berkovitz voted in the affirmative. Commissioners Behnam and Stump voted to concur. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

A critical component of the 2008 financial crisis was the inability of regulators to assess and quantify the counterparty credit risk of large banks and swaps dealers. To address this shortcoming, the Dodd-Frank Act gave the CFTC broad responsibility to enhance regulatory transparency and price discovery for market participants through trade reporting to swap data repositories (SDRs).

In 2011 and 2012, the CFTC adopted rules for swap data reporting, recordkeeping and SDRs. Unfortunately, these initial rules lacked technological detail and specification. Under my direction in 2017, CFTC staff began the process of assessing the effectiveness of the swap reporting rules in Parts 43, 45, and 49 of the CFTC's regulations. The 2017 Roadmap to Achieve High Quality Swaps Data (Roadmap) outlined a series of steps to improve data reporting requirements. The CFTC received a wide range of feedback on the Roadmap, via written comments and discussions with SDRs and market participants.

I am pleased to see the first part of the Roadmap, the proposed changes to Part 49, issued today. These proposed changes update the requirements for SDRs and swap counterparties to verify the accuracy and completeness of swap data reported to SDRs. Completion of these and the other changes proposed by the Roadmap will result in more complete, more accurate, and higher-quality data available to the CFTC and to the public; streamline data reporting; and help the CFTC perform its regulatory responsibilities. The time has come to revisit this important post-crisis reform and ensure the CFTC is fulfilling its commitments.

Appendix 3—Statement of Concrrence of Commissioner Rostin Behnam

I respectfully concur with the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') approval of its proposed rule regarding amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Swap Data Reporting Requirements (the ''Proposal''). In 2011, the Commission adopted part 49 of the Commission's Regulations [1] to implement the requirements of section 21 of the Commodity Exchange Act (the ''Act'' or ''CEA'').[2] Section 21 describes the registration regime for and operation of swap data repositories (''SDRs'') by setting out applicable registration rules, data standards, duties, core principles, and requirements regarding confidentiality and chief compliance officers as envisioned by Congress in the Dodd-Frank Act to implement the key trade reporting provisions laid out at the 2009 G20 Pittsburgh Summit.[3] Similarly, part 49 builds out a regulatory framework aimed at ensuring the legal and operational stability and soundness of SDRs in support of post-trade transparency in the swaps market. The Proposal aims to improve upon the quality, accuracy, and completeness of swap data reported to the Commission via SDRs and generally follows a plan laid out in the Commission's 2017 Roadmap to Achieve High Quality Swap Data.[4] This Proposal purports to be the first step in following that Roadmap. While true, I prefer to view this as a part of the Commission's ongoing duties to regularly review its Regulations to increase efficiencies and avoid unintended consequences, and to be certain that our SDR rules further the goals of increasing transparency and identifying risk.

As I have stated several times during my tenure as a Commissioner, as we engage in strategic regulatory decisions, our policy goals from 2010 remain unchanged. As we endeavor to provide surgical flexibility and a more principles-based approach, I will continue to oppose any roll backs of Dodd-Frank initiatives.[5] While I do not believe that today's Proposal would be considered a rollback per se, I would like to call attention to a section of the Proposal where we deviate from the language of section 21 regarding the role of the chief compliance officer (''CCO'') at an SDR.

Section 21(e)(2)(C) affirmatively requires an SDR's CCO, in consultation with the board of directors or similar body, to ''resolve any conflicts of interest that may arise.'' The Commission's current part 49 rules mirror the language of the CEA exactly. Regulation 49.22(d)(2) affirmatively requires an SDR's CCO to ''resolve any conflicts of interest that may arise,'' using precisely the same language as the Act.

However, today's Proposal would amend 49.22(d)(2) in a way that deviates from the plain language of the statute. While the statute requires that CCOs actually resolve any conflicts of interest, today's Proposal would simply require a CCO to take ''reasonable steps'' to resolve any conflict of interest. In addition, the Proposal would only apply to ''material'' conflicts of interest. Neither this new reasonableness standard nor this new materiality standard appear in the language of the statute. My concern is that adding these new standards may deviate from Congressional intent. This potentially dilutes the CCO's obligation to address conflicts of interest, but perhaps more importantly, it dilutes the CCO's ability to do

[1] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[2] 7 U.S.C. 24a.

[3] *Id.*

[4] Roadmap to Achieve High Quality Swap Data, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.*

[5] Rostin Behnam, Commissioner, U.S. Comm. Fut. Trading Comm'n, Remarks of Rostin Behnam before FIA/SIFMA Asset Management Group, Asset Management Derivatives Forum 2018, Dana Point, California (Feb. 8, 2018), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam2.*

so. Under the language of the Act and the current Regulation, a CCO can point to their statutory obligation in working to resolve conflicts of interest. Imposing a new reasonableness standard may have the real world impact of making it more difficult for a CCO to actually resolve conflicts of interest.

I note that the same statutory language appears elsewhere in the Act regarding CCO resolution of conflicts of interest at other types of Commission registrants, and the Commission has issued a final rule implementing the same new reasonableness and materiality standards regarding CCOs of futures commission merchants, swap dealers and major swap participants.[6] The Commission also has recently proposed adding these new standards for CCOs of swap execution facilities.[7] However, in contrast, this week the Commission is issuing amendments to the Part 39 regulations for Derivatives Clearing Organizations (''DCO'') (the ''Part 39 Proposal''). Current regulation 39.10(c)(2)(ii) requires a DCO's CCO to resolve conflicts of interest. Regulation 39.10(c)(2)(ii) exactly follows the language of Section 5b(i)(2)(C). While the Part 39 Proposal makes amendments to 39.10, the Commission does not alter the CCO's current duty to resolve conflicts of interest. In other words, for DCOs the Commission is choosing to maintain the statutory language. I believe that this may be the more appropriate approach for CCOs generally.

The Commission has, of late, begun a practice of re-interpreting statutory provisions with a somewhat flippant regard for their underlying purpose and rationales in order to lessen the burdens that are rarely substantiated by anything more than a call for change. While it is not out of the ordinary for an independent agency to reexamine whether its regulatory approach remains fit for purpose, I believe that we should be mindful that our role is not to bend too easily to unsupported claims of burden or complexity. This is particularly true when the re-interpretation seems to be at odds with the express language of the statute itself. I look forward to reading the comments on this CCO issue. I am particularly interested to learn whether various stakeholders believe that the statute itself is diluted by the addition of the reasonableness and materiality standards to CCO obligations in this and other rulemakings.

Appendix 4—Statement of Concurrence of Commissioner Dawn D. Stump

The Commission is publishing for public comment ''Proposed Amendments to the Commission's Regulations Relating to Certain Swap Data Repository and Swap Data Reporting Requirements'' (Proposal). Accurate swap data reporting is vital to our ability to make appropriate policy choices. I very much look forward to receiving feedback from all parties impacted by this Proposal to assure that the Commission has robust and accurate data, which is a lynchpin of future Commission decision-making.

However, a Latin proverb reads: Qui tacet consentire videtur, ubi loqui debuit ac potuit (he who is silent, when he ought to have spoken and was able to, is taken to agree). While I share the Commission's desire for accurate swap data, I do not agree with all the policy and procedural choices in this Proposal. I question certain of the underlying assumptions driving these policy changes, and the promulgation of this rulemaking in isolation and without corresponding changes to other swap data reporting rules. I am uncomfortable with the lack of details and nebulous description of certain obligations in many parts of the Proposal, which I believe will make it difficult for the public to comment in an informed fashion. And I disagree with imposing immense additional burdens on swap data repositories (SDRs) and all types of reporting counterparties (RCPs), particularly without commensurate streamlining of regulatory obligations in the rest of the Commission's swap data reporting rule set.

Because I share the Commission's ultimate goal of accurate swaps data, I support the Proposal going out for comment, with the caveat that the other aspects of the swaps data ''Roadmap'' [1] are published in quick succession. I look forward to feedback from all interested parties as to how that goal can best be achieved in light of my concerns about the Proposal discussed below and other options that may be at the Commission's disposal to enhance data accuracy while appropriately balancing costs and benefits.

I. Verification: Solution in Search of a Problem?

This Proposal is predicated upon a view that new verification procedures are needed because the swap data currently being reported to SDRs is substantially wrong and inaccurate. Yet, the Commission has recently proffered positive reviews of the role of SDR data in enhancing its understanding of swaps markets, citing the ''more complete information now available regarding certain portions of the swap market, [and] the data analytical capabilities developed since the [swap dealer] regulations were adopted'' [2] as supporting its policy decision making. Specifically, the Commission cited analysis based upon a year of SDR data sourced from data reported to the registered SDRs in its recent rulemaking concerning the *de minimis* exception to the swap dealer definition relating to insured depository institutions (IDIs).[3] Given that the Commission has not voiced concern about widespread discrepancies or inaccuracies in swaps data reported to SDRs in relying upon that data in our rulemakings, I am not convinced that it is necessary to add new layers of complexity to swaps data reporting and create new burdens on market participants via the steps outlined in the Proposal.

Taken in isolation, asking RCPs to verify the accuracy of data reported to SDRs is appealing. But how does the Commission know that a substantial portion of that data is actually incorrect? The Proposal attempts to depict a data accuracy problem by referencing that it is not uncommon for discrepancies to be found in SDR data. However, from the universe of reported swap data that contains millions of swap transactions and exponentially more messages sent to SDRs over the course of the last five years, the Proposal mentions only two examples of errors: ''In the processing of swap data to generate the CFTC's Weekly Swaps Report, for example, there are instances when the notional amount differs between the Commission's open swaps information and the swap data reported for the same swap. Other common examples of discrepancies include incorrect references to an underlying currency, such as a notional value incorrectly linked to U.S. dollars instead of Japanese Yen.'' [4] I would expect a much more extensive and egregious list of systemic, recurring errors in reported swaps data to warrant the expansive new obligations contained in the Proposal.

The Proposal strains to quantify the number of inaccuracies in reported SDR data by opining that, ''[b]ased on swap data available to the Commission and discussions with the SDRs, the Commission estimates that an SDR would perform an average of approximately 2,652,000 data corrections per year.'' [5] The Proposal does not explain exactly how this figure was derived, identify the interaction between SDRs and RCPs referenced in its corrections estimate, indicate whether the ''correction'' refers to incomplete or inaccurate data,[6] or provide critical context as to the percentage of messages that this number represents. Indeed, it is impossible to know for certain that an RCP was intending to correct erroneously reported data based on the data schema utilized by SDRs to address changes in swaps data—which include actions such as ''snapshot,'' ''amendment,'' and

[6] Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, 83 FR 43510 (Aug. 27, 2018).

[7] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018).

[1] *See* Roadmap to Achieve High Quality Swaps Data (DMO July 10, 2017), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf, published with* CFTC Letter 17–33, Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations (DMO July 10, 2017), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf.*

[2] De Minimis Exception to the Swap Dealer Definition—Swaps Entered Into by Insured Depository Institutions in Connection With Loans to Customers, 81 FR 12450, 12452 (April 1, 2019) (IDI *De Minimis* Rulemaking).

[3] *Id.* at 12454 and n.59 (''The Commission believes that end-users would primarily benefit from the IDI De Minimis Provision by entering into [interest rate swaps, or 'IRS'], [foreign exchange, or 'FX'] swaps, and [non-financial commodity, or 'NFC'] swaps with IDIs to hedge loan-related risks. SDR data indicates that IDIs that have between $1 billion and $50 billion in [aggregate gross notional amount, or 'AGNA'] of swaps activity primarily enter into IRS, FX swaps, and NFC swaps, as measured by AGNA and transaction count.

[4] Proposal, text accompanying n.239.

[5] *Id.,* at section VII.B.3.v.

[6] *Incomplete* data is not the same things as *inaccurate* data. Thus, ''corrections'' of incomplete data would not be relevant to the verification with respect to inaccurate data that is the subject of this Proposal.

''modify,''[7] but may not actually include a category of ''correction'' messages.

While the Proposal posits the annual number of corrections across all SDRs to be about 8 million ''corrections'' (3 provisionally registered SDRs * 2,652,000 annual data corrections per SDR), it lacks the total number of data submissions that are received by the SDRs. The Paperwork Reduction Act portion of the Proposal does provide one potentially related data point, as it includes an estimate of 462,981,508 total annual responses across all SDRs for the relevant information collection.[8] Without the benefit of further clarity, the corrections could apply to the entire universe of the collections associated with the Proposal. If the figures are roughly rounded for the sake of simplicity, and it is stipulated for the sake of argument that all the corrections cited by the Proposal reveal data inaccuracies, then does this suggest that only approximately 2% (400 million responses/8 million corrections) of all messages might be inaccurate? In my opinion, the burdens that this Proposal would impose on SDRs and RCPs (including commercial end users) may be difficult to justify if the problem the Commission is attempting to rectify may equate to 2% of all messages delivered to SDRs.

I share the view that has been stated by some of my colleagues recently that the Commission should strive to make data-driven policy determinations and should avoid relying on assumptions or anecdotes when engaged in rulemaking activity.[9] Yet, the same is true when it comes to imposing costs and burdens on market participants that are already heavily encumbered by a broad swath of regulatory obligations that continue to shift and expand. Our recent rulemakings have referenced data driven policy making, learning from experience with Dodd-Frank implementation, and demonstrating supporting evidence for regulatory change, but the verification provisions of this Proposal deviate from that approach. The Commission should delay this rulemaking until the other aspects of the Roadmap critical to improving swaps data reporting and lessening unnecessary regulatory burdens were ready to be proposed. But, short of that, I welcome public comment and data evaluating the breadth and depth of inaccuracies in SDR data.[10] Such information would help to determine how much reported SDR data is actually incorrect before the Commission requires SDRs and RCPs to build additional systems and undertake significant new compliance burdens and obligations to address an accuracy problem that, at this point, has not been proved. I look forward to comments and data that demonstrate the actual need for the proposed changes.

II. Insufficient Level of Detail for Appropriate Public Comment and Cost-Benefit Consideration

The Administrative Procedure Act (APA) requires that, in issuing its rules, the Commission ''examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choices made.''[11] Section 15(a) of the Commodity Exchange Act (CEA) further requires that in doing so, the Commission must consider the costs and benefits of its proposed action.[12] A notice of proposed rulemaking affords the Commission the opportunity to gather information and build a record that will provide the reasons for the conclusions that it ultimately draws when final rules are issued. If the Commission fails to properly exercise this responsibility, we risk having our rules set aside as arbitrary and capricious agency action.[13]

While I support the purposes and intent underlying the Proposal, I am concerned that some of the proposed rules are too vague to enable the public to provide the Commission with information necessary to adopt a sound final rule set. For RCPs, the Proposal informs them of their general obligations, but leaves a tremendous amount of the details to future action by the Commission (often delegated to staff) and the SDRs to dictate the operational work flows that RCPs will have to adhere to in order to comply with the Commission's rules. RCPs reading the proposed rules still would not know what changes are being proposed in what they have to report, when they must report by, and how they are to deliver that information to SDRs. The proposed rules are often amorphous, lacking specificity as to the actual processes and procedures to be imposed, with RCPs left to comment without really knowing what much of this would actually require of them in the future.

The same is true for SDRs. For example, proposed § 49.9 covering open swaps reports to be provided to the Commission is quite opaque, and provides no detail as to any potential future instructions from the Commission that ''may include, but are not limited to, the method, timing, and frequency of transmission as well as the format of the swap data to be transmitted.'' Similarly, proposed § 49.17(c)(1) would require an SDR to transmit all swap data requested by the Commission, but provides that the SDR will receive instructions that may include, but are not limited to, the method, timing, and frequency of transmission, and the format and scope of the SDR data to be transmitted, at a later time.

How can RCPs and SDRs prepare for, budget, build, test, and implement systems to comply with these requirements without ample information ahead of time as to what these requirements entail? Indeed, it is not clear to me how RCPs and SDRs can even meaningfully comment on either the merits or the costs and benefits of the proposed rules when these critical elements of the requirements are left for future determination.

But the proposed rule that troubles me most in this regard is proposed § 49.13, which addresses an SDR's duty to monitor, screen, and analyze data upon the request of the Commission. The Proposal explains that in its original consideration of current Regulation 49.13,[14] the Commission received comments that the rule does not sufficiently describe the specific tasks that SDRs are expected to perform. The Commission decided to later establish specific monitoring, screening, and analyzing duties when its knowledge was more fully developed, and that is where we find ourselves presently. Yet, despite the Commission's experience with swaps data over the last five plus years, this Proposal still fails to delineate specific duties that would enable an SDR to provide appropriate budget, technological development, and staff resources to assure an ability to comply with the demands that may be made upon it.

Proposed § 49.13(a)(1) requires SDRs to be prepared to comply with Commission requests for monitoring, screening, and analyzing of data. Several of the tasks alluded to in the proposal rule could impose significant, albeit wholly undefined, obligations on SDRs. For example, proposed § 49.13(a)(1)(iv) contemplates assessments of risk, which is not particularly an SDR function and which can be a very complicated exercise that is defined and calculated differently by different market participants. Proposed § 49.13(a)(1)(viii) would appear to render SDRs an arm of the Commission's enforcement program, as it would require them to provide information

[7] DTCC SDR templates, for instance, include the following message and action types. The modify action type allows for the valid modification or correction to an existing trade that has previously been reported by the submitting party. However, firms could reflect a correction using other methods. The snapshot message allows participants to report the current state of the swap in their portfolio as a ''point-in-time'' view of the position. The reported position should reflect all post-trade events and non-position forming amendments that the submitter may wish to reflect on their trade record. The amendment transaction type could be utilized as an indication of a confirmable amendment, via a negotiated agreement, to a previously confirmed and reported trade. As a result, it would be difficult to conclude with any certainty the actual number of corrections without a critical review of contrasting terms related to a particular trade on each type of action, message, or transaction type submission.

[8] Proposal at section VII.B.3.xi.

[9] *See, e.g.,* IDI *De Minimis* Rulemaking at 12467 (Statement of Chairman J. Christopher Giancarlo) (''As I have said many times before, I believe that CFTC policy is best when it is driven by data and not assumptions.'').

[10] The cost-benefit consideration in the Proposal loosely references and mischaracterizes information contained in three public studies that allude to challenges in SDR data. Unfortunately, these studies are from 2015 or earlier and are based upon data from the initial roll-out of SDR reporting. These studies address incomplete rather than inaccurate data and do not belong in this Proposal that focuses on verification of data. *See* fn. 6, *supra.* The Roadmap explained that validations should be utilized to reject swap data reports with missing data fields, and these issues would be better served by a holistic implementation of the Roadmap and do not require the onerous verification aspects of the Proposal. Furthermore, some of these identified issues also would be resolved by the technical specification detailed in the Roadmap and, again, if proposed in unison, would provide RCPs with clear definition, form and manner, and allowable values. The reference to the third study also fails to mention that the two soybean swaps referred to were removed from a universe of 39,622 agricultural swaps.

[11] *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29, 43 (1983).

[12] 7 U.S.C. 19(a).

[13] *See* APA, 7 U.S.C. 706(2)(A).

[14] 17 CFR 49.13.

about compliance with Commission regulations without clarifying how SDRs could do so, and despite the fact that SDRs are not self-regulatory organizations.

Proposed § 49.13(b), in turn, requires SDRs to ''establish and at all times maintain sufficient information technology, staff, and other resources to fulfill'' these Commission requests. Yet, proposed § 49.13(a)(2) provides that the content, scope, and frequency of all monitoring, screening, and analyzing requests shall be at the discretion of the Commission (to be exercised by staff pursuant to delegated authority); further, in addition to the 11 types of potential Commission requests identified in the proposal, SDRs also would have to be prepared to comply with other, unspecified, types of requests for monitoring, screening, and analyzing as well. How can an SDR be expected to efficiently allocate capital and meet the standards of proposed § 49.13(b) with respect to information technology, staff, and ''other'' (undefined) resources when it does not know what the actual requirements will be, when it will be expected to deliver, at what frequency, and the exact form and manner of the deliverable?

Finally, proposed § 49.30 would mandate that ''a swap data repository shall submit SDR data reports and any other information required under this part to the Commission, within the time specified, using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission.'' I cannot begin to fathom the uncomfortable (and unenviable) position of an SDR under rules whereby the Commission can ask for almost anything under proposed § 49.13, and then demand its submission whenever and however it wishes under proposed § 49.30.

The Proposal states, somewhat incredibly, that it ''expects specifying these topic areas [in proposed § 49.13] would not impose substantial new fixed costs on SDRs. . .'' [15] It is wishful thinking to claim that the extensive list of undefined, open-ended tasks hypothesized in proposed § 49.13(a)(1) that SDRs must prepare to build and deliver will not represent a meaningful burden. Although it is not clear how SDRs could quantify the costs of compliance with such vague obligations, it is likely that the costs incurred by SDRs will be significant—and that their clients, including commercial end-users, ultimately will pay the price.

I appreciate that it is not possible to foresee all future circumstances when proposing a rulemaking, and I recognize the need for flexibility in aspects of the Commission's day-to-day administration of the Dodd-Frank swap regulatory regime. Nevertheless, I am concerned that the Proposal fails to inform the public as to the full nature of the responsibilities that the Commission intends to impose upon RCPs and SDRs so that they can provide appropriate comment and feedback to drive the best final rule outcome possible. I wonder how the Commission can produce a complete cost-benefit consideration without specifying the actual scope and technical details of the requirements it is proposing to impose, particularly with respect to requests to SDRs to be made via proposed § 49.13. In sum, I fear that in proposing several rules where critical elements are left for future specification (often by staff), the Commission will not receive informed and meaningful public comments (including comments on costs and benefits) that are necessary to provide the foundation on which our rules ultimately must rest.

[15] Proposal at section II.I.

III. Suboptimal Policy Choices

Certain elements of the Proposal rest on questionable policy choices that I wish to highlight in order to garner public input as part of the comment process.

First, the Proposal would remove a longstanding market practice of trusted sources when it comes to verification of data accuracy without demonstrating why such a change is necessary, or appropriate. The Proposal states: ''The Commission provided an exception to the requirement that SDRs 'confirm with both counterparties to the swap the accuracy of the data that was submitted' in § 49.11(b)(1)(ii) for swap creation data and § 49.11(b)(2)(ii) for swap continuation data when swap data is received from a [swap execution facility, or 'SEF'], [designated contract market, or 'DCM'], derivatives clearing organization ('DCO'), or from a third-party service provider acting on behalf of the swap counterparty, under certain conditions.'' [16] The Proposal's departure from this policy means that SDRs would no longer be able to rely on an exception from the requirement to affirmatively confirm with both counterparties where (1) the SDR forms a reasonable belief that the data is accurate, (2) the reporting identifies that both counterparties agreed to the data submitted, and (3) the SDR provides both counterparties with a 48-hour correction window.

The Proposal argues, without citing any evidence, that, ''based on the Commission's experience with swap data submitted by SEFs, DCMs, DCOs, and third-party service providers since the rule was adopted, the Commission believes that such swap data has not been consistently complete and accurate in some instances, and the swap data accuracy is not sufficient to justify the exception to the requirement that SDRs confirm the reported swap data's accuracy with swap counterparties. The current requirements have had a negative effect on swap data accuracy and consistency, which has hampered the Commission's ability to carry out its regulatory responsibilities.'' [17] I do not believe that trading venues, which value execution certainty and must deliver accurate trade details to clients, or clearing organizations, which must have verified trade details available for risk management purposes, would report systematically or consistently inaccurate swaps data to SDRs, given their level of technological expertise and concern for reputational risk. At a minimum, I would not eliminate the existing exception absent evidence establishing that this is the case.

Second, the Proposal would mandate in proposed §§ 43.3(e) and 45.14(b) that corrections of errors and omissions be performed by SEFs, DCMs, and RCPs ''regardless of the state of the swap that is the subject of the swap data.'' The Proposal defines an ''open swap'' as ''an executed swap transaction that has not reached maturity or the final contractual settlement date, and has not been exercised, closed out, or terminated.'' Thus, the Proposal is requiring additional reporting for ''dead'' swaps without demonstrating a relevant use-case to warrant such a requirement.

[16] *Id.,* text accompanying n.70.

[17] *Id.,* text immediately following n.73.

It is more difficult for RCPs to correct dead/expired swaps that are no longer on their books and records. SDRs also face additional challenges and complexity in modifying swaps that are no longer what the Proposal defines as an ''open swap.'' The Proposal does not identify a Commission or public use-case that justifies the increased burden and challenge associated with correcting data on dead/expired swaps. The financial crisis that precipitated Dodd-Frank was not caused by, nor could it have been prevented by, regulatory oversight of dead swaps, but rather was the result of active risk. Again, absent an identified justification with evidentiary support, I do not support imposing additional regulatory burdens that force market participants to shift resources from the management of active risks to the reporting of dead swaps.

Third, I would prefer a more sensible approach to the duration of the recordkeeping requirements for SDRs. Proposed § 49.12(b)(2) would require SDR records—including SDR data, timestamps, and messages—to be readily accessible following final termination of the swap for five years, and then for a period of ten additional years in archival storage, which, of course, has an associated cost. Unless the Commission can clearly articulate the use-case and regulatory purpose that would justify requiring archival storage up to 15 years after the expiration of the swap, I believe the Commission should consider reducing the recordkeeping time frame for SDRs.

IV. Process Foul To Address Only One Aspect of the Complex Swap Data Reporting Puzzle

I also am uncomfortable with the sequencing of this Proposal and the rush to publication on a stand-alone basis rather than as part of the contemplated overhaul of all the swaps data reporting rules.

I expressed a similar view about the application of a holistic approach to interrelated regulations during last November's Open Meeting concerning SEFs when I noted that ''I would prefer that the Commission be able to opine on a final SEF rule and a final rule on name give-up at the same time. Acting on all aspects impacting SEF trading contemporaneously would benefit all entities involved.'' [18] The same principles apply to swap data reporting, as both the public and the Commission would benefit from holistically addressing the

[18] *See* Opening Statement of Commissioner Dawn D. Stump before the CFTC Open Meeting, November 5, 2018, *available at https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement110518.*

entirety of the swap data reporting universe. Unfortunately, the Commission continues to propose regulations that are interrelated and that would govern the same activity in an inefficient, piecemeal manner.

Swap data reporting is a complex web of interrelated processes and systems that must all work in sync in order to generate complete and accurate data in a timely and cost effective manner. Many tasks in reporting are sequential in nature, and it takes all participants in the reporting ecosystem to coordinate and cooperate with a complete understanding of all the swap data reporting regulations from the Commission. For example, SDRs have to scope out and create policies and procedures and build systems/templates for any new requirement. RCPs cannot adequately prepare for, much less build and test, systems on how to comply until they receive final feedback and instructions from the SDR. For this reason, implementing reporting changes—which invariably is quite costly to both SDRs and RCPs in terms of the expenditure of time, energy, and money—must be orchestrated and timed very carefully.

SDRs and RCPs have previously expressed to the Commission the importance of being made aware of anticipated future modifications to reporting so that they can understand the expected end-game that the Commission has in mind.[19] Market participants also have commented on the need to understand the entire policy idea and all the associated pieces before committing time and energy to provide the Commission with meaningful comments and input.[20]

I appreciate that the Proposal states that ''[w]hen the Commission proposes the next two rulemakings, the Commission anticipates re-opening the comment period for this proposal to provide market participants with an opportunity to comment collectively on the three rulemakings together, because the proposals address interconnected issues.'' [21] But I do not see the benefit of proceeding in such an inefficient manner. Issuing the Proposal now does provide notice of the Commission's intentions with respect to one piece of the swaps data Roadmap, but no notice of what else from the Roadmap might come to pass. Such ''partial notice'' does not enable parties to evaluate, and comment upon, the full picture of their new compliance obligations, including their costs and burdens.[22] Under these circumstances, I would not be surprised if market participants simply waited for all of the reporting rules to be proposed before providing feedback to the Commission on the whole of what is being proposed.

In addition, if, as the Proposal suggests, there actually is a significant problem with inaccurate swap data being reported to SDRs, the piecemeal issuance of these rulemakings makes it more difficult for the Commission to evaluate whether that problem can be rectified by allowing other facets of the swaps data Roadmap to gain traction. Query whether the Commission generating a technical specification removing uncertainty as to what must be reported and how, harmonizing with other regulators and implementing unique identifiers (Unique Transaction Identifiers and Unique Product Identifiers) and critical data elements from CPMI–IOSCO work streams, minimizing the number of fields required to be reported, and affording RCPs more time to report would organically resolve a large proportion of any inaccurate data reporting problem that may exist. The manner in which the Commission has elected to proceed will make it challenging for SDRs and RCPs to comment appropriately on these questions, and I fear will place the Commission in a predicament as it attempts to make informed policy decisions on how best to proceed.

V. Lack of Harmonization With the SEC

Market participants of all shapes-and-sizes—even those that are often on opposing sides of most regulatory debates—all agree on a common theme that has been repeatedly urged upon the Commission via every imaginable medium since the enactment of Dodd-Frank: The Commission and the Securities and Exchange Commission (SEC) should coordinate and harmonize their respective derivatives regulations to the maximum extent possible, and especially concerning entities that have already incurred systems and compliance costs in connection with the corresponding requirements of the related agency. All types of market participants have implored both the Commission and the SEC to minimize compliance burdens on potential dual registrants in connection with the derivatives rules, such as swap data reporting. And yet, notwithstanding the current emphasis on CFTC–SEC harmonization,[23] the Commission is proposing a swap data reporting rule that appears to take an approach that is the opposite of, and in direct contrast to, the SEC's thinking on the same issue.

The SEC published a proposed rulemaking in December 2018 [24] that specifically discusses, among other things, verification of the terms of reported security-based swaps—as does the Proposal. Yet, while the Proposal would increase regulatory burdens on all entities in its amended regulatory reporting scheme, the SEC is considering a more pragmatic approach. The SEC, in its proposal, ''believes it to be an appropriate time to revisit and request comment on an issue previously identified in connection with the rules . . . [that] require[] each registered SDR to 'confirm with both counterparties to the security-based swap the accuracy of the data that was submitted.' '' [25]

Specifically, the SEC in its proposal states that ''SDRs may be able to reasonably rely on certain third parties to address the accuracy of the transaction data. For example, the Commission previously stated that if an SDR develops reasonable policies and procedures that rely on confirmations completed by another entity, such as a third-party confirmation provider, as long as such reliance is reasonable the SDR could use such confirmation to fulfill its obligations under certain SDR rules. Because the two

[19] In late 2015, CFTC staff issued a request for comment on draft technical specifications for certain prioritized swap data elements and sought input on 80 enumerated questions addressing 120 data elements for several swap data reporting topics. *See* Draft Technical Specifications for Certain Swap Data Elements (December 22, 2015), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf and https://www.cftc.gov/PressRoom/PressReleases/pr7298-15*. In responding to staff's request for comment, SIFMA stated that it ''view[s] the Draft Technical Specifications as one component of a broader initiative to enhance swap data reporting'' and that the ''interrelationships among the Draft Technical Specifications and these other workstreams, as well as their shared dependencies on the same technology and human resources, necessitate a well-planned and sequenced approach to enhancing swap data reporting requirements. Prioritizing among the various enhancements under consideration will help to avoid inadvertent inconsistencies and associated potential for erroneous data and unnecessary infrastructure costs.'' Letter from Kyle Brandon, SIFMA, at 2 (March 7, 2016), *available at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60702&SearchText=*.

[20] SIFMA and ISDA jointly commented on the swaps data Roadmap and suggested that the Commission align the anticipated timeframes for swaps data reporting changes: ''[G]iven the interconnection between SDR functions and the counterparties' reporting workflows, we believe that any proposed rule amendments and final rules associated with Tranche 1 and Tranche 2 should be issued at the same time.'' Their letter then went on to comment: ''Alternatively, should the Commission decide to publish the proposed rule amendments to the SDR rules first in Tranche 1, then we recommend that the public comment period for this release remain open for at least 90 days following publication of the proposed rule amendments to the reporting workflow rules in Tranche 2. This extended comment period would provide market participants with a comprehensive and holistic understanding of whether the two proposals achieve the desired policy outcomes and account for operational costs and possible additional builds to comply with a modified reporting regime.'' Letter from Steven Kennedy, ISDA, and Kyle Brandon, SIFMA, at 3–4 (August 21, 2017) (footnote omitted), *available at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61288&SearchText=*.

[21] Proposal, text immediately following n.23.

[22] The Commission's disjointed delivery of proposed changes to its swap data reporting rules also raises questions as to its consideration of relevant costs and benefits. Cost-benefit considerations, by their very nature, must evaluate the proposed changes in comparison to the status quo—including the present state of other relevant regulations. As a result, the cost-benefit portion of the Proposal could be deemed obsolete to the extent it does not incorporate any of the modifications to other swap data reporting requirements in parts 43 and 45 of the Commission's regulations that the Commission intends to propose and act upon. The failure to propose all the swaps data reporting rule amendments in unison would seem to necessitate a refresh of the accompanying cost-benefit portion of this Proposal, and further public comment.

[23] *See, e.g.,* Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Coordination in Areas of Common Regulatory Interest and Information Sharing (July 11, 2018) (specifically addressing the regulatory regime for swaps and security-based swaps), *available at https://www.cftc.gov/sites/default/files/2018-07/CFTC_MOU_InformationSharing062818.pdf and https://www.cftc.gov/PressRoom/PressReleases/7745-18*.

[24] Risk Mitigation Techniques for Uncleared Security-Based Swaps, 84 FR 4614 (February 15, 2019) (proposed rules).

[25] *Id.* at 4633–4634 (footnote omitted).

relevant provisions that we are proposing today generally relate to the obligation of [Security-Based Swap, or 'SBS'] Entities to take certain steps in the reconciliation and documentation processes related specifically to the reporting of the relevant security-based swap data to an SDR . . . the Commission believes that . . . these measures, taken together, could provide an SDR with a set of factors to assess the reasonableness of relying on an SBS Entity's ability to independently provide the definitive report of a given security-based swap position, thereby providing a basis for the SDR to satisfy its statutory and regulatory obligations to verify the accuracy of the reported data when the SBS Entity's counterparty is not a member of the SDR.'' [26]

In other words, the SEC is considering whether the reconciliation process undertaken by security-based swap dealers of their swaps portfolios could satisfy the statutory obligation to confirm the accuracy of data reported to SDRs. This sensible approach being considered demonstrates deference to trusted sources for swap data accuracy when a third-party service provider is employed to address the confirmation of swaps data, similar to the exceptions in Regulations 49.11(b)(1)(ii) and 49.11(b)(2)(ii) that the Proposal would eliminate.

As discussed more fully in Section VI below, based on the Commission's reporting hierarchy in Regulation 45.8,[27] swap dealers (SDs) are the RCP and transmit required swap data elements to an SDR for the vast preponderance of swap transactions. These same SDs are already subject to another regulatory obligation relating to verification of the terms of their swap transactions, as they must conduct a portfolio reconciliation exercise on a regularly recurring basis via Regulation 23.502.[28] Portfolio reconciliation forces the ''[e]xchange [of] the material terms of all swaps in the swap portfolio between the counterparties'' and requires the parties to ''[r]esolve any discrepancy in material terms and valuations.'' [29] Since SDs already must check the accuracy of their portfolios through a reconciliation exercise, and since SDs report almost all swaps, then the Commission, like the SEC, should consider leveraging this existing process and afford SDs that undertake such an exercise enough time for it to run its course and then submit that same accurate and verified data set for SDR reporting purposes. Leveraging this existing regulatory process, rather than creating yet another process that compliance officers and operations staff must adhere to, may offer a ''good government'' solution, assuming the existence of a systemic problem with SDR data accuracy. If SDs represent that the same data reconciled with counterparties per Rule 23.502 is reported to SDRs, then the Commission might not need to impose the burdensome new requirements set out in the Proposal.

It is unfortunate that the Commission did not propose—or even request comment on—the less burdensome approach to verification that the SEC is considering in light of our stated commitment to harmonizing the agencies' derivatives rules. And it is even more mystifying to me why we are proposing these rule amendments in the inefficient, piecemeal manner described above when delaying the issuance of this Proposal would not only enable us to issue the various proposed amendments to our swap data reporting rules as a unified package, but also to learn from comments on the SEC's data verification discussion (the comment period closed on April 16) whether the SEC may have identified a better option for fostering accurate reported swaps data.

VI. Outsized Burden Placed Upon SDRs and RCPs, Including End-Users

Swap market participants have repeatedly emphasized to the Commission that the swap data reporting rules are overly complicated, difficult to implement, and a significant operational burden and compliance challenge for all concerned, including end-users.[30] Yet, the Proposal would add more layers of complexity to reporting workflows, and require SDRs and RCPs to commit more time and money to submit more reports and undertake additional obligations.

In particular, the Commission has heard from many end-users about the immense nature of their reporting burdens, how regulatory capture on end-users has impacted their business models and their ability to hedge via derivatives markets, and the unintended consequences of the initial implementation of the Dodd-Frank swap reporting regime. In response, the Commission, commendably, has made considerable progress in addressing reporting issues and limiting burdens on end-users via the various tools at our disposal when consistent with our regulatory responsibilities. It is not clear to me why this Proposal would break from those efforts and go in the opposite direction by placing new and burdensome swap data reporting obligations on end-users.

End-user RCPs would bear several onerous obligations under this Proposal. End-user RCPs would have to commit considerable resources to create more sophisticated and elaborate reporting systems in order to be compliant. The Proposal estimates that 1,585 RCPs are neither SDs, major swap participants (MSPs), nor DCOs.[31] As a result of the Proposal, all of these end-user RCPs would have to acquire or build additional processes and hire more staff to comply with these new reporting regulations, regardless of the number, notional amount, asset class, or risk profile of the swaps for which they are the RCP. To provide some perspective, staff has indicated that of new transactions in January 2019, trades with at least one SD counterparty (which would serve as the RCP) per asset class represented 99.6183% of the 22,446 CDS trades; 98.2466% of the 137,499 IRS trades; 97.0540% of the 603,696 FX trades; 99.9998% of the 471,657 Equity trades; and 85.3056% of the 60,021 Commodity trades. In other words, the 1,585 RCPs that are not SDs, MSPs, or DCOs reported, at most, 86 CDS, 2,454 IRS, 18,325 FX, 1 Equity, and 10,339 Commodity swaps during this time period. Given the limited number of swaps for which end-users are RCPs compared to the overall swaps market, I question whether imposing on all end-users that may serve as an RCP the additional burdens of preparing for compliance with the requirements of this Proposal reflects an appropriate consideration of costs and benefits.

The Commission has made strides post the initial roll-out of its Dodd-Frank rulemakings to fix unintended consequences of its swap data reporting rules and minimize the burdens on end-users where appropriate. This Proposal, unfortunately, errs in the other direction. I welcome suggestions via the public comment process on the appropriate role for end-user RCPs to play in assuring the accuracy of reported swap data short of imposing the burdens set out in the Proposal.

VII. Alternate Approaches for Further Consideration

To be clear, my concern with the Proposal is not simply that it would impose costs on market participants; all necessary regulatory requirements do so. Rather, my concern is with the extent of the burdens that the Proposal would impose on market participants, including end-users, in light of the prospects that the Proposal will meaningfully improve the quality of reported swap data. As discussed above, the Proposal does not establish that there actually is a systemic problem in that regard. But assuming that to be the case, consider the following fact pattern and whether any errors would be found and rectified under the Proposal:

- RCP submits data to an SDR from its regulatory reporting databases;
- SDR creates Open Swaps reports based upon the data received;

[26] *Id.* at 4634 (footnotes omitted).

[27] 17 CFR 45.8.

[28] 17 CFR 23.502.

[29] 17 CFR 23.500(i)(1), (3).

[30] In responding to staff's request for comment on the Draft Technical Specifications, *see* fn. 19, *supra,* ISDA stated: ''End-users which either have reporting obligations or which would be compelled to provide data to the reporting counterparty necessitated by the proposed fields would be particularly burdened by the requirements and many will lack the technological capability to capture, transform and report or provide data as required. The small to mid-sized commodity producers, processors, merchants and other end-users that use swaps to mitigate commodity, interest rates, foreign exchange or other price risks will require additional technology, compliance and legal support in order to accommodate additional reporting requirements. This will impose significant, unjustified costs to end-users . . . . ISDA, on behalf of commercial end-users, requests the CFTC to avoid imposing changes and additional reporting requirements on end-users by maintaining their obligations under the current Reporting Regulations to the greatest extent possible.'' Letter from Tara Kruse, ISDA, at 7–8 (March 7, 2016), *available at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60713&SearchText=*. ISDA continued to advocate against placing additional burdens on end-users through its joint comment letter with SIFMA to the Swap Data Roadmap and suggested the Commission ''should not require non-reporting counterparties, end-users, and smaller firms to perform reconciliations because these entities generally do not have the resources to effectively validate their swap transactions.'' *See* fn. 20, *supra,* at 6.

[31] Proposal, text accompanying n.226.

• SDR provides a mechanism for the RCP to verify the accuracy of the Open Swaps report; and

• RCP checks the Open Swaps report against the data that it submitted to the SDR.

In other words, if the original data set utilized by the RCP contains an inaccuracy, the Proposal could simply impose a futile exercise based on circular logic. The end result of the new burdens placed upon RCPs and SDRs would merely be a false positive in this scenario. If the RCP's data is inaccurate in the first place, then the Proposal would be successful only in making swap data reporting more complicated and expensive, without actually improving the accuracy of the data reported to the SDR.[32]

Accurately reported swap data is, of course, crucial to the Commission's performance of its regulatory responsibilities and the effective operation of the Dodd-Frank swap regime. That is why I am concurring in the issuance of the Proposal—because I support the Commission's efforts to determine whether appropriate improvements can be made to its swap data reporting rule set.

This Proposal provides an opportunity for the public to suggest other, perhaps better, solutions to more efficiently produce the desired outcome of accurate swap data for purposes of conducting the Commission's work, facilitating risk oversight and management, and fostering robust swaps markets. I strongly encourage SDRs, SDs, DCOs, end-users, and the public in general to take advantage of this opportunity and provide not only feedback on the Proposal, but also their ideas on how to appropriately balance the need for accurately reported swap data with the costs and burdens associated with obtaining it. The Commission should consider any alternate approaches that can satisfy the policy goal of improving the quality of SDR data while limiting the impact on market participants already saturated with complex and repetitive reporting obligations.

I would like to offer, and invite comment on, a few alternatives with respect to RCPs. CEA Section 21(c)(2) provides that SDRs shall ''confirm with both counterparties to the swap the accuracy of the data that was submitted.''[33] As a result, a clear obligation exists as to what SDRs must do. The statute is less clear on what RCPs must do, if anything.

Under the Commission's current regulations, all RCPs must submit hundreds of fields per transaction to their respective SDRs. Some RCPs have thousands of open swaps that would be captured under this Proposal and require recurring verification. I hope that commenters will address whether a smaller number of swaps and/or a limited subset of essential fields that must be verified would enable the Commission to conduct its regulatory functions without indiscriminately requiring verification of all swap data elements.

Another option on which public comment would be helpful is requiring RCPs to verify only the accuracy of a statistically significant portion of their Open Swaps report and then decide, based on the level of accuracy, whether the entirety of Open Swaps must be analyzed. Still another option might be to require verification of only a limited set of the most important fields required to understand the basic terms of plain-vanilla swap transactions. Finally, commenters could address a possible *de minimis* level that must be exceeded before the new reporting obligations in this Proposal would apply. For example, if an RCP has less than X swaps per year, or less than Y notional transacted per year, then it would not have to perform these verification functions.

With respect to end-user RCPs in particular, where the ability to build reporting systems and the cost of doing so on a per swap basis is much different than for SDs, MSPs, and DCOs, comment would be beneficial on whether end-user RCPs should have more time than proposed, both for replying to Open Swaps reports with a ''verification'' or ''notification of discrepancy'' message and correcting errors and omissions. Also, commenters may wish to address the frequency of how often end-user RCPs should be required to participate in this labor-intensive process. I recognize that the Proposal includes less stringent obligations on end-user RCPs in comparison to SDs, MSPs, and DCOs that are RCPs, but I welcome comment on whether the Commission should strive to do more in this regard.

As written, the Proposal would impose a number of new, often undefined, obligations with respect to swap data reporting. The potential alternatives noted above, together with others that commenters may suggest, could represent a common sense approach to addressing concerns regarding swap data accuracy while appropriately calibrating the costs and burdens associated with verification of SDR data.

Appendix 5—Statement of Commissioner Dan. M. Berkovitz

I am pleased to support the Commission's notice of proposed rulemaking (''NPRM'') to amend its rules for swap data repositories (''SDRs'') and data reporting requirements.[1] The proposed amendments reflect the Commission's commitment to accurate, detailed, and timely swaps data for regulators, market participants, and the public through enhanced data verification and error correction procedures, among other amendments. They are an important step in achieving the Dodd-Frank Act's mandate of swap data reporting as an integral part of OTC derivatives reform and financial market stability.[2]

The Dodd-Frank Act codified important new swap data reporting obligations,[3] and established SDRs as the vehicles for reporting and retaining swaps data.[4] It recognized the role of regulatory reporting and real-time public reporting in enhancing transparency and reducing systemic risk in the U.S. financial system. Consistent with these foundational principles, the Commission has focused on swap data reporting since the very inception of its Dodd-Frank efforts. In 2011, it began finalizing a series of coordinated reporting rules that provide for both regulatory and real-time public reporting of swap transaction and pricing data (Parts 45 and 43);[5] establish SDRs to receive data and make it available to regulators and the public (Part 49);[6] and define certain swap dealer and major swap participant reporting obligations (Part 23).[7]

The Commission's regulations leverage real-time public reporting to help increase transparency, fairness, and efficiency in swaps markets,[8] while regulatory reporting assists the Commission and other financial regulators in market oversight and systemic risk mitigation.[9] In this regard, SDRs provide a more consolidated view[10] of market

[32] To be sure, the Proposal might identify situations in which the SDR inexplicably alters the data that it receives from an RCP. But current Regulation 49.10(c), 17 CFR 49.10(c), already prohibits such activity since an SDR ''shall establish policies and procedures reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the confirmation or recording process of the swap data repository. The policies and procedures must ensure that the swap data repository's user agreements are designed to prevent any such invalidation or modification.''

[33] 7 U.S.C. 24a(c)(2).

[1] The NPRM notes that it is the first of three rulemakings anticipated pursuant to the Commission's 2017 ''Roadmap to Achieve High Quality Swaps Data'' (''Roadmap''). *See* NPRM section I(C). Information regarding the Roadmap is available in CFTC Letter 17–33 (Division of Market Oversight Announces Review of Swap Reporting Rules in Parts 43, 45, and 49 of Commission Regulations) (July 10, 2017), available at *http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-33.pdf.* The Roadmap itself is available at *http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/dmo_swapdataplan071017.pdf.*

[2] *See also* G20, Leaders' Statement: The Pittsburgh Summit (Sept. 24–25, 2009), paragraph 13, available at *https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, section 727, Public Law 111–203, 124 Stat. 1376 (2010) (the ''Dodd-Frank Act''), available at *https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.*

[4] *See* Dodd-Frank Act, section 728.

[5] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012) (''Part 45 Adopting Release'') and Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (''Part 43 Adopting Release'').

[6] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[7] Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 3, 2012).

[8] *See* Part 43 Adopting Release, 77 FR 1182, 1183.

[9] *See* Part 45 Adopting Release, 77 FR 2136, 2138.

[10] However, in a jurisdiction with multiple SDRs, such as the United States, regulators' view into market participants' swap positions is not fully consolidated. The presence of different SDRs in jurisdictions across the globe also impinges on full consolidation. These limitations give added import to standardizing data reporting, data fields, and regulators' access to data. Aggregation by regulators in a jurisdiction with multiple SDRs, for example, is greatly facilitated by agreed reporting conventions.

participants' exposures across their swaps portfolios, and can help to identify concentrations and other potential risks that are dispersed across individual portfolios, trading platforms, and clearinghouses. Accurate, complete, and timely information is therefore vital to any successful swaps data reporting regime. These objectives were central to post-crisis reform efforts, and they must remain the primary considerations as the Commission moves to enhance its reporting rules.

It is important to note that the existing reporting rules have already achieved important successes. Currently, three provisionally registered SDRs [11] facilitate regulatory reporting and real-time public reporting, and CFTC staff estimates that SDRs processed approximately 13 million unique swaps in 2018. SDRs provide online systems where any member of the public can track transaction-by-transaction information as swaps are executed and publicly reported. SDRs have also designed portals and other resources to provide CFTC staff with more complete regulatory access.

While building on this solid foundation, the NPRM and the proposed amendments acknowledge areas where the Commission's existing swap data reporting rules are not working as effectively as they might. Registered swap dealers began reporting swap data on December 31, 2012, and the proposed amendments are therefore based on over six years of Commission experience with SDRs and swap data reporting. In this regard, the NPRM addresses several areas that the Commission identified for improvement in its 2017 Roadmap. For example, the NPRM addresses swap data verification and the prompt correction of errors or omissions in previously reported data. It proposes to clarify and strengthen the obligations of SDRs and reporting counterparties by requiring SDRs to provide reporting counterparties with regular reports on open swaps to ''verify the accuracy and completeness of swap data reported to SDRs.'' [12] In turn, reporting counterparties must respond affirmatively by indicating that the records in the reports they receive are accurate, or otherwise correcting any errors or omissions.[13] Reporting counterparties must respond within timeframes specified in the NPRM, and they must do so pursuant to standards established by SDRs.

The NPRM also proposes that SDRs provide open swap reports to the Commission. SDRs must provide such reports pursuant to timing, method, frequency, content, and other instructions that the Commission may issue.[14] While working with SDRs, open swaps reports will help the Commission to perform its regulatory functions more effectively and efficiently through reports that SDRs standardize in content, format, calculation methods, and other variables.

In addition to these important data-focused amendments, the NPRM also proposes amendments to rules in Part 49 of the Commission's regulations that govern the internal operations of SDRs, particularly as they pertain to an SDR's chief compliance officer (''CCO''), conflicts of interest, and annual compliance reports. I am interested in receiving comments regarding these proposed amendments, including areas where the Commission's existing CCO-related rules for SDRs are working well and where they could be improved. In this regard, the Commission should be vigilant that changes to compliance or other requirements made in the name of efficiency do not diminish the self-regulatory foundation of the Commission's oversight of derivatives markets.

I thank the staff of the Division of Market Oversight for their dedicated work on both this NPRM and potential future proposals related to swaps data reporting. I also thank staff for their responsiveness to questions and comments from my office, including their willingness to consider changes that have improved the NPRM before the Commission today. While swap data reporting is not always the most glamorous area of the Commission's work, it is vitally important that we get it right. I look forward to public comments on the NPRM, and to continued efforts by market participants and the Commission to achieve the most effective swap data reporting possible.

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[11] Chicago Mercantile Exchange Inc. Swap Data Repository; DTCC Data Repository (U.S.); and ICE Trade Vault.

[12] *See* NPRM section II(G) (discussing proposed section 49.11).

[13] *See* NPRM section III(B) (discussing proposed section 45.14).

[14] *See* NRPM section II(E) (discussing proposed section 49.9).

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 190220145–9145–01]

RIN 0648–BI85

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) to extend the time period from November 2023 to November 2025 for Marine Mammal Protection Act (MMPA) regulations authorizing the take of marine mammals incidental to Navy training and testing activities conducted in the Atlantic Fleet Training and Testing (AFTT) Study Area. In August 2018, the MMPA was amended by the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 to allow for seven-year authorizations for military readiness activities, as compared to the previously allowed five years. The Navy's activities qualify as military readiness activities pursuant to the MMPA as amended by the NDAA for Fiscal Year 2004. In making the request to extend the time period covered by the MMPA AFTT regulations from five to seven years, the Navy proposes no changes to their specified activities, the geographical region in which those activities would be conducted, mitigation measures, monitoring, or reporting over the longer seven-year period. Pursuant to the MMPA, NMFS is requesting comments on the proposed seven-year rule and associated Letters of Authorization (LOAs) to cover the same activities covered by the existing 2018 AFTT regulations. NMFS will consider all public comments prior to issuing any final rule and making final decisions on the issuance of the requested LOAs, and agency responses will be summarized in the notice of the final decision.

DATES: Comments and information must be received no later than June 12, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0050, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0050,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

A copy of the Navy's applications, NMFS' proposed and final rules and subsequent LOAs for the existing regulations, and other supporting documents and documents cited herein may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please use the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose of Regulatory Action

These proposed regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), would extend the framework for authorizing the take of marine mammals incidental to the Navy's training and testing activities (which qualify as military readiness activities) from the use of sonar and other transducers, in-water detonations, air guns, impact pile driving/vibratory extraction, and the movement of vessels throughout the AFTT Study Area, which includes areas of the western Atlantic Ocean along the East Coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico.

NMFS received an application from the Navy requesting to extend NMFS' existing MMPA regulations (50 CFR part 218, subpart I; hereafter ''2018 AFTT regulations'') that authorize the take of marine mammals incidental to Navy training and testing activities conducted in the AFTT Study Area to cover seven years of the Navy's activities, instead of five. Take is anticipated to occur by Level A harassment and Level B harassment as well as a very small number of serious injuries or mortalities incidental to the Navy's training and testing activities.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA 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 and the opportunity to submit comments.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stocks 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 this rule as ''mitigation measures''); and requirements pertaining to the monitoring and reporting of such takings. The MMPA defines ''take'' to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The *Preliminary Analysis and Negligible Impact Determination* section below discusses the definition of ''negligible impact.''

The NDAA for Fiscal Year 2004 (2004 NDAA) (Pub. L. 108–136) amended section 101(a)(5) of the MMPA to remove the ''small numbers'' and ''specified geographical region'' provisions indicated above and amended the definition of ''harassment''

as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). In addition, the 2004 NDAA amended the MMPA as it relates to military readiness activities such that least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

More recently, section 316 of the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115–232), signed on August 13, 2018, amended the MMPA to allow incidental take rules for military readiness activities under section 101(a)(5)(A) to be issued for up to seven years. Prior to this amendment, all incidental take rules under section 101(a)(5)(A) were limited to five years.

Summary of Request

On November 14, 2018, NMFS issued a five-year final rule governing the taking of marine mammals incidental to Navy training and testing activities conducted in the AFTT Study Area (83 FR 57076; hereafter ''2018 AFTT final rule''). Previously on August 13, 2018, and towards the end of the time period in which NMFS was processing the Navy's request for the 2018 regulations, the 2019 NDAA amended the MMPA for military readiness activities to allow incidental take regulations to be issued for up to seven years instead of the previous five years. The Navy's training and testing activities conducted in the AFTT Study Area qualify as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA. On November 16, 2018, the Navy submitted an application requesting that NMFS extend the 2018 AFTT regulations and associated LOAs such that they would cover take incidental to seven years of training and testing activities instead of five, extending the expiration date from November 13, 2023 to November 13, 2025. A revised application correcting the estimated takes due to ship shock trials (Table 5.1–2) was submitted to NMFS by the Navy on January 18, 2019.

In its 2019 application, the Navy proposes no changes to the nature of the specified activities covered by the 2018 AFTT final rule, the level of activity within and between years would be consistent with that previously analyzed in the 2018 AFTT final rule, and all activities would be conducted within the same boundaries of the AFTT Study Area identified in the 2018 AFTT final rule. Therefore, the training and testing activities (*e.g.,* equipment and sources used, exercises conducted) and the mitigation, monitoring, and reporting measures are identical to those described and analyzed in the 2018 AFTT final rule. The only changes included in the Navy's request are to conduct those same activities in the same region for an additional two years. In its request, the Navy included all information necessary to identify the type and amount of incidental take that may occur in the two additional years so NMFS could determine whether the analyses and conclusions regarding the impacts of the proposed activities on marine mammal species and stocks previously reached for five years of activities remain the same for seven years of identical activity.

The Navy's mission is to organize, train, equip, and maintain combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. This mission is mandated by federal law (10 U.S.C. 8062), which ensures the readiness of the naval forces of the United States. The Navy executes this responsibility by establishing and executing training programs, including at-sea training and exercises, and ensuring naval forces have access to the ranges, operating areas (OPAREAs), and airspace needed to develop and maintain skills for conducting naval activities.

The Navy proposes to continue conducting training and testing activities within the AFTT Study Area. The Navy's January 18, 2019, rulemaking and LOA extension application (hereafter ''2019 Navy application'') reflects the same compilation of training and testing activities presented in the Navy's June 16, 2017, initial rulemaking and LOA application (hereafter ''2017 Navy application'') and the 2018 AFTT regulations that were subsequently promulgated, which can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* These activities are deemed by the Navy necessary to accomplish military readiness requirements and are anticipated to continue into the reasonably foreseeable future. The 2019 Navy application and this rule cover training and testing activities that would occur over seven years, including the five years already authorized under the 2018 AFTT regulations, with the regulations valid from the publication date of the final rule (if issued) through November 13, 2025.

Summary of the Proposed Regulations

NMFS is proposing to extend the incidental take regulations and associated LOAs through November 13, 2025 to cover the same Navy activities covered by the 2018 AFTT regulations. The 2018 AFTT final rule was only recently published and its analysis remains current and valid. In its 2019 application, the Navy proposes no changes to the nature (*e.g.,* equipment and sources used, exercises conducted) or level of the specified activities within or between years or to the boundaries of the AFTT Study Area. The mitigation, monitoring, and reporting measures would be identical to those described and analyzed in the 2018 AFTT final rule. The proposed regulatory language included at the end of this proposed rule, which would be published at 50 CFR part 218, subpart I, also is the same as that under the AFTT 2018 regulations, except for a small number of minor, technical changes. No new information has been received from the Navy, or otherwise become available to NMFS, since publication of the 2018 AFTT final rule that significantly changes the analyses supporting the 2018 findings. Where there is any new information pertinent to the descriptions, analyses, or findings required to authorize incidental take for military readiness activities under MMPA section 101(a)(5)(A), that information is provided in the appropriate sections below.

Because the activities included in the 2019 Navy application have not changed and the analyses and findings included in the documents provided and produced in support of the recently published 2018 AFTT final rule remain current and applicable, this proposed rule relies heavily on and references to the applicable information and analyses in those documents. Below is a list of the regulatory documents referenced in this proposed rule. The list indicates the short name by which the document is referenced in this proposed rule, as well as the full titles of the cited documents. All of the documents can be found at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* and *http://www.aftteis.com/.*

- NMFS March 13, 2018, Atlantic Fleet Training and Testing (AFTT) proposed rule (83 FR 10954; hereafter ''2018 AFTT proposed rule'');
- NMFS November 14, 2018, Atlantic Fleet Training and Testing (AFTT) final rule (83 FR 57076; hereafter ''2018 AFTT final rule'');
- NMFS December 27, 2018, Hawaii-Southern California Training and Testing (HSTT) Study Area final rule (83 FR 66846; hereafter ''2018 HSTT final rule'');
- Navy June 16, 2017, MMPA rulemaking and LOA application (hereafter ''2017 Navy application'');
- Navy January 18, 2019, MMPA rulemaking and LOA extension application (hereafter ''2019 Navy application''); and
- September 14, 2018, Atlantic Fleet Training and Testing (AFTT) Final Environmental Impact Statement/Overseas Environmental Impact Statement (FEIS/OEIS) (hereafter ''2018 AFTT FEIS/OEIS'').

Description of the Specified Activity

The Navy requests authorization to take marine mammals incidental to conducting training and testing activities. The Navy has determined that acoustic and explosives stressors are most likely to result in impacts on marine mammals that could rise to the level of harassment. Detailed descriptions of these activities are provided in Chapter 2 of the 2018 AFTT FEIS/OEIS and in the 2017 and 2019 Navy applications.

Overview of Training and Testing Activities

The Navy routinely trains in the AFTT Study Area in preparation for national defense missions. Training and testing activities and components covered in the 2019 Navy application are described in detail in the *Overview of Training and Testing Activities* sections of the 2018 AFTT proposed rule and the 2018 AFTT final rule and Chapter 2 of the 2018 AFTT FEIS/OEIS (*http://www.aftteis.com/*). Each military training and testing activity described meets mandated Fleet requirements to deploy ready forces. The Navy proposes no changes to the specified activities described and analyzed in the 2018 AFTT final rule. The boundaries of the AFTT Study Area (see Figure 1.2–1 of the 2019 Navy application); the training and testing activities (*e.g.,* equipment and sources used, exercises conducted); manner of or amount of vessel movement; and standard operating procedures presented in this proposed rule are identical to those described and analyzed in the 2018 AFTT final rule.

Dates and Duration

The specified activities would occur at any time during the seven-year period of validity of the regulations. The proposed number of training and testing activities are described in the *Detailed Description of the Specified Activities* section (Tables 1 through 4).

Specified Geographical Region

The Navy proposes no changes to the geographic extent of the AFTT Study Area as described in the 2018 AFTT final rule. The AFTT Study Area (see Figure 2–1 of the 2019 Navy application) includes areas of the western Atlantic Ocean along the east coast of North America, the Gulf of Mexico, and portions of the Caribbean Sea. The AFTT Study Area begins at the mean high tide line along the U.S. coast and extends east to the 45-degree west longitude line, north to the 65-degree north latitude line, and south to approximately the 20-degree north latitude line. The AFTT Study Area also includes Navy pierside locations, bays, harbors, and inland waterways, and civilian ports where training and testing occurs. The AFTT Study Area generally follows the Commander Task Force 80 area of operations, covering approximately 2.6 million nautical miles squared (nmi^2) of ocean area, and includes designated Navy range complexes and associated operating areas (OPAREAs) and special use airspace. While the AFTT Study Area itself is very large, the vast majority of Navy training and testing occurs in designated range complexes and testing ranges.

A Navy range complex consists of geographic areas that encompass a water component (above and below the surface) and airspace, and may encompass a land component where training and testing of military platforms, tactics, munitions, explosives, and electronic warfare systems occur. Range complexes include established OPAREAs, which may be further divided to provide better control of the area for safety reasons. Additional detail on range complexes and testing ranges was provided in the *Duration and Location* section of the 2018 AFTT proposed rule; please see the 2018 AFTT proposed rule or the 2017 Navy application for more information.

Description of Acoustic and Explosive Stressors

The Navy uses a variety of sensors, platforms, weapons, and other devices, including ones used to ensure the safety of Sailors and Marines, to meet its mission. Training and testing with these systems may introduce acoustic (sound) energy or shock waves from explosives into the environment. The specific components that could act as stressors by having direct or indirect impacts on the environment are described in detail in the *Description of Acoustic and Explosive Stressors* section of the 2018 AFTT final rule and Chapter 2 of the 2018 AFTT FEIS/OEIS. The Navy proposes no changes to the nature of the specified activities and, therefore, the acoustic and explosive stressors are identical to those described and analyzed in the 2018 AFTT final rule.

Other Stressor—Vessel Strike

Vessel strikes are not specific to any particular training or testing activity, but rather a limited, sporadic, and incidental result of Navy vessel movement within the AFTT Study Area. Navy vessels transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. The average speed of large Navy ships ranges between 10 and 15 knots and submarines generally operate at speeds in the range of 8–13 knots, while a few specialized vessels can travel at faster speeds. By comparison, this is slower than most commercial vessels where full speed for a container ship is typically 24 knots (Bonney and Leach, 2010).

Should a vessel strike occur, it would likely result in incidental take from serious injury and/or mortality and, accordingly, for the purposes of the analysis we assume that any ship strike would result in serious injury or mortality. The Navy proposes no changes to the nature of the specified activities, the training and testing activities, the manner of or amount of vessel movement, and standard operating procedures. Therefore, the description of vessel strikes as a stressor is the same as those presented in the *Other Stressor—Vessel Strike* sections of the 2018 AFTT proposed rule and 2018 AFTT final rule.

Detailed Description of the Specified Activities

The Navy's proposed activities are presented and analyzed as a representative year of training to account for the natural fluctuation of training cycles and deployment schedules in any seven-year period. In the 2018 AFTT final rule, NMFS analyzed activities based on the Navy conducting three years of a representative level of activity and two years of a maximum level of activity. For the purposes of this rulemaking, the Navy proposes that the additional two

years of training and testing would consist of one additional year of maximum training tempo and one representative year of training tempo consistent with the pattern set forth in the 2018 AFTT final rule, the 2018 AFTT FEIS/OEIS, and the 2017 Navy application.

Proposed Training Activities

The number of proposed training activities that could occur annually and the duration of those activities remains identical to those presented in Table 4 of the 2018 AFTT final rule, and are not repeated here. The number of proposed training activities that could occur over the seven-year period are presented in Table 1. The table is organized according to primary mission areas and includes the activity name, associated stressors applicable to these proposed regulations, sound source bin, number of proposed activities, and locations of those activities in the AFTT Study Area. For further information regarding the primary platform used (*e.g.*, ship or aircraft type) see Appendix A (Navy Activity Descriptions) of the 2018 AFTT FEIS/OEIS.

TABLE 1—PROPOSED TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
Major Training Exercise—Large Integrated Anti-Submarine Warfare					
Acoustic	Composite Training Unit Exercise.	Aircraft carrier and its associated aircraft integrate with surface and submarine units in a challenging multi-threat operational environment in order to certify them for deployment.	ASW1, ASW2, ASW3, ASW4, ASW5, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	17	VACAPES RC; Navy Cherry Point RC; JAX RC.
Major Training Exercises—Medium Integrated Anti-Submarine Warfare					
Acoustic	Fleet Exercises/ Sustainment Exercise.	Aircraft carrier and its associated aircraft integrates with surface and submarine units in a challenging multi-threat operational environment in order to maintain their ability to deploy.	ASW1, ASW2, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	28 14	JAX RC. VACAPES RC.
Integrated/Coordinated Training—Small Integrated Anti-Submarine Warfare Training					
Acoustic	Naval Undersea Warfare Training Assessment Course.	Multiple ships, aircraft, and submarines integrate the use of their sensors to search for, detect, classify, localize, and track a threat submarine in order to launch an exercise torpedo.	ASW1, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF12.	42 21 21	JAX RC. Navy Cherry Point RC. VACAPES RC.
Integrated/Coordinated Training—Medium Coordinated Anti-Submarine Warfare Training					
Acoustic	Anti-Submarine Warfare Tactical Development Exercise.	Surface ships, aircraft, and submarines coordinate to search for, detect, and track submarines.	ASW1, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	14 7 7	JAX RC. Navy Cherry Point RC. VACAPES RC.
Integrated/Coordinated Training—Small Coordinated Anti-Submarine Warfare Training					
Acoustic	Group Sail	Surface ships and helicopters search for, detect, and track threat submarines.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11, MF12.	28 28 35	JAX RC. Navy Cherry Point RC. VACAPES RC.
Amphibious Warfare					
Explosive	Naval Surface Fire Support Exercise—At Sea.	Surface ship crews use large-caliber guns to support forces ashore; however, the land target is simulated at sea. Rounds are scored by passive acoustic buoys located at or near the target area.	E5	28 84 14 266	GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Anti-Submarine Warfare					
Acoustic	Anti-submarine Warfare Torpedo Exercise—Helicopter.	Helicopter aircrews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF4, MF5, TORP1	98 28	JAX RC. VACAPES RC.
Acoustic	Anti-submarine Warfare Torpedo Exercise—Maritime Patrol Aircraft.	Maritime patrol aircraft aircrews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF5, TORP1	98 28	JAX RC. VACAPES RC.
Acoustic	Anti-Submarine Warfare Torpedo Exercise—Ship.	Surface ship crews search for, track, and detect submarines. Exercise torpedoes are used.	ASW3, MF1, TORP1	112 35	JAX RC. VACAPES RC.
Acoustic	Anti-Submarine Warfare Torpedo Exercise—Submarine.	Submarine crews search for, track, and detect submarines. Exercise torpedoes are used.	ASW4, HF1, MF3, TORP2.	84 42 14	JAX RC. Northeast RC. VACAPES RC.
Acoustic	Anti-Submarine Warfare Tracking Exercise—Helicopter.	Helicopter aircrews search for, track, and detect submarines	MF4, MF5	168 2,590 84 56	Other AFTT Areas. JAX RC. Navy Cherry Point RC. VACAPES RC.
Acoustic	Anti-Submarine Warfare Tracking Exercise—Maritime Patrol Aircraft.	Maritime patrol aircraft aircrews search for, track, and detect submarines.	ASW5, ASW2, MF5	630 1,232 3,675 322	Northeast RC. VACAPES RC. JAX RC. Navy Cherry Point RC.

TABLE 1—PROPOSED TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA—Continued

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
Acoustic	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines	ASW1, ASW3, MF1, MF11, MF12.	*35 *770 *35 *3,080 *385 *1,540	Northeast RC. Other AFTT Areas. GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Acoustic	Anti-Submarine Warfare Tracking Exercise—Submarine.	Submarine crews search for, track, and detect submarines	ASW4, HF1, MF3	308 91 7 126 42	Other AFTT Areas. JAX RC. Navy Cherry Point RC. Northeast RC. VACAPES RC.
Expeditionary Warfare					
Explosive	Maritime Security Operations—Anti-Swimmer Grenades.	Small boat crews engage in force protection activities by using anti-swimmer grenades to defend against hostile divers.	E2	14 14 14 28 35	GOMEX RC. JAX RC. Navy Cherry Point RC. Northeast RC. VACAPES RC.
Mine Warfare					
Acoustic	Airborne Mine Countermeasure—Mine Detection.	Helicopter aircrews detect mines using towed or laser mine detection systems.	HF4	462 2,219 2,597 1,708 10,780	GOMEX RC. JAX RC. Navy Cherry Point RC. NSWC Panama City. VACAPES RC.
Acoustic, Explosive	Civilian Port Defense—Homeland Security Anti-Terrorism/Force Protection Exercise.	Maritime security personnel train to protect civilian ports against enemy efforts to interfere with access to those ports.	HF4, SAS2, E2, E4	4	Beaumont, TX; Boston, MA; Corpus Christi, TX; Delaware Bay, DE; Earle, NJ; GOMEX RC; Hampton Roads, VA; JAX RC; Kings Bay, GA; NS Mayport; Morehead City, NC; Port Canaveral, FL; Savannah, GA; Tampa Bay, FL; VACAPES RC; Wilmington, NC.
Acoustic	Coordinated Unit Level Helicopter Airborne Mine Countermeasure Exercise.	A detachment of helicopter aircrews train as a unit in the use of airborne mine countermeasures, such as towed mine detection and neutralization systems.	HF4	14 14 14 14	GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Acoustic, Explosive	Mine Countermeasures—Mine Neutralization—Remotely Operated Vehicle.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles.	HF4, E4	924 497 497 4,410	GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Acoustic	Mine Countermeasures—Ship Sonar.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	HF4	154 371 371	GOMEX RC. JAX RC. VACAPES RC.
Explosive	Mine Neutralization—Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges	E4, E5, E6, E7	42 112 140 119 112 3,668	Lower Chesapeake Bay. GOMEX RC. JAX RC. Key West RC. Navy Cherry Point RC. VACAPES RC.
Surface Warfare					
Explosive	Bombing Exercise Air-to-Surface.	Fixed-wing aircrews deliver bombs against surface targets	E9, E10, E12	469 3,038 756 2,303	GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Explosive	Gunnery Exercise Surface-to-Surface Boat Medium-Caliber.	Small boat crews fire medium-caliber guns at surface targets	E1	42 182 896 14 1,820	GOMEX RC. JAX RC. Navy Cherry Point RC. Northeast RC. VACAPES RC.
Explosive	Gunnery Exercise Surface-to-Surface Ship Large-Caliber.	Surface ship crews fire large-caliber guns at surface targets	E3, E5	70 63 357 245 525	Other AFTT Areas. GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Explosive	Gunnery Exercise Surface-to-Surface Ship Medium-Caliber.	Surface ship crews fire medium-caliber guns at surface targets	E1	287 231 1,127 504 2,247	Other AFTT Areas. GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Explosive	Integrated Live Fire Exercise.	Naval forces defend against a swarm of surface threats (ships or small boats) with bombs, missiles, rockets, and small-, medium- , and large-caliber guns.	E1, E3, E6, E10	14 14	VACAPES RC. JAX RC.

TABLE 1—PROPOSED TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA—Continued

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
Explosive	Missile Exercise Air-to-Surface.	Fixed-wing and helicopter aircrews fire air-to-surface missiles at surface targets.	E6, E8, E10	714 364 616	JAX RC. Navy Cherry Point RC. VACAPES RC.
Explosive	Missile Exercise Air-to-Surface—Rocket.	Helicopter aircrews fire both precision-guided and unguided rockets at surface targets.	E3	70 714 70 644	GOMEX RC. JAX RC. Navy Cherry Point RC. VACAPES RC.
Explosive	Missile Exercise Surface-to-Surface.	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E6, E10	112 84	JAX RC. VACAPES RC.
Acoustic, Explosive	Sinking Exercise	Aircraft, ship, and submarine crews deliberately sink a seaborne target, usually a decommissioned ship (made environmentally safe for sinking according to U.S. Environmental Protection Agency standards), with a variety of munitions.	TORP2, E5, E8, E9, E10, E11.	7	SINKEX Box.
Other Training Activities					
Acoustic	Elevated Causeway System.	A temporary pier is constructed off the beach. Supporting pilings are driven into the sand and then later removed.	Impact hammer or vibratory extractor.	7 7	Lower Chesapeake Bay. Navy Cherry Point RC.
Acoustic	Submarine Navigation	Submarine crews operate sonar for navigation and object detection while transiting into and out of port during reduced visibility.	HF1, MF3	1,183 21 21 588 161	NSB New London. NSB Kings Bay. NS Mayport. NS Norfolk. Port Canaveral, FL.
Acoustic	Submarine Sonar Maintenance.	Maintenance of submarine sonar systems is conducted pierside or at sea.	MF3	84 462 63 14 238 602 14 88 326	Other AFTT Areas. NSB New London. JAX RC. NSB Kings Bay. NS Norfolk. Northeast RC. Port Canaveral, FL. Navy Cherry Point RC. VACAPES RC.
Acoustic	Submarine Under Ice Certification.	Submarine crews train to operate under ice. Ice conditions are simulated during training and certification events.	HF1	21 21 63 63	JAX RC. Navy Cherry Point RC. Northeast RC. VACAPES RC.
Acoustic	Surface Ship Object Detection.	Surface ship crews operate sonar for navigation and object detection while transiting in and out of port during reduced visibility.	HF8, MF1K	532 1,134	NS Mayport. NS Norfolk.
Acoustic	Surface Ship Sonar Maintenance.	Maintenance of surface ship sonar systems is conducted pierside or at sea.	HF8, MF1	350 350 840 1,645 840	JAX RC. NS Mayport. Navy Cherry Point RC. NS Norfolk. VACAPES RC.

[1] The number of proposed training activities that could occur annually and the duration of those activities remains identical to those presented in Table 4 of the 2018 AFTT final rule.
[2] Locations given are areas where activities typically occur. However, activities could be conducted in other locations within the Study Area. Where multiple locations are provided within a single cell, the number of activities could occur in any of the locations, not in each of the locations.
* For Anti-Submarine Warfare Tracking Exercise—Ship, 50 percent of requirements are met through synthetic training or other training exercises.
Notes: GOMEX: Gulf of Mexico; JAX: Jacksonville; NS: Naval Station; NSB: Naval Submarine Base; NSWC: Naval Surface Warfare Center; RC: Range Complex; VACAPES: Virginia Capes.

Proposed Testing Activities

The number of proposed testing activities that could occur annually and the duration of those activities are identical to those presented in Tables 5 through 7 of the 2018 AFTT final rule, and are not repeated here. Similar to the 2017 Navy application, the Navy's proposed testing activities here are based on the level of testing activities anticipated to be conducted into the reasonably foreseeable future, with adjustments that account for changes in the types and tempo (increases or decreases) of testing activities to meet current and future military readiness requirements. The number of proposed testing activities that could occur for the seven-year period are presented in Tables 2 through 4. The number of ship shock trials for the seven-year period would remain the same as the number authorized under the 2018 AFTT final rule.

Naval Air Systems Command

The proposed Naval Air Systems Command testing activities that could occur over the seven-year period within the AFTT Study Area are presented in Table 2.

TABLE 2—PROPOSED NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
Anti-Submarine Warfare					
Acoustic	Anti-Submarine Warfare Torpedo Test.	This event is similar to the training event torpedo exercise. Test evaluates anti-submarine warfare systems onboard rotary-wing (*e.g.,* helicopter) and fixed-wing aircraft and the ability to search for, detect, classify, localize, track, and attack a submarine or similar target.	MF5, TORP1	209 523	JAX RC. VACAPES RC.

TABLE 2—PROPOSED NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA—Continued

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
Acoustic, Explosive	Anti-Submarine Warfare Tracking Test—Helicopter.	This event is similar to the training event anti-submarine warfare tracking exercise—helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking system perform to specifications.	MF4, MF5, E3	34 36 64 442 1,368	GOMEX RC. JAX RC. Key West RC. Northeast RC. VACAPES RC.
Acoustic, Explosive	Anti-Submarine Warfare Tracking Test—Maritime Patrol Aircraft.	The test evaluates the sensors and systems used by maritime patrol aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	ASW2, ASW5, E1, E3, MF5, MF6.	85 133 76 101 279 175	GOMEX RC. JAX RC. Key West RC. Navy Cherry Point RC. Northeast RC. VACAPES RC.
Acoustic	Kilo Dip	Functional check of a helicopter deployed dipping sonar system prior to conducting a testing or training event using the dipping sonar system.	MF4	22 12 12 12 200	GOMEX RC. JAX RC. Key West RC. Northeast RC. VACAPES RC.
Acoustic, Explosive	Sonobuoy Lot Acceptance Test.	Sonobuoys are deployed from surface vessels and aircraft to verify the integrity and performance of a production lot or group of sonobuoys in advance of delivery to the fleet for operational use.	ASW2, ASW5, HF5, HF6, LF4, MF5, MF6, E1, E3, E4.	1,120	Key West RC.
Mine Warfare					
Acoustic	Airborne Dipping Sonar Minehunting Test.	A mine-hunting dipping sonar system that is deployed from a helicopter and uses high-frequency sonar for the detection and classification of bottom and moored mines.	HF4	144 66	NSWC Panama City. VACAPES RC.
Explosive	Airborne Mine Neutralization System Test.	A test of the airborne mine neutralization system evaluates the system's ability to detect and destroy mines from an airborne mine countermeasures capable helicopter. The airborne mine neutralization system uses up to four unmanned underwater vehicles equipped with high-frequency sonar, video cameras, and explosive and non-explosive neutralizers.	E4	154 215	NSWC Panama City. VACAPES RC.
Acoustic	Airborne Sonobuoy Minehunting Test.	A mine-hunting system made up of a field of sonobuoys deployed by a helicopter. A field of sonobuoys, using high-frequency sonar, is used to detect and classify bottom and moored mines.	HF6	364 168	NSWC Panama City. VACAPES RC.
Surface Warfare					
Explosive	Air-to-Surface Bombing Test.	This event is similar to the training event bombing exercise air-to-surface. Fixed-wing aircraft test the delivery of bombs against surface maritime targets with the goal of evaluating the bomb, the bomb carry and delivery system, and any associated systems that may have been newly developed or enhanced.	E9	140	VACAPES RC.
Explosive	Air-to-Surface Gunnery Test.	This event is similar to the training event gunnery exercise air-to-surface. Fixed-wing and rotary-wing aircrews evaluate new or enhanced aircraft guns against surface maritime targets to test that the guns, gun ammunition, or associated systems meet required specifications or to train aircrews in the operation of a new or enhanced weapon system.	E1	295 890	JAX RC. VACAPES RC.
Explosive	Air-to-Surface Missile Test.	This event is similar to the training event missile exercise air-to-surface. Test may involve both fixed-wing and rotary-wing aircraft launching missiles at surface maritime targets to evaluate the weapon system or as part of another system's integration test.	E6, E9, E10	30 234 928	GOMEX RC. JAX RC. VACAPES RC.
Explosive	Rocket Test	Rocket tests evaluate the integration, accuracy, performance, and safe separation of guided and unguided 2.75-inch rockets fired from a hovering or forward-flying helicopter.	E3	121 233	JAX RC. VACAPES RC.
Other Testing Activities					
Acoustic	Undersea Range System Test.	Following installation of a Navy underwater warfare training and testing range, tests of the nodes (components of the range) will be conducted to include node surveys and testing of node transmission functionality.	MF9, BB4	66	JAX RC.

[1] The number of proposed testing activities that could occur annually and the duration of those activities are identical to those presented in Table 5 of the 2018 AFTT final rule.
[2] Locations given are areas where activities typically occur. However, activities could be conducted in other locations within the Study Area.
Notes: GOMEX: Gulf of Mexico; JAX: Jacksonville; NSWC: Naval Surface Warfare Center; RC: Range Complex; VACAPES: Virginia Capes.

Naval Sea Systems Command

The proposed Naval Sea Systems Command testing activities that could occur over the seven-year period within the AFTT Study Area are presented in Table 3.

TABLE 3—PROPOSED NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA.

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
Anti-Submarine Warfare					
Acoustic	Anti-Submarine Warfare Mission Package Testing.	Ships and their supporting platforms (*e.g.,* helicopters, unmanned aerial systems) detect, localize, and attack submarines.	ASW1, ASW2, ASW3, ASW5, MF1, MF4, MF5, MF12, TORP1.	294	JAX RC.
				28	Newport, RI.
				28	NUWC Newport.
				182	VACAPES RC.
Acoustic	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	ASW3, ASW4, HF1, LF5, M3, MF1, MF1K, MF3, MF5, MF9, MF11, TORP2.	14	JAX RC; Navy Cherry Point RC; Northeast RC; VACAPES RC.
				7	JAX RC; Navy Cherry Point RC; VACAPES RC.
				14	offshore Fort Pierce, FL; GOMEX RC; JAX RC; SFOMF; Northeast RC; VACAPES RC.
				28	JAX RC.
				14	Navy Cherry Point RC.
				56	NUWC Newport.
				84	VACAPES RC.
Acoustic	Pierside Sonar Testing.	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities.	ASW3, HF1, HF3, HF8, M3, MF1, MF1K, MF3, MF9, MF10.	7	NSB New London; NS Norfolk; Port Canaveral, FL
				77	Bath, ME.
				35	NSB New London.
				28	NSB Kings Bay.
				56	Newport, RI.
				91	NS Norfolk.
				14	Pascagoula, MS.
				21	Port Canaveral, FL.
				14	PNS.
Acoustic	Submarine Sonar Testing/Maintenance.	Pierside testing of submarine systems occurs periodically following major maintenance periods and for routine maintenance.	HF1, HF3, M3, MF3 ..	112	Norfolk, VA.
				168	PNS.
Acoustic	Surface Ship Sonar Testing/Maintenance.	Pierside and at-sea testing of ship systems occur periodically following major maintenance periods and for routine maintenance.	ASW3, MF1, MF1K, MF9, MF10.	7	JAX RC.
				7	NS Mayport.
				21	NS Norfolk.
				21	VACAPES RC.
Acoustic, Explosive	Torpedo (Explosive) Testing.	Air, surface, or submarine crews employ explosive and non-explosive torpedoes against artificial targets.	ASW3, HF1, HF5, HF6, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, E8, E11.	28	GOMEX RC; offshore Fort Pierce, FL; Key West RC; Navy Cherry Point RC; Northeast RC; VACAPES RC.
				14	GOMEX RC; JAX RC; Northeast RC; VACAPES RC.
Acoustic	Torpedo (Non-Explosive) Testing.	Air, surface, or submarine crews employ non-explosive torpedoes against submarines or surface vessels. When performed on a testing range, these torpedoes may be launched from a range craft or fixed structures and may use artificial targets.	ASW3, ASW4, HF1, HF6, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, TORP 3.	49	GOMEX RC.
				77	offshore Fort Pierce, FL.
				12	JAX, RC.
				49	Navy Cherry Point RC.
				54	Northeast RC.
				210	NUWC Newport.
				77	VACAPES RC.
Acoustic	Countermeasure Testing.	Countermeasure testing involves the testing of systems that will detect, localize, track, and attack incoming weapons including marine vessel targets. Testing includes surface ship torpedo defense systems and marine vessel stopping payloads.	ASW3, HF5, TORP1, TORP2.	35	GOMEX RC; JAX RC; NUWC Newport; VACAPES RC; Key West RC.
				20	GOMEX RC; JAX RC; Northeast RC; VACAPES RC.
Mine Warfare					
Acoustic, Explosive	Mine Countermeasure and Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	E4, E11	91	NSWC Panama City.
				42	VACAPES RC.
Acoustic, Explosive	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	HF4, SAS2, E4	133	GOMEX RC.
				70	JAX RC.
				77	NSWC Panama City.
				14	SFOMF.
				35	VACAPES RC.
Acoustic	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels and systems detect, classify, and avoid mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HF1, HF4, HF8, MF1, MF1K, MF9.	42	GOMEX RC.
				70	Navy Cherry Point RC.
				359	NSWC Panama City.
				66	Riviera Beach, FL.
				28	SFOMF.

TABLE 3—PROPOSED NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA.—Continued

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
				21	VACAPES RC.
Surface Warfare					
Explosive	Gun Testing—Large Caliber.	Crews defend against targets with large-caliber guns	E3, E5	84	GOMEX RC.
					JAX RC.
					Key West RC.
					Navy Cherry Point RC.
					Northeast RC.
					VACAPES RC.
				7	GOMEX RC;
				7	JAX RC;
				7	Key West RC;
				7	Navy Cherry Point RC;
				7	Northeast RC;
				231	NSWC Panama City.
				35	VACAPES RC.
Explosive	Gun Testing—Medium-Caliber.	Airborne and surface crews defend against targets with medium-caliber guns.	E1	84	GOMEX RC; JAX RC; Key West RC; Navy Cherry Point RC; Northeast RC; VACAPES RC.
				714	NSWC Panama City.
				34	VACAPES RC.
Explosive	Missile and Rocket Testing.	Missile and rocket testing includes various missiles or rockets fired from submarines and surface combatants. Testing of the launching system and ship defense is performed.	E6, E10	91	GOMEX RC; JAX RC; Key West RC; Navy Cherry Point RC; Northeast RC; VACAPES RC.
				7	GOMEX RC.
				14	JAX RC.
				35	Northeast RC.
				154	VACAPES RC.
Unmanned Systems					
Acoustic, Explosive	Unmanned Underwater Vehicle Testing.	Testing involves the development or upgrade of unmanned underwater vehicles. This may include testing of mine detection capabilities, evaluating the basic functions of individual platforms, or complex events with multiple vehicles.	ASW4, FLS2, HF1, HF4, HF5, HF6, HF7, LF5, MF9, MF10, SAS1, SA2, SAS3, VHF1, E8.	112	GOMEX RC; JAX RC; NUWC Newport.
				287	GOMEX RC.
				175	JAX RC.
				1,018	NSWC Panama City.
				2,158	NUWC Newport.
				63	Riviera Beach, FL.
				294	SFOMF.
Vessel Evaluation					
Explosive	Large Ship Shock Trial.	Underwater detonations are used to test new ships or major upgrades.	E17	1	GOMEX RC; JAX RC; VACAPES RC.
Explosive	Surface Warfare Testing.	Tests capability of shipboard sensors to detect, track, and engage surface targets. Testing may include ships defending against surface targets using explosive and non-explosive rounds, gun system structural test firing and demonstration of the response to Call for Fire against land-based targets (simulated by sea-based locations).	E1, E5, E8	14	GOMEX RC.
				91	JAX RC.
				7	Key West RC.
				70	Northeast RC.
				63	VACAPES RC.
Acoustic	Undersea Warfare Testing.	Ships demonstrate capability of countermeasure systems and underwater surveillance, weapons engagement, and communications systems. This tests ships' ability to detect, track, and engage underwater targets.	ASW3, ASW4, HF4, HF8, MF1, MF1K, MF4, MF5, MF9, MF10, TORP1, TORP2.	14	JAX RC; VACAPES RC.
				6	JAX RC; Navy Cherry Point RC; SFOMF; VACAPES RC.
				14	GOMEX RC.
				42	JAX RC.
				14	VACAPES RC.
Explosive	Small Ship Shock Trial.	Underwater detonations are used to test new ships or major upgrades.	E16	3	JAX RC; VACAPES RC.
Acoustic	Submarine Sea Trials—Weapons System Testing.	Submarine weapons and sonar systems are tested at-sea to meet integrated combat system certification requirements.	HF1, M3, MF3, MF9, MF10, TORP2.	14	Offshore Fort Pierce, FL; GOMEX RC; JAX RC; SFOMF; Northeast RC; VACAPES RC.
				28	JAX RC.
				28	Northeast RC.
				28	VACAPES RC.
Other Testing Activities					
Acoustic	Insertion/Extraction	Testing of submersibles capable of inserting and extracting personnel and payloads into denied areas from strategic distances.	MF3, MF9	28	Key West RC.
				1,848	NSWC Panama City.
Acoustic	Acoustic Component Testing.	Various surface vessels, moored equipment, and materials are tested to evaluate performance in the marine environment.	FLS2, HF5, HF7, LF5, MF9, SAS2.	231	SFOMF.

TABLE 3—PROPOSED NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA.—Continued

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location [2]
Acoustic	Semi-Stationary Equipment Testing.	Semi-stationary equipment (*e.g.,* hydrophones) is deployed to determine functionality.	AG, ASW3, ASW4, HF5, HF6, LF4, LF5, MF9, MF10, SD1, SD2.	28 77 1,330	Newport, RI. NSWC Panama City. NUWC Newport.
Acoustic	Towed Equipment Testing.	Surface vessels or unmanned surface vehicles deploy and tow equipment to determine functionality of towed systems.	HF6, LF4, MF9	252	NUWC Newport.
Acoustic	Signature Analysis Operations.	Surface ship and submarine testing of electromagnetic, acoustic, optical, and radar signature measurements.	ASW2, HF1, LF4, LF5, LF6, M3, MF9, MF10.	7 413	JAX RC. SFOMF.

[1] The number of proposed testing activities that could occur annually and the duration of those activities are identical to those presented in Table 6 of the 2018 AFTT final rule.
[2] Locations given are areas where activities typically occur. However, activities could be conducted in other locations within the Study Area. Where multiple locations are provided within a single cell, the number of activities could occur in any of the locations, not in each of the locations.
Notes: JEB LC–FS: Joint Expeditionary Base Little Creek-Fort Story; NS: Naval Station; NSB: Naval Submarine Base; NSWC: Naval Surface Warfare Center; NUWC: Naval Undersea Warfare Center; PNS: Portsmouth Naval Shipyard; SFOMF: South Florida Ocean Measurement Facility Testing Range.

Office of Naval Research

The proposed Office of Naval Research testing activities that could occur over the seven-year period within the AFTT Study Area are presented in Table 4.

TABLE 4—PROPOSED OFFICE OF NAVAL RESEARCH TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE AFTT STUDY AREA

Stressor category	Activity name	Activity description	Source bin	7-Year number of activities [1]	Location
Acoustic and Oceanographic Science and Technology					
Acoustic, Explosive	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	AG, ASW2, BB4, BB5, BB6, BB7, LF3, LF4, LF5, MF8, MF9, MF14, E1.	30 60 16 14	GOMEX RC. Northeast RC. VACAPES RC. Other AFTT Areas.
Acoustic	Emerging Mine Countermeasure Technology Research.	Test involves the use of broadband acoustic sources on unmanned underwater vehicles.	BB1, BB2, SAS4	7 14 7	JAX RC. Northeast RC. VACAPES RC.

[1] The number of proposed testing activities that could occur annually and the duration of those activities are identical to those presented in Table 7 of the 2018 AFTT final rule.
Notes: GOMEX: Gulf of Mexico; JAX: Jacksonville, Florida; RC: Range Complex; VACAPES: Virginia Capes.

Summary of Acoustic and Explosive Sources Analyzed for Training and Testing

Tables 5 through 8 show the acoustic source classes and numbers, explosive source bins and numbers, airgun sources, and pile driving and removal activities associated with the Navy's proposed training and testing activities over a seven-year period in the AFTT Study Area that were analyzed in the 2019 Navy application and for this proposed rule. The annual numbers for acoustic source classes, explosive source bins, and airgun sources, as well as the annual pile driving and removal activities associated with Navy training and testing activities in the AFTT Study Area are identical to those presented in Tables 8 through 11 of the 2018 AFTT final rule, and are not repeated here. Consistent with the periodicity in the 2018 AFTT final rule, the Navy proposes the addition of two pile driving/extraction activities for each of the two additional years.

Table 5 describes the acoustic source classes (*i.e.,* low-frequency (LF), mid-frequency (MF), and high-frequency (HF)) that could occur over seven years under the proposed training and testing activities. Acoustic source bin use in the proposed activities would vary annually. The seven-year totals for the proposed training and testing activities take into account that annual variability.

TABLE 5—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE AFTT STUDY AREA

Source class category	Bin	Description	Unit [1]	7-Year total [2]	
				Training	Testing
Low-Frequency (LF): Sources that produce signals less than 1 kHz.	LF3	LF sources greater than 200 dB	H	0	9,156
	LF4	LF sources equal to 180 dB and up to 200 dB.	H C	0 0	6,797 140
	LF5	LF sources less than 180 dB	H	60	12,264
	LF6	LF sources greater than 200 dB with long pulse lengths.	H	1,104	280
Mid-Frequency (MF): Tactical and non-tactical sources that produce signals between 1–10 kHz.	MF1	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–53C and AN/SQS–61).	H	36,833	23,358
	MF1K	Kingfisher mode associated with MF1 sonars.	H	819	1,064

TABLE 5—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE AFTT STUDY AREA—Continued

Source class category	Bin	Description	Unit [1]	7-Year total [2]	
				Training	Testing
	MF3	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).	H	14,604	8,799
	MF4	Helicopter-deployed dipping sonars (*e.g.,* AN/AQS–22 and AN/AQS–13).	H	4,196	3,797
	MF5	Active acoustic sonobuoys (*e.g.,* DICASS).	C	47,340	38,663
	MF6	Active underwater sound signal devices (*e.g.,* MK84).	C	0	8,986
	MF8	Active sources (greater than 200 dB) not otherwise binned.	H	0	2,436
High-Frequency (HF): Tactical and non-tactical sources that produce signals between 10–100 kHz.	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	0	52,128
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.	H	6,088	39,830
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%.	H	6,495	9,968
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%.	H	2,658	9,716
	MF14	Oceanographic MF sonar	H	0	10,080
	HF1	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).	H	13,504	2,772
	HF3	Other hull-mounted submarine sonars (classified).	H	34,275	215
	HF4	Mine detection, classification, and neutralization sonar (*e.g.,* AN/SQS–20).	H	41,717	179,516
	HF5	Active sources (greater than 200 dB) not otherwise binned.	H C	0 0	13,624 280
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	0	15,254
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.	H	0	8,568
	HF8	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–61).	H	140	14,587
Very High-Frequency Sonars (VHF): Non-tactical sources that produce signals between 100–200 kHz.	VHF1	VHF sources greater than 200 dB	H	0	84
Anti-Submarine Warfare (ASW): Tactical sources (*e.g.,* active sonobuoys and acoustic counter-measures systems) used during ASW training and testing activities.	ASW1	MF systems operating above 200 dB	H	4,251	5,740
	ASW2	MF Multistatic Active Coherent sonobuoy (*e.g.,* AN/SSQ–125).	C	10,572	35,842
	ASW3	MF towed active acoustic counter-measure systems (*e.g.,* AN/SLQ–25).	H	34,275	21,737
	ASW4	MF expendable active acoustic device countermeasures (*e.g.,* MK 3).	C	2,994	24,043
	ASW5	MF sonobuoys with high duty cycles	H	4,244	4,316
Torpedoes (TORP): Source classes associated with the active acoustic signals produced by torpedoes.	TORP1	Lightweight torpedo (*e.g.,* MK 46, MK 54, or Anti-Torpedo Torpedo).	C	399	6,122
	TORP2	Heavyweight torpedo (*e.g.,* MK 48)	C	560	2,600
	TORP3	Heavyweight torpedo (*e.g.,* MK 48)	C	0	640
Forward Looking Sonar (FLS): Forward or upward looking object avoidance sonars used for ship navigation and safety.	FLS2	HF sources with short pulse lengths, narrow beam widths, and focused beam patterns.	H	0	8,568
Acoustic Modems (M): Systems used to transmit data through the water.	M3	MF acoustic modems (greater than 190 dB).	H	0	4,436

TABLE 5—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE AFTT STUDY AREA—Continued

Source class category	Bin	Description	Unit [1]	7-Year total [2]	
				Training	Testing
Swimmer Detection Sonars (SD): Systems used to detect divers and submerged swimmers.	SD1–SD2	HF and VHF sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security.	H	0	1,232
Synthetic Aperture Sonars (SAS): Sonars in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS1	MF SAS systems	H	0	6,720
	SAS2	HF SAS systems	H	33,600	24,584
	SAS3	VHF SAS systems	H	0	6,720
	SAS4	MF to HF broadband mine coiuntermeasure sonar.	H	0	6,720
Broadband Sound Sources (BB): Sonar systems with large frequency spectra, used for various purposes.	BB1	MF to HF mine countermeasure sonar	H	0	6,720
	BB2	HF to VHF mine countermeasure sonar	H	0	6,720
	BB4	LF to MF oceanographic source	H	0	10,884
	BB5	LF to MF oceanographic source	H	0	4,704
	BB6	HF oceanographic source	H	0	4,704
	BB7	LF oceanographic source	C	0	840

[1] H = hours; C = count (*e.g.,* number of individual pings or individual sonobuoys).
[2] The annual numbers for acoustic source classes associated with Navy training and testing activities in the AFTT Study Area are identical to those presented in Table 8 in the 2018 AFTT final rule.
Note: dB = decibel.

Table 6 describes the number of air gun shots that could occur over seven years under the proposed training and testing activities.

TABLE 6—TRAINING AND TESTING AIR GUN SOURCES QUANTITATIVELY ANALYZED IN THE AFTT STUDY AREA

Source class category	Bin	Unit [1]	7-Year total [2]	
			Training	Testing
Air Guns (AG): Small underwater air guns	AG	C	0	4,228

[1] C = count. One count (C) of AG is equivalent to 100 air gun firings.
[2] The annual numbers for airgun sources associated with Navy training and testing activities in the AFTT Study Area are identical to those presented in Table 9 in the 2018 AFTT final rule.

Table 7 summarizes the impact pile driving and vibratory pile removal activities that would occur during a 24-hour period. Annually, for impact pile driving, the Navy would drive 119 piles, two times a year for a total of 238 piles. Over the seven-year period of the rule, the Navy would drive a total of 1,666 piles by impact pile driving. Annually, for vibratory pile removal, the Navy would remove 119 piles, two times a year for a total of 238 piles. Over the seven-year period of the rule, the Navy would remove a total of 1,666 piles by vibratory pile removal.

TABLE 7—SUMMARY OF PILE DRIVING AND REMOVAL ACTIVITIES PER 24-HOUR PERIOD IN THE AFTT STUDY AREA

Method	Piles per 24-hour period	Time per pile (minutes)	Total estimated time of noise per 24-hour period (minutes)
Pile Driving (Impact)	6	15	90
Pile Removal (Vibratory)	12	6	72

Table 8 describes the number of in-water explosives that could be used in any year under the proposed training and testing activities. Under the proposed activities bin use would vary annually, and the seven-year totals for the proposed training and testing activities take into account that annual variability.

TABLE 8—EXPLOSIVE SOURCE BINS ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES WITHIN THE AFTT STUDY AREA

Bin	Net explosive weight [1] (lb.)	Example explosive source	7-Year total [2]	
			Training	Testing
E1	0.1–0.25	Medium-caliber projectile	53,900	160,880
E2	>0.25–0.5	Medium-caliber projectile	1,486	0
E3	>0.5–2.5	Large-caliber projectile	32,144	20,162
E4	>2.5–5	Mine neutralization charge	913	5,330
E5	>5–10	5-inch projectile	10,052	9,275
E6	>10–20	Hellfire missile	4,214	276
E7	>20–60	Demo block/shaped charge	28	0
E8	>60–100	Light-weight torpedo	154	231
E9	>100–250	500 lb. bomb	462	28
E10	>250–500	Harpoon missile	630	566
E11	>500–650	650 lb. mine	7	70
E12	>650–1,000	2,000 lb. bomb	126	0
E16 [2]	>7,250–14,500	Littoral Combat Ship full ship shock trial	0	12
E17 [2]	>14,500–58,000	Aircraft carrier full ship shock trial	0	4

[1] Net Explosive Weight refers to the equivalent amount of Trinitrotoluene (TNT) the actual weight of a munition may be larger due to other components.

[2] The annual numbers for explosive source bins associated with Navy training and testing activities in the AFTT Study Area are identical to those presented in Table 11 in the 2018 AFTT final rule.

Note: Shock trials consist of four explosions each. In any given year there could be 0–3 small ship shock trials (E16) and 0–1 large ship shock trials (E17). Over a 7-year period, there could be three small ship shock trials (E16) and one large ship shock trial (E17) which is the same amount of ship shock trial events that could occur over the original five-year period. Therefore, there is no increase in ship shock trial events under the proposed rule.

Vessel Movement

Vessel movements associated with the proposed activities include both surface and sub-surface operations. Vessels used as part of the proposed activities include ships, submarines, unmanned vessels, and boats ranging in size from small, 22 feet (ft.) (7 meters (m)) rigid hull inflatable boats to aircraft carriers with lengths up to 1,092 ft. (333 m). Large Navy ships greater than 60 ft (18 m) generally operate at speeds in the range of 10 to 15 kn for fuel conservation. Submarines generally operate at speeds in the range of 8 to 13 kn in transits and less than those speeds for certain tactical maneuvers. Small craft, less than 60 ft (18 m) in length, have much more variable speeds (dependent on the mission). For small craft types, sizes and speeds vary during training and testing. Speeds generally range from 10 to 14 kn. While these speeds for large and small crafts are representative of most events, some vessels need to temporarily operate outside of these parameters. A full description of Navy vessels that are used during training and testing activities can be found in the 2017 Navy application and Chapter 2 of the 2018 AFTT FEIS/OEIS.

The Navy proposes no changes to the manner in which Navy vessels would be used during training and testing activities, the speeds at which they operate, the number of vessels that would be used during various activities, or the locations in which Navy vessel movement would be concentrated within the AFTT Study Area from those analyzed in the 2018 AFTT final rule. The only change related to the Navy's request regarding Navy vessel movement is the vessel use associated with the additional two years of Navy activities.

Standard Operating Procedures

For training and testing to be effective, personnel must be able to safely use their sensors and weapon systems as they are intended to be used in a real-world situation and to their optimum capabilities. While standard operating procedures are designed for the safety of personnel and equipment and to ensure the success of training and testing activities, their implementation often yields additional benefits on environmental, socioeconomic, public health and safety, and cultural resources. Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the proposed activities and has included them in the environmental analysis. Details on standard operating procedures were provided in the 2018 AFTT proposed rule; please see the 2018 AFTT proposed rule, the 2017 Navy application, and Chapter 2 of the 2018 AFTT FEIS/OEIS for more information. The Navy proposes no changes to the Standard Operating Procedures from those included in the 2018 AFTT final rule.

Description of Marine Mammals and Their Habitat in the Area of the Specified Activities

Marine mammal species and their associated stocks that have the potential to occur in the AFTT Study Area are presented in Table 9 along with the best/minimum abundance estimate and associated coefficient of variation value. Some marine mammal species, such as manatees, are not managed by NMFS, but by the U.S. Fish and Wildlife Service and therefore not discussed below. Consistent with the 2018 AFTT final rule, the Navy still anticipates the take of individuals of 39 marine mammal species by Level A harassment and B harassment incidental to training and testing activities from the use of sonar and other transducers, in-water detonations, air guns, and impact pile driving/vibratory extraction activities. The Navy requested authorization for nine serious injuries or mortalities combined from four marine mammal stocks during ship shock trials, and four takes of large whales by serious injury or mortality from vessel strikes over the seven-year period.

We presented a detailed discussion of marine mammals and their occurrence in the AFTT Study Area, inclusive of important marine mammal habitat (*e.g.,* critical habitat), biologically important areas (BIAs), national marine sanctuaries (NMSs), and unusual mortality events (UMEs) in the 2018 AFTT proposed rule and 2018 AFTT final rule; please see these rules and the 2017 and 2019 Navy applications for

additional information. There have been no changes to important marine mammal habitat, BIAs, NMSs, or Endangered Species Act (ESA) designated critical habitat since the issuance of the 2018 AFTT final rule; therefore the information that supports our determinations here can be found in the 2018 AFTT proposed and final rules. NMFS has reviewed the most recent Stock Assessment Reports (SARs), which have not been revised since the publication of the 2018 AFTT final rule); information on relevant UMEs; and other scientific literature, and determined that none of these nor any other new information changes our determination of which species or stocks have the potential to be affected by the Navy's activities or the pertinent information in the *Description of the Marine Mammals in the Area of Specified Activities* section in the 2018 AFTT proposed and final rules. Therefore the information presented in those sections of the 2018 proposed and final rules remains current and valid.

As described in the 2018 AFTT final rule, the species carried forward for analysis are those likely to be found in the AFTT Study Area based on the most recent data available, and do not include stocks or species that may have once inhabited or transited the area but have not been sighted in recent years and therefore are extremely unlikely to occur in the AFTT Study Area (*e.g.,* species which were extirpated because of factors such as nineteenth and twentieth century commercial exploitation).

The species not carried forward for analysis (addressed in more detail in the *Description of Marine Mammals and Their Habitat in the Area of the Specified Activities* section of the 2018 AFTT rule) include the bowhead whale, beluga whale, and narwhal as these would be considered extralimital and are not part of the AFTT seasonal species assemblage. Additionally, for multiple bottlenose dolphin stocks, there was no potential for overlap with any stressors from Navy activities; therefore, there would be no adverse effects (or takes), and those stocks were not considered further. Specifically, with the exception of the Mississippi Sound, Lake Borgne, Bay Boudreau stock of bottlenose dolphins (which is addressed in the *Analysis and Negligible Impact Determination* section of the 2018 AFTT final rule), there is no potential for overlap of any Navy stressor with any other Northern Gulf of Mexico Bay, Sound, and Estuary stocks. Also, the following bottlenose dolphin stocks for the Atlantic do not have any potential for overlap with Navy activity stressors (or take), and therefore are not considered further: Northern South Carolina Estuarine System, Charleston Estuarine System, Northern Georgia/Southern South Carolina Estuarine System, Central Georgia Estuarine System, Southern Georgia Estuarine System, Biscayne Bay, and Florida Bay stocks. For the same reason, bottlenose dolphins off the coasts of Puerto Rico and the U.S. Virgin Islands were also not considered further.

TABLE 9—MARINE MAMMALS PRESENT IN THE AFTT STUDY AREA

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT Study Area [5]		
					Open ocean	Large marine ecosystems	Inland waters
Order Cetacea—Suborder Mysticeti (baleen whales)							
Family Balaenidae (right whales):							
Bowhead whale	*Balaena mysticetus*	Eastern Canada-West Greenland.	Endangered, strategic, depleted.	7,660 (4,500–11,100) [6]	Labrador Current	Newfoundland-Labrador Shelf, West Greenland Shelf, Northeast U.S. Continental Shelf.	NA.
North Atlantic right whale.	*Eubalaena glacialis*	Western	Endangered, strategic, depleted.	451 (0)/445	Gulf Stream, Labrador Current, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Gulf of Mexico (extralimital).	NA.
Family Balaenopteridae (rorquals):							
Blue whale	*Balaenoptera musculus.*	Western North Atlantic (Gulf of St. Lawrence).	Endangered, strategic, depleted.	Unknown/440 [11]	Gulf Stream, North Atlantic Gyre, Labrador Current.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Southeast U.S. Continental Shelf, Caribbean Sea, and Gulf of Mexico (strandings only).	NA.
Bryde's whale	*Balaenoptera brydei/edeni.*	Northern Gulf of Mexico.	Endangered, strategic	33 (1.07)/16	Gulf Stream, North Atlantic Gyre.	Gulf of Mexico	NA.
Fin whale	*Balaenoptera physalus.*	Western North Atlantic.	Endangered, strategic, depleted.	1,618 (0. 33)/1,234	Gulf Stream, North Atlantic Gyre, Labrador Current.	Caribbean Sea, Gulf of Mexico, Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		West Greenland	Endangered, strategic, depleted.	4,468 (1,343–14,871) [9]	Labrador Current	West Greenland Shelf	NA.
		Gulf of St. Lawrence	Endangered, strategic, depleted.	328 (306–350) [10]		Newfoundland-Labrador Shelf, Scotian Shelf.	NA.
Humpback whale	*Megaptera novaeangliae.*	Gulf of Maine	NA	896 (0)/896	Gulf Stream, North Atlantic Gyre, Labrador Current.	Gulf of Mexico, Caribbean Sea, Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Minke whale	*Balaenoptera acutorostrata.*	Canadian Eastern Coastal.	NA	2,591 (0.81)/1,425	Gulf Stream, North Atlantic Gyre, Labrador Current.	Caribbean Sea, Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		West Greenland [7]	NA	16,609 (7,172–38,461)/NA [7].	Labrador Current	West Greenland Shelf	NA.
Sei whale	*Balaenoptera borealis*	Nova Scotia	Endangered, strategic, depleted.	357 (0.52)/236	Gulf Stream, North Atlantic Gyre.	Gulf of Mexico, Caribbean Sea, Southeast Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Labrador Sea	Endangered, strategic, depleted.	Unknown [8]	Labrador Current	Newfoundland-Labrador Shelf, West Greenland Shelf.	NA.
Suborder Odontoceti (toothed whales)							
Family Physeteridae (sperm whale):							
Sperm whale	*Physeter macrocephalus.*	North Atlantic	Endangered, strategic, depleted.	2,288 (0.28)/1,815	Gulf Stream, North Atlantic Gyre, Labrador Current.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Caribbean Sea.	NA.
		Northern Gulf of Mexico.	Endangered, strategic, depleted.	763 (0.38)/560	NA	Gulf of Mexico	NA.
		Puerto Rico and U.S. Virgin Islands.	Endangered, strategic, depleted.	Unknown	North Atlantic Gyre	Caribbean Sea	NA.
Family Kogiidae (sperm whales)							
Pygmy and dwarf sperm whales.	*Kogia breviceps* and *Kogia sima.*	Western North Atlantic.	NA	3,785 (0.47)/2,598 [12]	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, Caribbean Sea.	NA.
		Northern Gulf of Mexico.	NA	186 (1.04)/90 [12]	NA	Gulf of Mexico, Caribbean Sea	NA.

Family Monodontidae (beluga whale and narwhal)							
Beluga whale	*Delphinapterus leucas.*	Eastern High Arctic/Baffin Bay [13].	NA	21,213 (10,985–32,619) [13]	Labrador Current	West Greenland Shelf	NA.
		West Greenland [14]	NA	10,595 (4.904–24,650) [14]	NA	West Greenland Shelf	NA.
Narwhal	*Monodon monoceros*	NA [15]	NA	NA [15]	NA	Newfoundland-Labrador Shelf, West Greenland Shelf.	NA.
Family Ziphiidae (beaked whales)							
Blainville's beaked whale.	*Mesoplodon densirostris.*	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17]	Gulf Stream, North Atlantic Gyre, Labrador Current.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Northern Gulf of Mexico.	NA	149 (0.91)/77 [18]	NA	Gulf of Mexico, Caribbean Sea	NA.
Cuvier's beaked whale.	*Ziphius cavirostris*	Western North Atlantic [16].	NA	6,532 (0.32)/5,021	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	74 (1.04)/36	NA	Gulf of Mexico, Caribbean Sea	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Gervais' beaked whale.	*Mesoplodon europaeus.*	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17]	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast United States Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	149 (0.91)/77 [18]	Gulf Stream, North Atlantic Gyre.	Gulf of Mexico, Caribbean Sea	NA.
Northern bottlenose whale.	*Hyperoodon ampullatus.*	Western North Atlantic.	NA	Unknown	Gulf Stream, North Atlantic Gyre, Labrador Current.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Sowerby's beaked whale.	*Mesoplodon bidens*	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17]	Gulf Stream, North Atlantic Gyre.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
True's beaked whale.	*Mesoplodon mirus*	Western North Atlantic [16].	NA	7,092 (0.54)/4,632 [17]	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Family Delphinidae (dolphins)							
Atlantic spotted dolphin.	*Stenella frontalis*	Western North Atlantic [16].	NA	44,715 (0.43)/31,610	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico.	NA	Unknown	NA	Gulf of Mexico, Caribbean Sea	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Atlantic white-sided dolphin.	*Lagenorhynchus acutus.*	Western North Atlantic.	NA	48,819 (0.61)/30,403	Gulf Steam, Labrador Current.	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Clymene dolphin	*Stenella clymene*	Western North Atlantic [16].	NA	Unknown	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	129 (1.0)/64	NA	Gulf of Mexico, Caribbean Sea	NA.
Common bottlenose dolphin Common bottlenose dolphin.	*Tursiops truncatus*	Western North Atlantic Offshore [19].	Strategic, depleted	77,532 (0.40)/56,053	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf.	NA.
		Western North Atlantic Northern Migratory Coastal [20].	NA	6,639 (0.41)/4,759	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	Long Island Sound, Sandy Hook Bay, Lower Chesapeake Bay, James River, Elizabeth River.
		Western North Atlantic Southern Migratory Coastal [20].	Strategic, depleted	3,751 (0.06)/2,353	NA	Southeast U.S. Continental Shelf	Lower Chesapeake Bay, James River, Elizabeth River, Beaufort Inlet, Cape Fear River, Kings Bay, St. Johns River.
		Western North Atlantic South Carolina/Georgia Coastal [20].	Strategic, depleted	6,027 (0.34)/4,569	NA	Southeast U.S. Continental Shelf	Kings Bay, St. Johns River.
		Northern North Carolina Estuarine System [20].	Strategic	823 (0.06)/782	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	Beaufort Inlet, Cape Fear River.
		Southern North Carolina Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf	Beaufort Inlet, Cape Fear River.
		Northern South Carolina Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf	NA.
		Charleston Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf	NA.

TABLE 9—MARINE MAMMALS PRESENT IN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT Study Area [5]		
					Open ocean	Large marine ecosystems	Inland waters
		Northern Georgia/Southern South Carolina Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf	NA.
		Central Georgia Estuarine System [20].	Strategic	192 (0.04)/185	NA	Southeast U.S. Continental Shelf	NA.
		Southern Georgia Estuarine System [20].	Strategic	194 (0.05)/185	NA	Southeast U.S. Continental Shelf	Kings Bay, St. Johns River.
		Western North Atlantic Northern Florida Coastal [20].	Strategic, depleted	877 (0.49)/595	NA	Southeast U.S. Continental Shelf	Kings Bay, St. Johns River.
		Jacksonville Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf	Kings Bay, St. Johns River.
		Western North Atlantic Central Florida Coastal [20].	Strategic, depleted	1,218 (0.35)/913	NA	Southeast U.S. Continental Shelf	Port Canaveral.
		Indian River Lagoon Estuarine System [20].	Strategic	Unknown	NA	Southeast U.S. Continental Shelf	Port Canaveral.
		Biscayne Bay [16]	Strategic	Unknown	NA	Southeast U.S. Continental Shelf	NA.
		Florida Bay [16]	NA	Unknown	NA	Gulf of Mexico	NA.
		Northern Gulf of Mexico Continental Shelf [20].	Na	51,192 (0.10)/46,926	NA	Gulf of Mexico	NA.
		Gulf of Mexico Eastern Coastal [20].	NA	12,388 (0.13)/11,110	NA	Gulf of Mexico	NA.
		Gulf of Mexico Northern Coastal [20].	NA	7,185 (0.21)/6,044	NA	Gulf of Mexico	St. Andrew Bay, Pascagoula River.
		Gulf of Mexico Western Coastal [20].	NA	20,161 (0.17)/17,491	NA	Gulf of Mexico	Corpus Christi Bay, Galveston Bay.
		Northern Gulf of Mexico Oceanic [20].	NA	5,806 (0.39)/4,230	NA	Gulf of Mexico	NA.
		Laguna Madre [20]	Strategic	80 (1.57)/Unknown	NA	Gulf of Mexico	NA.
		Nueces Bay/Corpus Christi Bay [20].	Strategic	58 (0.61)/Unknown	NA	Gulf of Mexico	NA.
		Copano Bay/Aransas Bay/San Antonio Bay/Redfish Bay/Espiritu Santo Bay [20].	Strategic	55 (0.82)/Unknown	NA	Gulf of Mexico	NA.
		Matagorda Bay/Tres Palacios Bay/Lavaca Bay [20].	Strategic	61 (0.45)/Unknown	NA	Gulf of Mexico	NA.
		West Bay [20]	NA	48 (0.03)/46	NA	Gulf of Mexico	NA.
		Galveston Bay/East Bay/Trinity Bay [20].	Strategic	152 (0.43)/Unknown	NA	Gulf of Mexico	NA.
		Sabine Lake [20]	Strategic	0	NA	Gulf of Mexico	NA.
		Calcasieu Lake [20]	Strategic	0	NA	Gulf of Mexico	NA.
		Vermilion Bay/West Cote Blanche Bay/Atchafalaya Bay [20].	Strategic	0	NA	Gulf of Mexico	NA.
		Terrebonne Bay/Timbalier Bay [20].	NA	3,870 (0.15)/3,426	NA	Gulf of Mexico	NA.
		Barataria Bay Estuarine System [20].	Strategic	2,306 (0.09)/2,138	NA	Gulf of Mexico	NA.
		Mississippi River Delta [20].	Strategic	332 (0.93)/170	NA	Gulf of Mexico	NA.
		Mississippi Sound, Lake Borgne, Bay Boudreau [20].	Strategic	3,046 (0.06)/2,896	NA	Gulf of Mexico	NA.
		Mobile Bay/Bonsecour Bay [20].	Strategic	122 (0.34)/Unknown	NA	Gulf of Mexico	NA.
		Perdido Bay [20]	Strategic	0	NA	Gulf of Mexico	NA.
		Pensacola Bay/East Bay [20].	Strategic	33 (0.80)/Unknown	NA	Gulf of Mexico	NA.
		Choctawhatchee Bay [20].	Strategic	179 (0.04)/Unknown	NA	Gulf of Mexico	NA.
		St. Andrew Bay [20]	Strategic	124 (0.57)/Unknown	NA	Gulf of Mexico	NA.
		St. Joseph Bay [20]	Strategic	152 (0.08)/Unknown	NA	Gulf of Mexico	NA.

		St. Vincent Sound/ Apalachicola Bay/ St. George Sound [20].	Strategic	439 (0.14)/Unknown	NA	Gulf of Mexico	NA.
		Apalachee Bay [20]	Strategic	491 (0.39)/Unknown	NA	Gulf of Mexico	NA.
		Waccasassa Bay/ Withlacoochee Bay/ Crystal Bay [20].	Strategic	Unknown	NA	Gulf of Mexico	NA.
		St. Joseph Sound/ Clearwater Harbor [20].	Strategic	Unknown	NA	Gulf of Mexico	NA.
		Tampa Bay [20]	Strategic	Unknown	NA	Gulf of Mexico	NA.
		Sarasota Bay/Little Sarasota Bay [20].	Strategic	158 (0.27)/126	NA	Gulf of Mexico	NA.
		Pine Island Sound/ Charlotte Harbor/ Gasparilla Sound/ Lemon Bay [20].	Strategic	826 (0.09)/Unknown	NA	Gulf of Mexico	NA.
		Caloosahatchee River [20].	Strategic	0	NA	Gulf of Mexico	NA.
		Estero Bay [20]	Strategic	Unknown	NA	Gulf of Mexico	NA.
		Chokoloskee Bay/Ten Thousand Islands/ Gullivan Bay [20].	Strategic	Unknown	NA	Gulf of Mexico	NA.
		Whitewater Bay [20]	Strategic	Unknown	NA	Gulf of Mexico	NA.
		Florida Keys (Bahia Honda to Key West) [20].	Strategic	Unknown	NA	Gulf of Mexico	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
False killer whale	*Pseudorca crassidens*	Western North Atlantic [22].	Strategic	442 (1.06)/212	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	Unknown	NA	Gulf of Mexico, Caribbean Sea	NA.
Fraser's dolphin	*Lagenodelphis hosei*	Western North Atlantic [23].	NA	Unknown	Gulf Stream	Northeast U.S. Continental Shelf, Southeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	Unknown	NA	Gulf of Mexico, Caribbean Sea	NA.
Killer Whale	*Orcinus orca*	Western North Atlantic [22].	NA	Unknown	Gulf Stream, North Atlantic Gyre, Labrador Current.	Southeast U.S. Continental Shelf, Northeast United States Continental Shelf, Scotian Shelf, Newfoundland—Labrador Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	28 (1.02)/14	NA	Gulf of Mexico, Caribbean Sea	NA.
Long-finned pilot whale.	*Globicephala melas*	Western North Atlantic.	NA	5,636 (0.63)/3,464	Gulf Stream	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Melon-headed Whale.	*Peponocephala electra.*	Western North Atlantic [23].	NA	Unknown	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf	NA.
		Northern Gulf of Mexico [16].	NA	2,235 (0.75)/1,274	NA	Gulf of Mexico, Caribbean Sea	NA.
Pantropical spotted-dolphin.	*Stenella attenuate*	Western North Atlantic [16].	NA	3,333 (0.91)/1,733	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [22].	NA	50,880 (0.27)/40,699	NA	Gulf of Mexico, Caribbean Sea	NA.
Pygmy Killer Whales.	*Feresa attenuata*	Western North Atlantic [16].	NA	Unknown	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf	NA.
		Northern Gulf of Mexico [16].	NA	152 (1.02)/75	NA	Gulf of Mexico, Caribbean Sea	NA.
Risso's dolphin	*Grampus griseus*	Western North Atlantic.	NA	18,250 (0.46)/12,619	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast United States Continental Shelf, Scotian Shelf, Newfoundland—Labrador Shelf.	NA.
		Northern Gulf of Mexico.	NA	2,442 (0.57)/1,563	NA	Gulf of Mexico, Caribbean Sea	NA.
Rough-toothed dolphin.	*Steno bredanensis*	Western North Atlantic [16].	NA	136 (1.00)/67	Gulf Stream, North Atlantic Gyre.	Caribbean Sea Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico.	NA	624 (0.99)/311	NA	Gulf of Mexico, Caribbean Sea	NA.
Short-finned pilot whale.	*Globicephala macrorhynchus.*	Western North Atlantic.	NA	28,924 (0.24)/23,637	NA	Northeast Continental Shelf, Southeast U.S. Continental Shelf.	NA.
		Northern Gulf of Mexico [22].	NA	2,415 (0.66)/1,456	NA	Gulf of Mexico, Caribbean Sea	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Spinner dolphin	*Stenella longirostris*	Western North Atlantic [16].	NA	Unknown	Gulf Stream, North Atlantic Gyre.	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf.	NA.

TABLE 9—MARINE MAMMALS PRESENT IN THE AFTT STUDY AREA—Continued

Common name	Scientific name [1]	Stock [2]	ESA/MMPA status [3]	Stock abundance [4] best/minimum population	Occurrence in AFTT Study Area [5]		
					Open ocean	Large marine ecosystems	Inland waters
		Northern Gulf of Mexico [16].	NA	11,441 (0.83)/6,221	NA	Gulf of Mexico, Caribbean Sea	NA.
		Puerto Rico and U.S. Virgin Islands.	Strategic	Unknown	NA	Caribbean Sea	NA.
Striped dolphin	*Stenella coeruleoalba*	Western North Atlantic [16].	NA	54,807 (0.30)/42,804	Gulf Stream	Northeast U.S. Continental Shelf, Scotian Shelf.	NA.
		Northern Gulf of Mexico [16].	NA	1,849 (0.77)/1,041	NA	Gulf of Mexico, Caribbean Sea	NA.
Short-beaked common dolphin.	*Delphinus delphis*	Western North Atlantic.	NA	70,184 (0.28)/55,690	Gulf Stream	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
White-beaked dolphin.	*Lagenorhynchus albirostris.*	Western North Atlantic [23].	NA	2,003 (0.94)/1,023	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Family Phocoenidae (porpoises):							
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy.	NA	79,883 (0.32)/61,415	NA	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebec River.
		Gulf of St. Lawrence [24].	NA	Unknown [24]	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Newfoundland [25]	NA	Unknown [25]	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
		Greenland [26]	NA	Unknown [26]	Labrador Current	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, West Greenland Shelf.	NA.
Order Carnivora—Suborder Pinnipedia							
Family Phocidae (true seals):							
Gray seal	*Halichoerus grypus*	Western North Atlantic.	NA	27,131 (0.19)/23,158	NA	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebeck River.
Harbor seal	*Phoca vitulina*	Western North Atlantic.	NA	75,834 (0.15)/66,884	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	Chesapeake Bay, Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebeck River.
Harp seal	*Pagophilus groenlandicus.*	Western North Atlantic.	NA	Unknown	NA	Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf.	NA.
Hooded seal	*Cystophora cristata*	Western North Atlantic.	NA	Unknown	NA	Southeast U.S. Continental Shelf, Northeast U.S. Continental Shelf, Scotian Shelf, Newfoundland-Labrador Shelf, West Greenland Shelf.	Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Piscataqua River, Thames River, Kennebec River.

Notes: CV: Coefficient of variation; ESA: Endangered Species Act; MMPA: Marine Mammal Protection Act; NA: Not applicable.

[1] Taxonomy follows (Committee on Taxonomy, 2016).

[2] Stock designations for the U.S. EEZ and abundance estimates are from Atlantic and Gulf of Mexico SARs prepared by NMFS *(Hayes et al.,* 2017) and the draft 2018 SARs, unless specifically noted.

[3] Populations or stocks defined by the MMPA as ''strategic'' for one of the following reasons: (1) The level of direct human-caused mortality exceeds the potential biological removal level; (2) based on the best available scientific information, numbers are declining and species are likely to be listed as threatened species under the ESA within the foreseeable future; (3) species are listed as threatened or endangered under the ESA; (4) species are designated as depleted under the MMPA.

[4] Stock abundance, CV, and minimum population are numbers provided by the Stock Assessment Reports (SARs; Hayes *et al.*, 2017). The stock abundance is an estimate of the number of animals within the stock. The CV is a statistical metric used as an indicator of the uncertainty in the abundance estimate. The minimum population estimate is either a direct count (*e.g.,* pinnipeds on land) or the lower 20th percentile of a statistical abundance estimate.

[5] Occurrence in the AFTT Study Area includes open ocean areas—Labrador Current, North Atlantic Gyre, Gulf Stream, and coastal/shelf waters of seven large marine ecosystems—West Greenland Shelf, Newfoundland-Labrador Shelf, Scotian Shelf, and Northeast U.S. Continental Shelf, Southeast U.S. Continental Shelf, Caribbean Sea, Gulf of Mexico, and inland waters of Kennebec River, Piscataqua River, Thames River, Narragansett Bay, Rhode Island Sound, Block Island Sound, Buzzards Bay, Vineyard Sound, Long Island Sound, Sandy Hook Bay, Lower Chesapeake Bay, James River, Elizabeth River, Beaufort Inlet, Cape Fear River, Kings Bay, St. Johns River, Port Canaveral, St. Andrew Bay, Pascagoula River, Sabine Lake, Corpus Christi Bay, and Galveston Bay.

[6] The bowhead whale population off the West Coast of Greenland is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent highest density interval were presented in (Frasier *et al.,* 2015).

[7] The West Greenland stock of minke whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent confidence interval were presented in (Heide-Jørgensen *et al.,* 2010).

[8] The Labrador Sea stock of sei whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Information was obtained in (Prieto *et al.,* 2014).

[9] The West Greenland stock of fin whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent confidence interval were presented in (Heide-Jørgensen *et al.,* 2010).

[10] The Gulf of St. Lawrence stock of fin whales is not managed by NMFS and, therefore, does not have an associated Stock Assessment Report. Abundance and 95 percent confidence interval were presented in (Ramp *et al.,* 2014).

[11] Photo identification catalogue count of 440 recognizable blue whale individuals from the Gulf of St. Lawrence is considered a minimum population estimate for the western North Atlantic stock (Waring *et al.,* 2010).

[12] Estimates include both the pygmy and dwarf sperm whales in the western North Atlantic (Waring *et al.,* 2014) and the northern Gulf of Mexico (Waring *et al.,* 2013).

[13] Beluga whales in the Atlantic are not managed by NMFS and have no associated Stock Assessment Report. Abundance and 95 percent confidence interval for the Eastern High Arctic/Baffin Bay stock were presented in (Innes *et al.,* 2002).

[14] Beluga whales in the Atlantic are not managed by NMFS and have no associated Stock Assessment Report. Abundance and 95 percent confidence interval for the West Greenland stock were presented in (Heide-Jørgensen *et al.,* 2009).

[15] NA = Not applicable. Narwhals in the Atlantic are not managed by NMFS and have no associated Stock Assessment Report.
[16] Estimates for these western North Atlantic stocks are from Waring *et al.* (2014) and the northern Gulf of Mexico stock are from (Waring *et al.*, 2013) as applicable.
[17] Estimate includes undifferentiated Mesoplodon species.
[18] Estimate includes Gervais' and Blainville's beaked whales.
[19] Estimate may include sightings of the coastal form.
[20] Estimates for these Gulf of Mexico stocks are from SARs.
[21] NMFS is in the process of writing individual stock assessment reports for each of the 32 bay, sound, and estuary stocks.
[22] Estimates for these stocks are from Waring *et al.*, (2015).
[23] Estimates for these western North Atlantic stocks are from (Waring *et al.*, 2007).
[24] Harbor porpoise in the Gulf of St. Lawrence are not managed by NMFS and have no associated Stock Assessment Report.
[25] Harbor porpoise in Newfoundland are not managed by NMFS and have no associated Stock Assessment Report.
[26] Harbor porpoise in Greenland are not managed by NMFS and have no associated Stock Assessment Report.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided a full discussion of the potential effects of the specified activities on marine mammals and their habitat in our 2018 AFTT proposed rule and 2018 AFTT final rule. In the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the 2018 AFTT proposed and final rules, NMFS provided a description of the ways marine mammals may be affected by the same activities that the Navy will be conducting during the seven-year period analyzed in this rule in the form of serious injury or mortality, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particularly stress responses), behavioral disturbance, or habitat effects. Therefore, we do not repeat the information here, all of which remains current and applicable, but refer the reader to those rules and the 2018 AFTT FEIS/OEIS (Chapter 3, Section 3.7 *Marine Mammals, http://www.aftteis.com/*), which NMFS participated in the development of via our cooperating agency status and adopted to meet our NEPA requirements.

In addition, NMFS has reviewed information in relevant SARs (which have not been revised since the publication of the 2018 AFTT final rule) any new information on active UMEs and from the scientific literature. Summaries of current UMEs and new scientific literature since publication of the 2018 AFTT final rule are presented below.

Unusual Mortality Events

A UME is defined under section 410(6) of the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. The five active UMEs with ongoing investigations in the AFTT Study Area that inform our analysis are discussed below. The impacts to Barataria Bay bottlenose dolphins from the closed Northern Gulf of Mexico UME (discussed in the 2018 AFTT proposed rule) associated with the Deep Water Horizon oil spill in the Gulf of Mexico are thought to be persistent and continue to inform population analyses. The other more recent UMEs closed several years ago, and little is known about how the effects of those events might be appropriately applied to an impact assessment several years later.

North Atlantic Right Whale (NARW) UME

NOAA declared an UME for NARWs from January 1, 2017, to the present. The current total number of mortalities included in the event is 20 whales, including 12 NARW carcasses from Canada in 2017 and eight carcasses in the United States (5 in 2017; 3 in 2018). There have been no carcasses reported in 2019. In 2017, 17 right whale mortalities were documented, and in 2018, an additional three whales were found dead. Of the 12 NARW carcasses found in Canadian waters in 2017, six were necropsied and died as a direct result of human activities (either confirmed, probable, or suspect), from either rope entanglements (2) or vessel strikes (4) (Daoust *et al.,* 2017). Of the eight carcasses found in U.S. waters in 2017–2018, the cause of death was determined in six whales, with deaths attributable to either rope entanglement (5) or vessel strikes (1). Eight carcasses were not able to be examined. Daoust *et al.* (2018) also concluded there were no oil and gas seismic surveys authorized in the months prior to or during the period over which these mortalities occurred, as well as no blasting or major marine development projects. Navy was consulted as to sonar use and they confirmed none was used in the vicinity of any of the strandings.

As part of the UME investigation process for NARW, NOAA assembled an independent team of scientists (Investigative Team) that coordinates with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample future whales that strand, and determine the next steps for the investigation. For more information on this UME, please refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event#causes-of-the-north-atlantic-right-whale-ume.*

While data are not yet available to statistically estimate the population's trend beyond 2015, three lines of evidence indicate the population is still in decline. First, calving rates in 2016, 2017, and 2018 were low. Only five new calves were documented in 2017 (Pettis *et al.,* 2017a), well below the number needed to compensate for expected mortalities (Pace *et al.,* 2017), and no new calves were reported for 2018. Long-term photographic identification data indicate new calves rarely go undetected, so these years likely represent a continuation of the low calving rates that began in 2012 (Kraus *et al.,* 2007; Pace *et al.,* 2017). So far in 2019, seven calves have been documented. Second, as noted above, the preliminary abundance estimate for 2016 is 451 individuals, down approximately 1.5 percent from 458 in 2015. Third, since June 2017, at least 20 NARWs have died in what has been declared an UME as discussed above, and at least one calf died in April 2017 (Meyer-Gutbrod *et al.,* 2018; NMFS, 2017).

Humpback Whale UME Along the Atlantic Coast

NOAA declared an UME for humpback whales from January 1, 2016, to the present, along the Atlantic coast from Maine through Florida. As of April 1, 2019, 92 humpback strandings have occurred (26, 34, 25, and 9 whales in 2016, 2017, 2018 and 2019 respectively). As of April 2019, partial or full necropsy examinations have been conducted on 43 cases, or approximately half of the 92 strandings (at that time). Of the 43 whales examined, approximately 20 had evidence of blunt force trauma or pre-mortem propeller wounds indicative of vessel strike and approximately 6 had evidence of entanglements. NOAA, in coordination with our stranding network partners, continues to investigate the recent mortalities and environmental conditions, and conduct population monitoring to better understand the recent humpback whale mortalities. At this time, vessel parameters (including size) are not known for each vessel-whale collision that led to the death of a whale. Therefore, NOAA considers all sizes of vessels to be a potential risk for whale species in highly trafficked areas. The Navy has investigated potential strikes and confirmed that it had none. Please refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2019-humpback-whale-unusual-mortality-event-along-atlantic-coast* for more information on this UME.

Minke Whale UME Along the Atlantic Coast

NOAA declared an UME for minke whales from January 1, 2017, to the present, along the Atlantic coast from Maine through Florida. As of April 1, 2019, 59 strandings have occurred (27, 20, and 2 whales in 2017, 2018 and 2019, respectively). As of April 1, 2019, full or partial necropsy examinations have been conducted on 33 whales. Preliminary findings on several of the whales have shown evidence of human interactions, primarily fisheries interactions, or infectious disease. These findings are not consistent across all of the whales examined, and final diagnostic results are still pending for

many of the cases. Please refer to *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-minke-whale-unusual-mortality-event-along-atlantic-coast* for more information on this UME.

Northeast Pinniped UME Along the Atlantic Coast

NOAA declared an UME on August 30, 2018, to the present due to increased numbers of harbor seal and gray seal strandings along the U.S. coasts of Maine, New Hampshire, and Massachusetts during July and August of 2018. Strandings have remained elevated in these three states and expanded south to Virginia with cases on-going. Recently, harp and hooded seals have begun stranding as they migrate from Canada into U.S. waters and have been included in the investigation. From July 1, 2018, to March 28, 2019, more than 2,062 seals have stranded with 95 percent of the seals stranding in Maine, New Hampshire, and Massachusetts. Full or partial necropsy examinations have been conducted on many of the seals and samples have been collected for testing. Based on testing conducted so far, the main pathogen found in the seals is phocine distemper virus. Please refer to *https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along* for more information on this UME.

Southwest Florida Bottlenose Dolphin UME Along the Gulf of Mexico

NOAA declared a UME in 2018 to the present due to elevated bottlenose dolphin mortalities occurring along the Southwest coast of Florida including Collier, Lee, Charlotte, Sarasota, Manatee, Hillsborough, and Pinellas counties. From July 1, 2018, to March 27, 2019, 159 dolphins have been confirmed stranded in this event. Our stranding network partners have conducted full or partial necropsy examinations on several dolphins, with positive results for the red tide toxin (brevetoxin) indicating this UME is related to the severe bloom of a red tide that has been ongoing since November 2017. Please refer to *https://www.fisheries.noaa.gov/southeast/marine-life-distress/2018-2019-bottlenose-dolphin-unusual-mortality-event-southwest* for more information on this UME.

New Pertinent Science Since Publication of the 2018 AFTT Final Rule

Southall *et al.* (2019a) evaluated Southall *et al.* (2007) and used updated scientific information to propose revised noise exposure criteria to predict onset of auditory effects in marine mammals (*i.e.,* PTS and TTS onset). Southall *et al.* (2019) note that the quantitative processes described and the resulting exposure criteria (*i.e.,* thresholds and auditory weighting functions) are largely identical to those in Finneran (2016) and NMFS (2016 and 2018). However they differ in that the Southall *et al.* (2019a) exposure criteria are more broadly applicable as they include all marine mammal species (rather than those only under NMFS jurisdiction) for all noise exposures (both in air and underwater for amphibious species), and that while the hearing group compositions are identical they renamed the hearing groups.

Recent studies on the behavioral responses of cetaceans to sonar examine and continue to demonstrate the importance of not only sound source parameters, but exposure context (*e.g.,* behavioral state, presence of other animals and social relationships, prey abundance, distance to source, presence of vessels, environmental parameters, etc.) in determining or predicting a behavioral response. Kastelein *et al.* (2018) examined the role of sound pressure level (SPL) and duty cycle on the behavior of two captive harbor porpoises when exposed to simulated Navy mid-frequency sonar (53C, 3.5 to 4.1 kHz). Neither harbor porpoise responded to the low duty cycle (2.7 percent) at any of the five SPLs presented, even at the maximum received SPL (143 dB re: 1 μPa). At the higher duty cycle (96 percent), one porpoise responded by increasing his respiration rate at a received SPL of greater than or equal to 119 dB re: 1 μPa, and moved away from the transducer at a received SPL of 143 dB re: 1 μPa. Kastelein *et al.* (2018) observed that at the same received SPL and duty cycle, harbor porpoises respond less to 53C sonar sounds than 1–2 kHz, 6–7 kHz, and 25 kHz sonar signals observed in previous studies, but noted that when examining behavioral responses it is important to take into account the spectrum and temporal structure of the signal, the duty cycle, and the psychological interpretation by the animal. Wensveen *et al.* (2019) examined the role of sound source (simulated sonar pulses) distance and received level in northern bottlenose whales in an environment without frequent sonar activity using multi-scaled controlled exposure experiments. They observed behavioral avoidance of the sound source over a wide range of distances (0.8–28 km) and estimated avoidance thresholds ranging from received SPLs of 117–126 dB re: 1 μPa. The behavioral response characteristics and avoidance thresholds were comparable to those previously observed in beaked whale studies; however, they did not observe an effect of distance on behavioral response and found that onset and intensity of behavioral response were better predicted by received SPL. When conducting controlled exposure experiments on blue whales Southall *et al.* (2019b) observed that after exposure to simulated and operational mid-frequency active sonar, more than 50 percent of blue whales in deep-diving states responded to the sonar, while no behavioral response was observed in shallow-feeding blue whales. The behavioral responses they observed were generally brief, of low to moderate severity, and highly dependent on exposure context (behavioral state, source-to-whale horizontal range, and prey availability). Blue whale response did not follow a simple exposure-response model based on received sound exposure level. In a review of the potential impacts of sonar on beaked whales, Bernaldo de Quirós *et al.* (2019) suggested that the effect of mid-frequency active sonar on beaked whales varies among individuals or populations, and that predisposing conditions such as previous exposure to sonar and individual health risk factors may contribute to individual outcomes (such as decompression sickness).

Having considered this information, we have preliminarily determined that there is no new information that substantively affects our analysis of impacts on marine mammals and their habitat that appeared in the 2018 AFTT final rule, all of which remains applicable and valid for our assessment of the effects of the Navy's activities during the seven-year period of this rule.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize, which are based on the amount of take that NMFS anticipates could occur or is likely to occur, depending on the type of take and the methods used to estimate it, as described below. NMFS coordinated closely with the Navy in the development of their incidental take application, and preliminarily agrees that the methods the Navy has put forth described herein and in the 2018 AFTT proposed and final rules to estimate take (including the model, thresholds, and density estimates), and the resulting numbers are based on the best available science and appropriate for

authorization. The number and type of incidental takes that could occur or are likely to occur annually remain identical to those authorized in the 2018 AFTT regulations.

Takes are predominantly in the form of harassment, but a small number of serious injuries or mortalities are also possible. For military readiness activities, the MMPA defines ''harassment'' as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment).

Proposed authorized takes would primarily be in the form of Level B harassment, as use of the acoustic and explosive sources (*i.e.,* sonar, air guns, pile driving, explosives) is more likely to result in behavioral disruption (rising to the level of a take as described above) or temporary threshold shift (TTS) for marine mammals than other forms of take. There is also the potential for Level A harassment, however, in the form of auditory injury and/or tissue damage (the latter from explosives only) to result from exposure to the sound sources utilized in training and testing activities. Lastly, a limited number of serious injuries or mortalities could occur for four species of mid-frequency cetaceans during ship shock trials and no more than four serious injuries or mortalities total (over the seven-year period) of mysticetes (except for blue whales, Bryde's whales, and North Atlantic right whales) and North Atlantic sperm whales could occur through vessel collisions. Although we analyze the impacts of these potential serious injuries or mortalities that are proposed to be authorized, the required mitigation and monitoring measures are expected to minimize the likelihood that ship strike or these high level explosive exposures (and the associated serious injury or mortality) actually occur.

Generally speaking, for acoustic impacts we estimate the amount and type of harassment by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be taken by Level B harassment (in this case, as defined in the military readiness definition of Level B harassment included above) or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) and the number of days of activities or events.

Acoustic Thresholds

Using the best available science, NMFS, in coordination with the Navy, has established acoustic thresholds that identify the most appropriate received level of underwater sound above which marine mammals exposed to these sound sources could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered, or to incur TTS (equated to Level B harassment) or permanent threshold shift (PTS) of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur non-auditory injury from exposure to pressure waves from explosive detonation.

Despite the quickly evolving science, there are still challenges in quantifying expected behavioral responses that qualify as Level B harassment, especially where the goal is to use one or two predictable indicators *(e.g.,* received level and distance) to predict responses that are also driven by additional factors that cannot be easily incorporated into the thresholds (*e.g.,* context). So, while the new behavioral Level B harassment thresholds have been refined here to better consider the best available science (*e.g.,* incorporating both received level and distance), they also still, accordingly, have some built-in conservative factors to address the challenge noted. For example, while duration of observed responses in the data are now considered in the thresholds, some of the responses that are informing take thresholds are of a very short duration, such that it is possible some of these responses might not always rise to the level of disrupting behavior patterns to a point where they are abandoned or significantly altered. We describe the application of this Level B harassment threshold as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered. In summary, we believe these behavioral Level B harassment thresholds are the most appropriate method for predicting behavioral Level B harassment given the best available science and the associated uncertainty.

We described these acoustic thresholds, none of which have changed, in detail in the *Acoustic Thresholds* section and Tables 13 through 22 of the 2018 AFTT final rule; please see the 2018 AFTT final rule for detailed information.

Navy's Acoustic Effects Model

The Navy proposes no changes to the Acoustic Effects Model as described in the 2018 AFTT final rule and there is no new information that would affect the applicability or validity of the Model. Please see the 2018 AFTT final rule for detailed information.

Range to Effects

The Navy proposes no changes from the 2018 AFTT final rule to the type and nature of the specified activities to be conducted during the seven-year period analyzed in this proposed rule, including equipment and sources used and exercises conducted. There is also no new information that would affect the applicability or validity of the ranges to effects previously analyzed for these activities.Therefore the ranges to effects in this proposed rule are identical to those described and analyzed in the 2018 AFTT final rule, including received sound levels that may cause onset of significant behavioral response and TTS and PTS in hearing for each source type or explosives that may cause non-auditory injury. Please see the *Range to Effects* section and Tables 23 through 38 of the 2018 AFTT final rule for detailed information.

Marine Mammal Density

The Navy proposes no changes to the methods used to estimate marine mammal density described in the 2018 AFTT final rule and there is no new information that would affect the applicability or validity of these methods. Please see the 2018 AFTT final rule for detailed information.

Take Requests

As in the 2018 AFTT final rule, in its 2019 application, the Navy determined that the three stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Navy's data and analysis and determined that it is complete and accurate, and NMFS agrees that the following stressors have the potential to result in takes of marine mammals from the Navy's planned activities:

- Acoustics (sonar and other transducers; air guns; pile driving/extraction);

• Explosives (explosive shock wave and sound, assumed to encompass the risk due to fragmentation); and

• Physical Disturbance and Strike (vessel strike).

NMFS reviewed and agrees with the Navy's conclusion that acoustic and explosive sources have the potential to result in incidental takes of marine mammals by harassment, serious injury, or mortality. NMFS carefully reviewed the Navy's analysis and conducted its own analysis of vessel strikes, determining that the likelihood of any particular species of large whale being struck is quite low. Nonetheless, NMFS agrees that vessel strikes have the potential to result in incidental take from serious injury or mortality for certain species of large whales and the Navy has specifically requested coverage for these species. Therefore, the likelihood of vessel strikes, and later the effects of the incidental take that is being proposed to be authorized, has been fully analyzed and is described below.

Regarding the quantification of expected takes from acoustic and explosive sources (by Level A and Level B harassment, as well as mortality resulting from exposure to explosives), the number of takes are based directly on the level of activities (days, hours, counts, etc., of different activities and events) in a given year. In the 2018 AFTT final rule, take estimates across the five-years were based on the Navy conducting three years of a representative level of activity and two years of maximum level of activity. Consistent with the pattern set forth in the 2017 application, the 2018 AFTT FEIS/OEIS, and the 2018 AFTT final rule, the Navy proposes to add one additional representative year and one additional maximum year to determine the predicted take numbers in this rule. Specifically, as in the 2018 AFTT final rule, here the Navy proposes to use the maximum annual level to calculate annual takes (which would remain identical to what was determined in the 2018 AFTT final rule), and the sum of all years (four representative and three maximum) to calculate the seven-year totals for this rule. The Navy is not proposing to conduct any additional ship shock activities, and therefore both the total number and annual number of ship shock takes estimated and requested for the seven-year period is the same as the number requested in the five-year period under the 2018 AFTT final rule.

The quantitative analysis process used for the 2018 AFTT FEIS/OEIS and the 2017 and 2019 Navy applications to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled *Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing* (U.S. Department of the Navy, 2018). The Navy Acoustic Effects Model estimates acoustic and explosive effects without taking mitigation into account; therefore, the model overestimates predicted impacts on marine mammals within mitigation zones. To account for mitigation for marine species in the take estimates, the Navy conducts a quantitative assessment of mitigation. The Navy conservatively quantifies the manner in which procedural mitigation is expected to reduce model-estimated PTS to TTS for exposures to sonar and other transducers, and reduces model-estimated mortality to injury for exposures to explosives. For a complete explanation of the process for assessing the effects of mitigation, see the 2017 Navy application and the 2018 AFTT final rule. The extent to which the mitigation areas reduce impacts on the affected species and stocks is addressed separately in the *Preliminary Analysis and Negligible Impact Determination* section.

No changes have been made to the quantitative analysis process to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors and calculate take estimates. In addition, there is no new information that would call into question the validity of the Navy's quantitative analysis process. Please see the documents described in the paragraph above, the 2018 AFTT proposed rule, and the 2018 AFTT final rule for detailed descriptions of these analyses. In summary, we believe the Navy's methods, including the method for incorporating mitigation and avoidance, are the most appropriate methods for predicting PTS, TTS, and behavioral disruption. But even with the consideration of mitigation and avoidance, given some of the more conservative components of the methodology (*e.g.,* the thresholds do not consider ear recovery between pulses), we would describe the application of these methods as identifying the maximum number of instances in which marine mammals would be reasonably expected to be taken through PTS, TTS, or behavioral disruption.

Summary of Requested Take From Training and Testing Activities

Based on the methods discussed in the previous sections and the Navy's model and quantitative assessment of mitigation, the Navy provided its take estimate and request for authorization of takes incidental to the use of acoustic and explosive sources for training and testing activities both annually (based on the maximum number of activities that could occur per 12-month period) and over the seven-year period covered by the 2019 Navy application. Annual takes (based on the maximum number of activities that could occur per 12-month period) are identical to those presented in Tables 39 through 41 in the *Take Requests* section of the 2018 AFTT final rule. The 2019 Navy application also includes the Navy's take estimate and request for vessel strikes due to vessel movement in the AFTT Study Area and individual small and large ship shock trials over a seven-year period. The Navy proposes no additional ship shock trials, so the estimated and requested takes from ship shock trials are the same as those authorized in the 2018 AFTT final rule. NMFS has reviewed the Navy's data, methodology, and analysis and determined that it is complete and accurate. NMFS agrees that the estimates for incidental takes by harassment from all sources as well as the incidental takes by serious injury or mortality from explosives requested for authorization are reasonably expected to occur. NMFS also agrees that the takes by serious injury or mortality as a result of vessel strikes could occur. The total amount of estimated incidental take over the seven years covered by the 2019 Navy application is less than the sum total of each year because although the annual estimates are based on the maximum number of activities per year and therefore the maximum estimated takes, the seven-year take estimates are based on the sum of three maximum years and four representative years.

Estimated Harassment Take From Training Activities

For training activities, Table 10 summarizes the Navy's take estimate and request and the maximum amount and type of Level A and Level B harassment for the seven-year period covered by the 2019 Navy application that NMFS concurs is reasonably expected to occur by species or stock. For the estimated amount and type of Level A harassment and Level B harassment annually, see Table 39 in the 2018 AFTT final rule. Note that take by Level B harassment includes both behavioral disruption and TTS. Navy Figures 6.4–10 through 6.5–39 in Section 6 of the 2017 Navy application illustrate the comparative amounts of TTS and behavioral disruption for each species annually, noting that if a modeled marine mammal was ''taken''

through exposure to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 10—SEVEN-YEAR TOTAL SPECIES- AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES

Species	Stock	7-Year total [1]	
		Level B	Level A
Suborder Mysticeti (baleen whales)			
Family Balaenidae (right whales):			
North Atlantic right whale *	Western North Atlantic	1,644	0
Family Balaenopteridae (roquals):			
Blue whale *	Western North Atlantic (Gulf of St. Lawrence)	171	0
Bryde's whale	Northern Gulf of Mexico	5	0
	No Stock Designation	1,351	0
Minke whale	Canadian East Coast	15,824	0
Fin whale *	Western North Atlantic	10,225	19
Humpback whale	Gulf of Maine	1,564	4
Sei whale *	Nova Scotia	1,964	0
Suborder Odontoceti (toothed whales)			
Family Physeteridae (sperm whale):			
Sperm whale *	Gulf of Mexico Oceanic	167	0
	North Atlantic	96,479	0
Family Kogiidae (sperm whales):			
Dwarf sperm whale	Gulf of Mexico Oceanic	103	0
	Western North Atlantic	56,060	68
Pygmy sperm whale	Northern Gulf of Mexico	103	0
	Western North Atlantic	56,060	68
Family Ziphiidae (beaked whales):			
Blainville's beaked whale	Northern Gulf of Mexico	244	0
	Western North Atlantic	85,661	0
Cuvier's beaked whale	Northern Gulf of Mexico	242	0
	Western North Atlantic	317,180	0
Gervais' beaked whale	Northern Gulf of Mexico	244	0
	Western North Atlantic	85,661	0
Northern bottlenose whale	Western North Atlantic	7,504	0
Sowersby's beaked whale	Western North Atlantic	85,661	0
True's beaked whale	Western North Atlantic	85,661	0
Family Delphinidae (dolphins):			
Atlantic spotted dolphin	Northern Gulf of Mexico	6,584	0
	Western North Atlantic	804,058	64
Atlantic white-sided dolphin	Western North Atlantic	99,615	3
Bottlenose dolphin	Choctawhatchee Bay	46	0
	Gulf of Mexico Eastern Coastal	166	0
	Gulf of Mexico Northern Coastal	1,524	0
	Gulf of Mexico Western Coastal	16,778	0
	Indian River Lagoon Estuarine System	1,980	0
	Jacksonville Estuarine System	589	0
	Mississippi Sound, Lake Borgne, Bay Boudreau	0	0
	Northern Gulf of Mexico Continental Shelf	10,918	13
	Northern Gulf of Mexico Oceanic	1,356	0
	Northern North Carolina Estuarine System	16,089	0
	Southern North Carolina Estuarine System	0	0
	Western North Atlantic Northern Florida Coastal	6,060	0
	Western North Atlantic Central Florida Coastal	35,861	0
	Western North Atlantic Northern Migratory Coastal	175,237	30
	Western North Atlantic Offshore	2,062,942	269
	Western North Atlantic South Carolina/Georgia Coastal.	28,814	0
	Western North Atlantic Southern Migratory Coastal	81,155	14
Clymene dolphin	Northern Gulf of Mexico	694	0
	Western North Atlantic	463,220	19
False killer whale	Northern Gulf of Mexico	291	0
	Western North Atlantic	54,818	0
Fraser's dolphin	Northern Gulf of Mexico	418	0
	Western North Atlantic	26,155	0
Killer whale	Northern Gulf of Mexico	5	0
	Western North Atlantic	522	0
Long-finned pilot whale	Western North Atlantic	116,412	0
Melon-headed whale	Northern Gulf of Mexico	493	0
	Western North Atlantic	246,178	4

TABLE 10—SEVEN-YEAR TOTAL SPECIES- AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES—Continued

Species	Stock	7-Year total [1]	
		Level B	Level A
Pantropical spotted dolphin	Northern Gulf of Mexico	3,959	0
	Western North Atlantic	964,072	16
Pygmy killer whale	Northern Gulf of Mexico	118	0
	Western North Atlantic	43,009	0
Risso's dolphin	Northern Gulf of Mexico	276	0
	Western North Atlantic	140,368	0
Rough-toothed dolphin	Northern Gulf of Mexico	606	0
	Western North Atlantic	129,594	0
Short-beaked common dolphin	Western North Atlantic	1,467,625	87
Short-finned pilot whale	Northern Gulf of Mexico	251	0
	Western North Atlantic	210,736	0
Spinner dolphin	Northern Gulf of Mexico	1,593	0
	Western North Atlantic	487,644	9
Striped dolphin	Northern Gulf of Mexico	471	0
	Western North Atlantic	631,680	22
White-beaked dolphin	Western North Atlantic	269	0
Family Phocoenidae (porpoises):			
Harbor porpoise	Gulf of Maine/Bay of Fundy	206,071	1,121
Suborder Pinnipedia			
Family Phocidae (true seals):			
Gray seal	Western North Atlantic	10,038	0
Harbor seal	Western North Atlantic	16,277	0
Harp seal	Western North Atlantic	59,063	6
Hooded seal	Western North Atlantic	882	0

[1] The estimated amount and type of Level A harassment and Level B harassment annually are identical to those presented in Table 39 in the 2018 AFTT final rule.
* ESA-listed species (all stocks) within the AFTT Study Area.
† NSD: No stock designated.

Estimated Harassment Take From Testing Activities

For testing activities (excluding ship shock trials), Table 11 summarizes the Navy's take estimate and request and the maximum amount and type of Level A harassment and Level B harassment for the seven-year period covered by the 2019 Navy application that NMFS concurs is reasonably expected to occur by species or stock. For the estimated amount and type of Level A harassment and Level B harassment annually, see Table 40 in the 2018 AFTT final rule. Note that take by Level B harassment includes both behavioral disruption and TTS. Navy Figures 6.4–10 through 6.5–39 in Section 6 of the 2017 Navy application illustrate the comparative amounts of TTS and behavioral disruption for each species annually, noting that if a ''taken'' animat was exposed to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 11—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES (EXCLUDING SHIP SHOCK TRIALS)

Species	Stock	7-Year total [1]	
		Level B	Level A
Suborder Mysticeti (baleen whales)			
Family Balaenidae (right whales):			
North Atlantic right whale *	Western North Atlantic	1,528	0
Family Balaenopteridae (roquals):			
Blue whale *	Western North Atlantic (Gulf of St. Lawrence)	127	0
Bryde's whale	Northern Gulf of Mexico	358	0
	No Stock Designation	856	0
Minke whale	Canadian East Coast	11,155	9
Fin whale *	Western North Atlantic	24,808	22
Humpback whale	Gulf of Maine	3,380	0
Sei whale *	Nova Scotia	3,262	0
Suborder Odontoceti (toothed whales)			
Family Physeteridae (sperm whale):			
Sperm whale *	Gulf of Mexico Oceanic	7,315	0

TABLE 11—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES (EXCLUDING SHIP SHOCK TRIALS)—Continued

Species	Stock	7-Year total [1]	
		Level B	Level A
	North Atlantic	71,820	0
Family Kogiidae (sperm whales):			
Dwarf sperm whale	Gulf of Mexico Oceanic	4,787	38
	Western North Atlantic	29,368	91
Pygmy sperm whale	Northern Gulf of Mexico	4,787	38
	Western North Atlantic	29,368	91
Family Ziphiidae (beaked whales):			
Blainville's beaked whale	Northern Gulf of Mexico	9,368	0
	Western North Atlantic	68,738	0
Cuvier's beaked whale	Northern Gulf of Mexico	9,757	0
	Western North Atlantic	252,367	0
Gervais' beaked whale	Northern Gulf of Mexico	9,368	0
	Western North Atlantic	68,738	0
Northern bottlenose whale	Western North Atlantic	6,231	0
Sowersby's beaked whale	Western North Atlantic	68,903	0
True's beaked whale	Western North Atlantic	68,903	0
Family Delphinidae (dolphins):			
Atlantic spotted dolphin	Northern Gulf of Mexico	473,262	18
	Western North Atlantic	708,931	72
Atlantic white-sided dolphin	Western North Atlantic	210,578	8
Bottlenose dolphin	Choctawhatchee Bay	6,297	0
	Gulf of Mexico Eastern Coastal	0	0
	Gulf of Mexico Northern Coastal	108,154	7
	Gulf of Mexico Western Coastal	25,200	0
	Indian River Lagoon Estuarine System	21	0
	Jacksonville Estuarine System	20	0
	Mississippi Sound, Lake Borgne, Bay Boudreau	5	0
	Northern Gulf of Mexico Continental Shelf	841,076	56
	Northern Gulf of Mexico Oceanic	95,044	8
	Northern North Carolina Estuarine System	746	0
	Southern North Carolina Estuarine System	0	0
	Western North Atlantic Northern Florida Coastal	2,263	0
	Western North Atlantic Central Florida Coastal	15,409	0
	Western North Atlantic Northern Migratory Coastal	79,042	20
	Western North Atlantic Offshore	794,581	161
	Western North Atlantic South Carolina/Georgia Coastal.	11,232	0
	Western North Atlantic Southern Migratory Coastal	29,176	0
Clymene dolphin	Northern Gulf of Mexico	27,841	0
	Western North Atlantic	234,001	12
False killer whale	Northern Gulf of Mexico	12,788	0
	Western North Atlantic	24,580	0
Fraser's dolphin	Northern Gulf of Mexico	7,452	0
	Western North Atlantic	8,270	0
Killer whale	Northern Gulf of Mexico	212	0
	Western North Atlantic	264	0
Long-finned pilot whale	Western North Atlantic	131,095	11
Melon-headed whale	Northern Gulf of Mexico	20,324	0
	Western North Atlantic	109,192	6
Pantropical spotted dolphin	Northern Gulf of Mexico	169,678	6
	Western North Atlantic	495,207	26
Pygmy killer whale	Northern Gulf of Mexico	4,771	0
	Western North Atlantic	18,609	0
Risso's dolphin	Northern Gulf of Mexico	10,929	0
	Western North Atlantic	132,141	9
Rough-toothed dolphin	Northern Gulf of Mexico	26,033	0
	Western North Atlantic	58,008	0
Short-beaked common dolphin	Western North Atlantic	2,351,361	101
Short-finned pilot whale	Northern Gulf of Mexico	12,041	0
	Western North Atlantic	111,326	10
Spinner dolphin	Northern Gulf of Mexico	51,039	0
	Western North Atlantic	218,786	10
Striped dolphin	Northern Gulf of Mexico	16,344	0
	Western North Atlantic	652,197	32
White-beaked dolphin	Western North Atlantic	300	0
Family Phocoenidae (porpoises):			
Harbor porpoise	Gulf of Maine/Bay of Fundy	811,201	1,405

TABLE 11—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES (EXCLUDING SHIP SHOCK TRIALS)—Continued

Species	Stock	7-Year total [1]	
		Level B	Level A
Suborder Pinnipedia			
Family Phocidae (true seals):			
Gray seal	Western North Atlantic	6,130	14
Harbor seal	Western North Atlantic	9,941	23
Harp seal	Western North Atlantic	53,646	17
Hooded seal	Western North Atlantic	5,335	0

[1] The estimated amount and type of Level A harassment and Level B harassment annually are identical to those presented in Table 40 in the 2018 AFTT final rule.
* ESA-listed species (all stocks) within the AFTT Study Area.
† NSD: No stock designated.

Estimated Take From Ship Shock

For ship shock trials, Table 12 summarizes the Navy's take estimate and request and the maximum amount and type of Level A and Level B harassment and serious injury/mortality for the seven-year period covered by the Navy application that NMFS concurs is reasonably expected to occur by species or stock per small and large ship shock events. For the estimated amount and type of Level A harassment, Level B harassment, and serious injury/mortality annually, see Table 41 in the 2018 AFTT final rule. The Navy proposed no additional ship shock trials over the additional two years covered by the 2019 Navy application, so the estimated and requested takes are the same as those authorized in the 2018 AFTT final rule.

TABLE 12—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM SHIP SHOCK TRIALS

Species	7-Year total [1]		
	Level B	Level A	Mortality
Suborder Mysticeti (baleen whales)			
Family Balaenidae (right whales):			
North Atlantic right whale *	5	0	0
Family Balaenopteridae (roquals):			
Blue whale *	1	0	0
Bryde's whale	15	1	0
Minke whale	96	6	0
Fin whale *	627	36	0
Humpback whale	44	2	0
Sei whale *	63	7	0
Suborder Odontoceti (toothed whales)			
Family Physeteridae (sperm whale):			
Sperm whale *	6	7	0
Family Kogiidae (sperm whales):			
Dwarf sperm whale	229	154	0
Pygmy sperm whale	229	154	0
Family Ziphiidae (beaked whales):			
Blainville's beaked whale	4	1	0
Cuvier's beaked whale	8	6	0
Gervais' beaked whale	4	1	0
Northern bottlenose whale	0	0	0
Sowersby's beaked whale	4	1	0
True's beaked whale	4	1	0
Family Delphinidae (dolphins):			
Atlantic spotted dolphin	26	24	0
Atlantic white-sided dolphin	6	12	1
Bottlenose dolphin	55	54	0
Clymene dolphin	15	23	0
False killer whale	2	1	0
Fraser's dolphin	2	3	0
Killer whale	0	0	0
Long-finned pilot whale	11	12	0
Melon-headed whale	8	7	0
Pantropical spotted dolphin	31	29	1
Pygmy killer whale	1	1	0

TABLE 12—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE ESTIMATES PROPOSED FOR AUTHORIZATION FROM SHIP SHOCK TRIALS—Continued

Species	7-Year total [1]		
	Level B	Level A	Mortality
Risso's dolphin	6	4	0
Rough-toothed dolphin	6	2	0
Short-beaked common dolphin	187	260	6
Short-finned pilot whale	10	11	0
Spinner dolphin	46	48	1
Striped dolphin	22	36	0
White-beaked dolphin	0	0	0
Family Phocoenidae (porpoises):			
Harbor porpoise	249	204	0
Suborder Pinnipedia			
Family Phocidae (true seals):			
Gray seal	0	0	0
Harbor seal	0	0	0
Harp seal	0	0	0
Hooded seal	0	0	0

[1] The estimated amount and type of Level A harassment and Level B harassment and serious injury/mortality annually are identical to those presented in Table 41 in the 2018 AFTT final rule.
* ESA-listed species (all stocks) within the AFTT Study Area.
† NSD: No stock designated.

Estimated Take From Vessel Strikes

Vessel strikes from commercial, recreational, and military vessels are known to affect large whales and have resulted in serious injury and occasional fatalities to cetaceans (Berman-Kowalewski *et al.,* 2010; Calambokidis, 2012; Douglas *et al.,* 2008; Laggner 2009; Lammers *et al.,* 2003). Records of collisions date back to the early 17th century, and the worldwide number of collisions appears to have increased steadily during recent decades (Laist *et al.,* 2001; Ritter, 2012).

Numerous studies of interactions between surface vessels and marine mammals have demonstrated that free-ranging marine mammals often, but not always (*e.g.,* McKenna *et al.,* 2015), engage in avoidance behavior when surface vessels move toward them. It is not clear whether these responses are caused by the physical presence of a surface vessel, the underwater noise generated by the vessel, or an interaction between the two (Amaral and Carlson, 2005; Au and Green, 2000; Bain *et al.,* 2006; Bauer 1986; Bejder *et al.,* 1999; Bejder and Lusseau, 2008; Bejder *et al.,* 2009; Bryant *et al.,* 1984; Corkeron, 1995; Erbe, 2002; Félix, 2001; Goodwin and Cotton, 2004; Lemon *et al.,* 2006; Lusseau, 2003; Lusseau, 2006; Magalhaes *et al.,* 2002; Nowacek *et al.,* 2001; Richter *et al.,* 2003; Scheidat *et al.,* 2004; Simmonds, 2005; Watkins, 1986; Williams *et al.,* 2002; Wursig *et al.,* 1998). Several authors suggest that the noise generated during motion is probably an important factor (Blane and Jaakson, 1994; Evans *et al.,* 1992; Evans *et al.,* 1994). Water disturbance may also be a factor. These studies suggest that the behavioral responses of marine mammals to surface vessels are similar to their behavioral responses to predators. Avoidance behavior is expected to be even stronger in the subset of instances that the Navy is conducting training or testing activities using active sonar or explosives.

The marine mammals most vulnerable to vessel strikes are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the NARW seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slower moving whales.

Some researchers have suggested the relative risk of a vessel strike can be assessed as a function of animal density and the magnitude of vessel traffic (*e.g.,* Fonnesbeck *et al.,* 2008; Vanderlaan *et al.,* 2008). Differences among vessel types also influence the probability of a vessel strike. The ability of any ship to detect a marine mammal and avoid a collision depends on a variety of factors, including environmental conditions, ship design, size, speed, and personnel, as well as the behavior of the animal. Vessel speed, size, and mass are all important factors in determining if injury or death of a marine mammal is likely due to a vessel strike. For large vessels, speed and angle of approach can influence the severity of a strike. For example, Vanderlaan and Taggart (2007) found that between vessel speeds of 8.6 and 15 knots, the probability that a vessel strike is lethal increases from 0.21 to 0.79. Large whales also do not have to be at the water's surface to be struck. Silber *et al.* (2010) found when a whale is below the surface (about one to two times the vessel draft), there is likely to be a pronounced propeller suction effect. This suction effect may draw the whale into the hull of the ship, increasing the probability of propeller strikes.

There are some key differences between the operation of military and non-military vessels, which make the likelihood of a military vessel striking a whale lower than some other vessels (*e.g.,* commercial merchant vessels). Key differences include:

- Many military ships have their bridges positioned closer to the bow, offering better visibility ahead of the ship (compared to a commercial merchant vessel).
- There are often aircraft associated with the training or testing activity (which can serve as Lookouts), which can more readily detect cetaceans in the vicinity of a vessel or ahead of a vessel's present course before crew on the vessel would be able to detect them.
- Military ships are generally more maneuverable than commercial merchant vessels, and if cetaceans are spotted in the path of the ship, could be capable of changing course more quickly.

• The crew size on military vessels is generally larger than merchant ships, allowing for stationing more trained Lookouts on the bridge. At all times when vessels are underway, trained Lookouts and bridge navigation teams are used to detect objects on the surface of the water ahead of the ship, including cetaceans. Additional Lookouts, beyond those already stationed on the bridge and on navigation teams, are positioned as Lookouts during some activities.

• When submerged, submarines are generally slow moving (to avoid detection) and therefore marine mammals at depth with a submarine are likely able to avoid collision with the submarine. When a submarine is transiting on the surface, there are Lookouts serving the same function as they do on surface ships.

Vessel strike to marine mammals is not associated with any specific training or testing activity but is rather an extremely limited and sporadic, but possible, accidental result of Navy vessel movement within the AFTT Study Area or while in transit.

There have been three recorded Navy vessel strikes (one in 2011 and two in 2012) of large whales in the AFTT Study Area from 2009 through 2018 (ten years), the period in which the Navy began implementing effective mitigation measures to reduce the likelihood of vessel strikes. Two of the vessel strikes occurred in the Virginia Capes Range Complex and one occurred in the lower Chesapeake Bay. One of the whales in 2012 had features suggesting it was most likely a humpback whale. Note that while the Navy is generally unable to identify the species of whale is it unlikely the unidentified whales were NARW as the strikes occurred in areas where, or times of year when, NARW are not known to be present. In order to account for the accidental nature of vessel strikes to large whales in general, and the potential risk from any vessel movement within the AFTT Study Area within the seven-year period, the Navy requested incidental takes based on probabilities derived from a Poisson distribution using ship strike data between 2009 and 2018 in the AFTT Study Area (the time period from when current mitigation measures were instituted until the Navy conducted the analysis for the 2019 Navy application, with no new ship strikes occurring since this analysis), as well as historical at-sea days in the AFTT Study Area from 2009–2018 and estimated potential at-sea days for the period from 2018 to 2025 covered by the requested regulations. This distribution predicted the probabilities of a specific number of strikes (n=0, 1, 2, etc.) over the period from 2018 to 2025. The analysis is described in detail in Chapter 6 of the Navy's 2017 and 2019 applications (and further refined in the Navy's revised ship strike analysis posted on NMFS' website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*).

For the same reasons listed above describing why a Navy vessel strike is comparatively unlikely, it is highly unlikely that a Navy vessel would strike a whale, dolphin, porpoise, or pinniped without detecting it and, accordingly, NMFS is confident that the Navy's reported strikes are accurate and appropriate for use in the analysis. Specifically, Navy ships have multiple Lookouts, including on the forward part of the ship that can visually detect a hit animal, in the unlikely event ship personnel do not feel the strike (which has occasionally occurred). Navy's strict internal procedures and mitigation requirements include reporting of any vessel strikes of marine mammals, and the Navy's discipline, extensive training (not only for detecting marine mammals, but for detecting and reporting any potential navigational obstruction), and strict chain of command give NMFS a high level of confidence that all strikes actually get reported.

The Navy used the three whale strikes since 2009 in their calculations to determine the number of strikes likely to result from their activities (although worldwide strike information, from all Navy activities and other strikes, was used to inform the species that may be struck). The Navy evaluated data beginning in 2009, as that was the start of the Navy's Marine Species Awareness Training and adoption of additional mitigation measures to address ship strike, which will remain in place along with additional mitigation measures during the seven years of this rule.

The updated probability analysis in the 2019 Navy application concluded that there was a 12 percent chance that zero whales would be struck by Navy vessels over the next seven years in the AFTT Study Area, indicating an 88 percent chance that at least one whale would be struck over the next seven years. The analysis also concludes that there is a 10 percent chance of striking four whales over the seven-year period. Based on the revised analysis, the Navy requests coverage for one additional large whale mortality not previously included in the 2018 AFTT final rule bringing the total from three vessel strikes over five years to four vessel strikes over seven years. NMFS agrees that there is some probability that the Navy could strike, and take by serious injury or mortality, up to four large whales incidental to training and testing activities within the AFTT Study Area over the course of the seven years covered by this proposed rule.

Small delphinids, porpoises, and pinnipeds are not expected to be struck by Navy vessels. In addition to the reasons listed above that make it unlikely that the Navy will hit a large whale (more maneuverable ships, larger crew, etc.), the following are additional reasons that vessel strike of dolphins, small whales, porpoises, and pinnipeds is very unlikely. Dating back more than 20 years and for as long as it has kept records, the Navy has no records of individuals of these groups being struck by a vessel as a result of Navy activities and, further, their smaller size and maneuverability make a strike unlikely. Also, NMFS has never received any reports from other authorized activities indicating that these species have been struck by vessels. Worldwide ship strike records show little evidence of strikes of these groups from the shipping sector and larger vessels, and the majority of the Navy's activities involving faster-moving vessels (that could be considered more likely to hit a marine mammal) are located in offshore areas where smaller delphinid, porpoise, and pinniped densities are lower. Based on this information, NMFS concurs with the Navy's assessment and recognizes the potential for incidental take by vessel strike of large whales only (*i.e.,* no dolphins, small whales, porpoises, or pinnipeds) over the course of the seven-year period analyzed here from training and testing activities.

Taking into account the available information regarding how many of any given stock could be struck and therefore should be proposed for authorization for take NMFS considered two factors in addition to those considered in the Navy's request: (1) The relative likelihood of hitting one stock versus another based on available strike data from all vessel types as denoted in the SARs and (2) whether the Navy has ever definitively struck an individual from a particular stock and, if so, how many times. To address number (1) above, NMFS compiled information from NMFS' SARs on detected annual rates of large whale serious injury and mortality from vessel collisions (Table 13). The annual rates of large whale serious injury and mortality from vessel collisions from the SARs help inform the relative susceptibility of large whale species to vessel strike in the Atlantic Ocean and the Gulf of Mexico. We summed the annual rates of mortality and serious

injury from vessel collisions as reported in the SARs, then divided each species' annual rate by this sum to get the relative likelihood. To estimate the percent likelihood of striking a particular species of large whale, we multiplied the relative likelihood of striking each species by the total probability of striking a whale (*i.e.,* 88 percent, as described by the Navy's probability analysis). We also calculated the percent likelihood of striking a particular species of large whale twice by squaring the value estimated for the probability of striking a particular species of whale once (*i.e.,* to calculate the probability of an event occurring twice, multiply the probability of the first event by the second). We note that these probabilities vary from year to year as the average annual mortality for a given five-year window changes (and we include the annual averages from 2017 and 2018 draft SARs in Table 13 to illustrate); however, over the years and through changing SARs, stocks tend to consistently maintain a relatively higher or relatively lower likelihood of being struck. The analysis indicates that there is a very low percent chance of striking any particular species or stock more than once except for humpback whales, as shown in Table 13. The probabilities calculated as described above are then considered in combination with the information indicating the species that the Navy has definitively hit in the AFTT Study Area since 1995 (since they started tracking consistently). Accordingly, stocks that have no record of ever having been struck by any vessel are considered unlikely to be struck by the Navy in the seven-year period of the rule. Stocks that have never been struck by the Navy, have rarely been struck by other vessels, and have a low percent likelihood based on the SAR calculation and a low relative abundance are also considered unlikely to be struck by the Navy during the seven-year rule.

TABLE 13—ANNUAL RATES OF MORTALITY AND SERIOUS INJURY (M/SI) FROM VESSEL COLLISIONS COMPILED FROM NMFS DRAFT 2018 STOCK ASSESSMENT REPORTS (SARS) AND ESTIMATED PERCENT CHANCE OF STRIKING EACH LARGE WHALE SPECIES IN THE AFTT STUDY AREA OVER A SEVEN-YEAR PERIOD

Species (stock) [1]	Annual rate of M/SI from vessel collision (2017 SARs)	Annual rate of M/SI from vessel collision (2018 draft SARs)	Percent chance of ONE strike	Percent chance of TWO strikes	Annual proposed take	Potential take proposed over 7 years
Fin whale (Western North Atlantic)	1.6	1.4	19.51	3.81	0.14	1
Sei whale (Nova Scotia)	0.8	0.8	11.15	1.24	0.14	1
Minke whale (Canadian East Coast)	1.4	1	13.94	1.94	0.14	1
Humpback whale (Gulf of Maine)	1.8	2.7	37.63	14.16	0.29	2
Sperm (North Atlantic)	0.2	0.2	2.79	0.08	0.14	[2] 1
Bryde's whale (Northern Gulf of Mexico)	0.2	0.2	2.79	0.08	0	[3] 0
Sperm (Gulf of Mexico)	0	0	0.00	0.00	0	0
Blue whale (Western North Atlantic)	0	0	0.00	0.00	0	0

[1] North Atlantic right whales are not included in this analysis as NARWs are not anticipated to be struck due to the additional extensive mitigation the Navy implements to minimize the risk of striking this particular species. In addition, the Navy has not struck this species since prior to 2009 when the Navy's current vessel movement mitigation, reporting, and monitoring requirements have been in place.

[2] The analysis indicates only a very small likelihood (less than 3 percent) that a North Atlantic sperm whale would be struck over the seven years, however, the Navy has struck a sperm whale previously in the Atlantic, which may indicate a higher possibility that it could occur and suggests that authorizing one mortality over the seven years would be appropriate.

[3] Due to their low population abundance within the Study Area and lack of previous vessel strikes by the Navy, along with the Navy's enhanced mitigation measures in the Bryde's Whale Mitigation Area, Bryde's whales are not anticipated to be struck therefore and have zero mortality/serious injury takes.

For the reasons discussed in detail in the 2018 AFTT final rule and discussed further below, due to enhanced mitigation measures, NARWs are not anticipated to be struck by Navy vessels and are anticipated to have zero mortality/serious injury takes over the seven years of the rule. In addition, based on the quantitative method described above, blue whales and Gulf of Mexico sperm whales have a zero percent chance of being struck. After considering this result, along with additional factors discussed below, the Navy found that any vessel strike of these two stocks is highly unlikely. After fully considering all relevant information, NMFS agreed with this conclusion. Finally, the quantitative analysis outlined above indicates only a very small likelihood the Navy would strike a Bryde's whale (3 percent). Due to their low population abundance and lack of previous vessel strikes by the Navy, Bryde's whales are also unlikely to be struck and we have proposed to authorize zero mortality/serious injury takes. Alternately, the quantitative analysis discussed above also indicates only a very small likelihood that the Navy would strike a North Atlantic sperm whale over the seven years covered by the 2019 Navy application (less than 3 percent), however, the Navy has struck a sperm whale previously in the Atlantic (2005), which points to a higher possibility that it could occur and suggests that authorizing a single mortality/serious injury would be appropriate. Additional discussion relevant to our determinations for North Atlantic blue whales, Gulf of Mexico sperm whale, NARW, and Bryde's whale is included below.

In addition to the zero probability predicted by the quantitative model, there are no recent confirmed records of vessel collision to blue whales in the U.S. waters, although there is one older historical record pointing to a ship strike that likely occurred beyond the U.S. Atlantic EEZ (outside of where most Navy activities occur, so less relevant) and one 1998 record of a dead 20 m (66 ft) male blue whale brought into Rhode Island waters on the bow of a tanker. The cause of death was determined to be ship strike; however, some of the injuries were difficult to explain from the necropsy. As noted previously, the Navy has been conducting Marine Species Awareness Training and implementing additional mitigation measures to protect against vessel strikes since 2009. Therefore, given the absence of any strikes in the recent past since the Navy has implemented its current mitigation measures, the very low abundance of North Atlantic blue whales throughout the AFTT Study Area (Nmin = 440 for the Western North Atlantic stock,

Waring *et al.,* 2010), and the very low number of blue whales ever known to be struck in the area by any type of vessel (and none struck by Navy vessels), we believe the likelihood of the Navy hitting a blue whale is discountable.

In addition to the zero probability of hitting a sperm whale in the Gulf of Mexico predicted by the quantitative model, there have been no vessel strikes of sperm whales by any entity since 2009 in the Gulf of Mexico per the SAR (2009–2013) and no Navy strikes of any large whales since 1995 (based on our records, which include Navy's records) in the Gulf of Mexico. Further, the Navy has comparatively fewer steaming days in the Gulf of Mexico and there is a fairly low abundance of sperm whales occurring there. As noted previously, the Navy has been conducting Marine Species Awareness Training and implementing additional mitigation measures to protect against vessel strikes since 2009. Therefore, NMFS believes that the likelihood of the Navy hitting a Gulf of Mexico sperm whale is discountable.

Although the quantitative analysis would indicate that NARWs do have a low probability of being struck one time within the seven-year period when vessel strikes across all activity types (including non-Navy) are considered (annual mortality and serious injury, hereafter abbreviated as M/SI) from vessel strikes is calculated as 0.41 in the 2018 SAR), when the enhanced mitigation measures (discussed below) that the Navy has been implementing and would continue to implement for NARWs are considered in combination with this low probability, a vessel strike is highly unlikely. Therefore, lethal take of NARWs was not requested by the Navy and is not proposed to be authorized by NMFS. We further note that while there have been two strikes of unidentified whales by the Navy since 2009, it is unlikely they were NARW as the strikes occurred in areas where, or times of year when, NARW are not known to be present.

Regarding the Bryde's whale, due to the fact that the Navy has not struck a Bryde's whale (as no Navy strikes have occurred in the Gulf of Mexico), the very low abundance numbers (Nbest = 33 individuals, Hayes *et al.,* 2018), and the limited Navy ship traffic that overlaps with Bryde's whale habitat, neither the Navy nor NMFS anticipate any vessel-strike takes, and none were requested or are proposed for authorization. The Navy is now also limiting activities (*i.e.,* 200 hr cap on hull-mounted MFAS) and will not use explosives (except during mine warfare activities) in the Bryde's Whale Mitigation Area. For a complete discussion and analysis of these mitigation areas, see the *Mitigation Measures* section in the 2018 AFTT final rule along with a summary in the *Mitigation Measures* section of this proposed rule; see also Chapter 5 (Mitigation) of the 2018 AFTT FEIS/OEIS.

In addition to procedural mitigation, the Navy would continue to implement measures in mitigation areas used by NARW for foraging, calving, and migration. For a complete discussion and analysis of these mitigation areas, see the *Mitigation Measures* section in the 2018 AFTT final rule along with a summary in the *Mitigation Measures* section of this proposed rule; see also Chapter 5 (Mitigation) of the 2018 AFTT FEIS/OEIS. These measures, which go above and beyond those focused on other species (*e.g.,* funding of and communication with sightings systems, implementation of speed reductions during applicable circumstances in certain areas) have succeeded in the Navy avoiding strike of a NARW during training and testing activities in the past and essentially eliminate the potential for vessel strikes to occur during the seven-year period of this rule. In particular, the mitigation pertaining to vessels, including the continued participation in and sponsoring of the Early Warning System, would help Navy vessels avoid NARW during transits and training and testing activities. The Early Warning System is a comprehensive information exchange network dedicated to reducing the risk of vessel strikes to NARW off the southeast United States from all mariners (*i.e.,* Navy and non-Navy vessels). Navy participants include the Fleet Area Control and Surveillance Facility, Jacksonville; Commander, Naval Submarine Forces, Norfolk, Virginia; and Naval Submarine Support Command. The Navy, U.S. Coast Guard, U.S. Army Corps of Engineers, and NMFS collaboratively sponsor daily aerial surveys from December 1 through March 31 (weather permitting) to observe for NARW from the shoreline out to approximately 30–35 nmi offshore. Aerial surveyors relay sightings information to all mariners transiting within the NARW calving habitat (*e.g.,* commercial vessels, recreational boaters, and Navy ships).

In the Northeast NARW Mitigation Area, before all vessel transits, the Navy conducts a web query or email inquiry of NOAA's NARW Sighting Advisory System to obtain the latest NARW sightings information. Navy vessels currently use and would continue to use the obtained sightings information to reduce potential interactions with NARW during transits and prevent ship strikes. In this mitigation area, vessels would continue to implement speed reductions after they observe a NARW; if they are within 5 nmi of the location of a sighting reported to the NARW Sighting Advisory System within the past week; and when operating at night or during periods of reduced visibility. During transits and normal firing involving non-explosive torpedos activities, the Navy ships would continue to maintain a speed of no more than 10 kn. During submarine target firing, ships would maintain speeds of no more than 18 kn. During vessel target firing, vessel speeds would exceed 18 kn for only brief periods of time (*e.g.,* 10–15 min).

In the Southeast NARW Mitigation Area, before transiting or conducting training or testing activities within the mitigation area, the Navy would continue to initiate communication with the Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System NARW whale sightings data. The Fleet Area Control and Surveillance Facility, Jacksonville would continue to advise vessels of all reported whale sightings in the vicinity to help vessels and aircraft reduce potential interactions with NARWs and prevent ship strikes. Commander Submarine Force U.S. Atlantic Fleet would coordinate any submarine activities that may require approval from the Fleet Area Control and Surveillance Facility, Jacksonville. Vessels would continue to use the sightings information to reduce potential interactions with NARW during transits and prevent ship strikes. Vessels would also implement speed reductions after they observe a NARW, if they are within 5 nmi of a sighting reported within the past 12 hours (hrs), or when operating in the mitigation area at night or during periods of poor visibility. To the maximum extent practicable, vessels would continue to minimize north-south transits in the mitigation area. Finally, the Navy would continue to broadcast awareness notification messages with NARW Dynamic Management Area information (*e.g.,* location and dates) to applicable Navy vessels operating in the vicinity of the Dynamic Management Area. The information would continue to alert assets to the possible presence of a NARW to maintain safety of navigation and further reduce the potential for a vessel strike. Navy platforms would use the information to assist their visual observation of applicable mitigation zones during training and testing

activities and to aid in the implementation of procedural mitigation, including but not limited to, mitigation for vessel movement.

Implementation of these measures is expected to significantly reduce the possibility of striking NARWs during the seven-year period of the rule. Ship strikes are a fluke encounter for which the probability will never be zero for any vessel. The probability for any particular ship to strike a marine mammal is primarily a product of the ability of the ship to detect a marine mammal and the ability to effectively act to avoid it. Navy combat ships are inherently among the best at both of these because compared to large commercial vessels, they have trained Lookouts which have received specialized Marine Mammal Observer (MMO) training, and they are the most maneuverable ships, which means that they are more likely to sight a marine mammal and more likely to be able to maneuver to avoid it in the available time—both of which decrease the probability of striking a marine mammal below what it would have been in the absence of those abilities. In the case of the NARW, the extensive communication/detection network described above, which is in use in the areas of highest NARW occurrence and where they may be more susceptible to strike, further increases the likelihood of detecting a NARW and thereby avoiding it, which further reduces the probability of NARW strike. Further, detection of NARW in some areas/times is associated with reduced speed requirements, which in some cases may reduce the strike probability further by slightly increasing the time within which an operator has to maneuver away from a whale. Because of these additional mitigation measures combined with the already low probability that a NARW will be struck, it is extremely unlikely the Navy would strike a NARW, and mortality/serious injury of a NARW from vessel strike is neither anticipated nor proposed to be authorized.

In conclusion, although it is generally unlikely that any whales will be struck in a year, based on the information and analysis above, NMFS anticipates that no more than four whales have the potential to be taken by serious injury or mortality over the seven-year period of the rule. Of those four whales over the seven years, no more than two would be humpback whales (Gulf of Maine stock) and no more than one would come from any of the four following stocks: Fin whale (Western North Atlantic stock), minke (Canadian East Coast stock), sperm whale (North Atlantic stock), and sei whale (Nova Scotia stock). Accordingly in the *Preliminary Analysis and Negligible Impact Determination* section, NMFS has evaluated under the negligible impact standard the serious injury or mortality of 0.14 whales annually from each of these species or stocks (*i.e.,* 1 take over the 7 years divided by 7 to get the annual number), except for the humpback whale (North Atlantic stock) for which we used 0.29 (*i.e.,* 2 takes over the 7 years divided by 7 to get the annual number) along with other expected harassment incidental take.

Proposed Mitigation Measures

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse 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 subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The 2004 NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that a determination of ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' For the full discussion of how NMFS interprets least practicable adverse impact, including how it relates to the negligible-impact standard, see the *Mitigation Measures* section in the 2018 AFTT final rule.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, we reiterate that the least practicable adverse impact standard also requires consideration of measures for marine mammal habitat, with particular attention to rookeries, mating grounds, and other areas of similar significance, and for subsistence impacts, whereas the negligible impact standard is concerned solely with conclusions about the impact of an activity on annual rates of recruitment and survival.[1] In evaluating what mitigation measures are appropriate, NMFS considers the potential impacts of the Specified Activities, the availability of measures to minimize those potential impacts, and the practicability of implementing those measures, as we describe below.

Implementation of Least Practicable Adverse Impact Standard

Our evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation; and

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. 16 U.S.C. 1371(a)(5)(A)(iii).

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With

[1] Outside of the military readiness context, mitigation may also be appropriate to ensure compliance with the ''small numbers'' language in MMPA sections 101(a)(5)(A) and (D).

recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks—and the best available science has been used here. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the risk thereof) to species or stocks. We also acknowledge that there is always the potential that new information, or a new recommendation could become available in the future and necessitate reevaluation of mitigation measures (which may be addressed through adaptive management) to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and are carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species, consideration of personnel safety, practicality of implementation, and consideration of the impact on effectiveness of military readiness activities are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability in terms of these considerations, can vary widely. For example, a time/area restriction could be of very high value for decreasing population-level impacts (*e.g.,* avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (*e.g.,* decreased disturbance in an area of high productivity but of less firmly established biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the Navy's ability to certify a strike group (higher impact on mission effectiveness), or it could mean delaying a small in-port training event by 30 minutes to avoid exposure of a marine mammal to injurious levels of sound (lower impact). A responsible evaluation of ''least practicable adverse impact'' will consider the factors along these realistic scales. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock or their habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, and vice versa. In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and will be carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. For more detail on how we apply these factors, see the discussion in the *Mitigation Measures* section of the 2018 AFTT final rule.

NMFS fully reviewed the Navy's specified activities and the mitigation measures for the 2018 AFTT rulemaking and determined that the mitigation measures would result in the least practicable adverse impact on marine mammals. There is no change in either the activities or the mitigation measures for this rule. See the 2019 Navy application and the 2018 AFTT final rule for detailed information on the Navy's mitigation measures. NMFS worked with the Navy in the development of the Navy's initially proposed measures, which were informed by years of implementation and monitoring. A complete discussion of the Navy's evaluation process used to develop, assess, and select mitigation measures, which was informed by input from NMFS, can be found in Chapter 5 (Mitigation) of the 2018 AFTT FEIS/OEIS. The process described in Chapter 5 (Mitigation) of the 2018 AFTT FEIS/OEIS robustly supported NMFS' independent evaluation of whether the mitigation measures would meet the least practicable adverse impact standard. The Navy has implemented the mitigation measures under the 2018 AFTT regulations and would be required to continue implementation of the mitigation measures identified in this rule for the full seven years it covers to avoid or reduce potential impacts from acoustic, explosive, and physical disturbance and ship strike stressors.

In its 2019 application, the Navy proposes no changes to the mitigation measures in the 2018 AFTT final rule and there is no new information that affects NMFS' assessment of the applicability or effectiveness of those measures over the new seven-year period. See the 2018 AFTT proposed rule and the 2018 AFTT final rule for our full assessment of these measures. In summary, the Navy has agreed to procedural mitigation measures that will reduce the probability and/or severity of impacts expected to result from acute exposure to acoustic sources or explosives, ship strike, and impacts to marine mammal habitat. Specifically, the Navy will use a combination of delayed starts, powerdowns, and shutdowns to minimize or avoid serious injury or mortality, minimize the likelihood or severity of PTS or other injury, and reduce instances of TTS or more severe behavioral disruption caused by acoustic sources or explosives. The Navy also will implement multiple time/area restrictions (several of which were added in the 2018 AFTT final rule since the previous AFTT MMPA incidental take rule) that would reduce take of marine mammals in areas or at times where they are known to engage in important behaviors, such as feeding or calving, where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts. Summaries of the Navy's procedural mitigation measures and mitigation areas for the AFTT Study Area are provided in Tables 14 and 15.

TABLE 14—SUMMARY OF PROCEDURAL MITIGATION

Stressor or activity	Mitigation zones sizes and other requirements
Environmental Awareness and Education	○ Afloat Environmental Compliance Training program for applicable personnel.
Active Sonar	Depending on sonar source: ○ 1,000 yd. power down, 500 yd. power down, and 200 yd. shut down. ○ 200 yd. shut down.
Air Guns	○ 150 yd.
Pile Driving	○ 100 yd.
Weapons Firing Noise	○ 30° on either side of the firing line out to 70 yd.

TABLE 14—SUMMARY OF PROCEDURAL MITIGATION—Continued

Stressor or activity	Mitigation zones sizes and other requirements
Explosive Sonobuoys	○ 600 yd.
Explosive Torpedoes	○ 2,100 yd.
Explosive Medium-Caliber and Large-Caliber Projectiles..	○ 1,000 yd. (large-caliber projectiles). ○ 600 yd. (medium-caliber projectiles during surface-to-surface activities). ○ 200 yd. (medium-caliber projectiles during air-to-surface activities).
Explosive Missiles and Rockets	○ 2,000 yd. (21–500 lb. net explosive weight). ○ 900 yd. (0.6–20 lb. net explosive weight).
Explosive Bombs	○ 2,500 yd.
Sinking Exercises	○ 2.5 NM.
Explosive Mine Countermeasure and Neutralization Activities.	○ 2,100 yd. (6–650 lb. net explosive weight). ○ 600 yd. (0.1–5 lb. net explosive weight).
Explosive Mine Neutralization Activities Involving Navy Divers.	○ 1,000 yd. (21–60 lb. net explosive weight for positive control charges and charges using time-delay fuses). ○ 500 yd. (0.1–20 lb. net explosive weight for positive control charges).
Maritime Security Operations—Anti-Swimmer Grenades.	○ 200 yd.
Line Charge Testing	○ 900 yd.
Ship Shock Trials	○ 3.5 NM.
Vessel Movement	○ 500 yd. (whales). ○ 200 yd. (other marine mammals). ○ North Atlantic right whale Dynamic Management Area notification messages.
Towed In-Water Devices	○ 250 yd.
Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions.	○ 200 yd.
Non-Explosive Missiles and Rockets	○ 900 yd.
Non-Explosive Bombs and Mine Shapes	○ 1,000 yd.

Notes: lb: pounds; nmi: nautical miles; yd: yards.

TABLE 15—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS

Summary of mitigation area requirements
Northeast North Atlantic Right Whale Mitigation Area:
○ The Navy will report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports.
○ The Navy will minimize use of active sonar to the maximum extent practicable and will not use explosives that detonate in the water.
○ The Navy will conduct non-explosive torpedo testing during daylight hours in Beaufort sea state 3 or less using three Lookouts (one on a vessel, two in an aircraft during aerial surveys) and an additional Lookout on the submarine when surfaced; during transits, ships will maintain a speed of no more than 10 knots; during firing, ships will maintain a speed of no more than 18 knots except brief periods of time during vessel target firing.
○ Vessels will obtain the latest North Atlantic right whale sightings data and implement speed reductions after they observe a North Atlantic right whale, if within 5 NM of a sighting reported within the past week, and when operating at night or during periods of reduced visibility.
Gulf of Maine Planning Awareness Mitigation Area:
○ The Navy will report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports.
○ The Navy will not conduct major training exercises and will not conduct >200 hours of hull-mounted mid-frequency active sonar per year.
Northeast Planning Awareness Mitigation Areas and Mid-Atlantic Planning Awareness Mitigation Areas:
○ Navy will avoid conducting major training exercises to the maximum extent practicable.
○ The Navy will not conduct more than four major training exercises per year.
Southeast North Atlantic Right Whale Mitigation Area (November 15–April 15):
○ The Navy will report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports.
○ The Navy will not use active sonar except as necessary for navigation training, object detection training, and dipping sonar.
○ The Navy will not expend explosive or non-explosive ordnance.
○ Vessels will obtain the latest North Atlantic right whale sightings data; will implement speed reductions after they observe a North Atlantic right whale, if within 5 NM of a sighting reported within the past 12 hours, and when operating at night or during periods of reduced visibility; and will minimize north-south transits to the maximum extent practicable.
Jacksonville Operating Area (November 15–April 15):
○ Navy units conducting training or testing activities in the Jacksonville Operating Area will obtain and use Early Warning System North Atlantic right whale sightings data as they plan specific details of events to minimize potential interactions with North Atlantic right whales to the maximum extent practicable. The Navy will use the reported sightings information to assist visual observations of applicable mitigation zones and to aid in the implementation of procedural mitigation.
Southeast North Atlantic Right Whale Critical Habitat Special Reporting Area (November 15–April 15):
○ The Navy will report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports.
Navy Cherry Point Range Complex Nearshore Mitigation Area (March–September):
○ The Navy will not conduct explosive mine neutralization activities involving Navy divers in the mitigation area.
○ To the maximum extent practicable, the Navy will not use explosive sonobuoys, explosive torpedoes, explosive medium-caliber and large-caliber projectiles, explosive missiles and rockets, explosive bombs, explosive mines during mine countermeasure and neutralization activities, and anti-swimmer grenades in the mitigation area.
Bryde's Whale Mitigation Area:

TABLE 15—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS—Continued

Summary of mitigation area requirements
○ The Navy will report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports.
○ The Navy will not conduct >200 hours of hull-mounted mid-frequency active sonar per year and will not use explosives (except during explosive mine warfare activities).
Gulf of Mexico Planning Awareness Mitigation Areas

Notes: min.: minutes; nmi: nautical miles.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS' input during the previous phases of Navy training and testing authorizations and none of which have changed since our evaluation during the 2018 AFTT rulemaking—and considered a broad range of other measures (*i.e.,* the measures considered but eliminated in the Navy's 2018 FEIS/OEIS, which reflect many of the comments that have arisen via NMFS or public input in past years) in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: The manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and stocks and their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. There is no new information that affects our analysis from the 2018 AFTT rulemaking, all of which remains applicable and valid for our assessment of the appropriateness of the mitigation measures during the seven-year period of this rule.

Based on our evaluation of the Navy's proposed measures (which are being implemented under the 2018 AFTT regulations), as well as other measures considered by the Navy and NMFS, NMFS has preliminarily determined that the Navy's proposed mitigation measures (which are identical to those in the 2018 AFTT final rule) are appropriate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and considering specifically personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Additionally, as described in more detail below, the 2018 AFTT final rule includes an adaptive management provision, which the Navy proposes to extend, which ensures that mitigation is regularly assessed and provides a mechanism to improve the mitigation, based on the factors above, through modification as appropriate.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding the Navy's activities and the proposed mitigation measures. While NMFS has preliminarily determined that the Navy's proposed mitigation measures would effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform our final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

Proposed Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to authorize incidental take for an activity, 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 incidental take 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 its 2019 application, the Navy proposes no changes to the monitoring described in the 2018 AFTT final rule. They would continue implementation of the robust Integrated Comprehensive Monitoring Program and Strategic Planning Process described in the 2018 AFTT final rule. The Navy's monitoring strategy, currently required by the 2018 AFTT regulations, is well-designed to work across Navy ranges to help better understand the impacts of the Navy's activities on marine mammals and their habitat by focusing on learning more about marine mammal occurrence in different areas and exposure to Navy stressors, marine mammal responses to different sound sources, and the consequences of those exposures and responses on marine mammal populations. Similarly, the proposed seven-year regulations would include identical adaptive management provisions and reporting requirements as the 2018 AFTT regulations. There is no new information that would indicate that the monitoring measures put in place under the 2018 AFTT final rule would not remain applicable and appropriate for the seven-year period of this proposed rule. See the *Monitoring* section of the 2018 AFTT final rule for more details on the monitoring that would be required under this rule. In addition, please see the 2019 Navy application, which references Chapter 13 of the 2017 Navy application for full details on the monitoring and reporting proposed by the Navy.

Adaptive Management

The 2018 AFTT regulations governing the take of marine mammals incidental to Navy training and testing activities in the AFTT Study Area contain an adaptive management component. Our understanding of the effects of Navy training and testing activities (*e.g.,* acoustic and explosive stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of seven-year regulations. The 2019 Navy application proposes no changes to the adaptive management component included in the 2018 AFTT final rule.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to

consider whether any changes to existing mitigation and monitoring requirements are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring and if the measures are practicable. If the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of the planned LOA in the **Federal Register** and solicit public comment.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring and exercises reports, as required by MMPA authorizations; (2) compiled results of Navy funded research and development studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs. The results from monitoring reports and other studies may be viewed at *https://www.navymarinespeciesmonitoring.us/*.

Reporting

In order to issue incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects will be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us.* The 2019 Navy application proposes no changes to the reporting requirements identified in the 2018 AFTT final rule. Reporting requirements would remain identical to those described in the 2018 AFTT final rule, and there is no new information that would indicate that the reporting requirements put in place under the 2018 AFTT final rule would not remain applicable and appropriate for the seven-year period of this proposed rule. See the *Reporting* section of the 2018 AFTT final rule for more details on the reporting that would be required under this rule.

Preliminary Analysis and Negligible Impact 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 mortality, serious injury, and Level A or Level B harassment (as presented in Tables 10–13), NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, other ongoing sources of human-caused mortality, ambient noise levels, and specific consideration of take by Level A harassment or M/SI previously authorized for other NMFS activities).

In the *Estimated Take of Marine Mammals* sections of this proposed rule and the 2018 AFTT final rule (where the activities, species and stocks, potential effects, and mitigation measures are the same as for this rule), we identified the subset of potential effects that would be expected to rise to the level of takes both annually and over the seven-year period covered by this rule, and then identified the number of each of those mortality takes that we believe could occur or the maximum number of harassment takes that are reasonably expected to occur based on the methods described. The impact that any given take will have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.,* the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, etc.). For this proposed rule we evaluated the likely impacts of the enumerated maximum number of harassment takes that are proposed for authorization and reasonably expected to occur, in the context of the specific circumstances surrounding these predicted takes. We also assessed M/SI takes that have the potential to occur, as well as considering the traits and statuses of the affected species and stocks. Last, we collectively evaluated this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific assessments that support our negligible impact conclusions for each stock.

The Navy proposes no changes to the nature or level of the specified activities or the boundaries of the AFTT Study Area, and therefore the training and testing activities (*e.g.,* equipment and sources used, exercises conducted) are the same as those analyzed in the 2018 AFTT final rule. In addition, the mitigation, monitoring, and reporting measures are identical to those described and analyzed in the 2018 AFTT final rule. As described above, there is no new information available since the publication of the 2018 AFTT final rule regarding the impacts of the specified activities on marine mammals, the status and distribution of any of the affected marine mammal species or stocks, or the effectiveness of the mitigation and monitoring measures that would change our analyses.

Harassment

As described in the *Estimated Takes of Marine Mammals* section, the annual number of takes proposed for authorization and reasonably expected to occur by Level A harassment and Level B harassment (based on the maximum number of activities per 12-month period) are identical to those presented in Tables 39 through 41 in the *Take Requests* section of the 2018 AFTT final rule. As such the negligible impact analyses and determinations of the effects of the estimated Level A harassment and Level B harassment takes on annual rates of recruitment or survival for each species and stock are identical to that presented in the 2018 AFTT final rule. The only difference is that the annual levels of take and the associated effects on reproduction or survival would occur for the seven-year

period of the proposed rule instead of the five-year period of the 2018 AFTT final rule, which would make no difference in effects on annual rates of recruitment or survival. For detailed discussion of the impacts that affected individuals may experience given the specific characteristics of the specified activities and required mitigation (*e.g.,* from behavioral harassment, masking, and temporary or permanent threshold shift), along with the effects of the expected Level A harassment and Level B harassment take on reproduction and survival, see the applicable subsections in the *Analysis and Negligible Impact Determination* section of the 2018 AFTT final rule (83 FR 57211–57217).

Serious Injury or Mortality

In its 2019 application, the Navy proposes no additional ship shock trials during the seven-year period of the proposed rule to those covered by the existing 2018 AFTT regulations, so the expected and requested total takes by M/SI due to explosives over seven years are the same as those authorized in the existing 2018 AFTT regulations. There is no new information that affects the methodology or results of the ship-shock analysis presented in the 2018 AFTT final rule. But as these same activities would occur over seven years rather than five years, the estimated annual take is calculated as the number of total takes divided by seven. For each of the dolphin species or stocks listed in Table 16 there would be an annual take of 0.14 dolphins (*i.e.,* for those species or stocks where one take could occur divided by seven years to get the annual number of M/SIs) or 0.86 dolphins in the case of short-beaked common dolphin (*i.e.,* where six takes could occur divided by seven years to get the annual number of M/SIs). This is a decrease from the annual take of 0.2 dolphins (for the three species where one lethal take could occur) and annual take of 1.2 short-beaked dolphins (where six lethal takes could occur) over the five-year period of the 2018 AFTT regulations, as shown in Table 70 in the 2018 AFTT final rule. As the proposed annual number is less than that analyzed and authorized in the 2018 AFTT final rule and no other relevant information about the status, abundance, or effects of mortality on each species or stock has changed, the analysis of the effects of take from ship shock trials mirrors that presented in the 2018 AFTT final rule.

TABLE 16—SUMMARY INFORMATION RELATED TO AFTT SERIOUS INJURY OR MORTALITY FROM EXPLOSIVE [(Ship Shock Trials), 2018–2025]

Species (stock)	Stock abundance (Nbest) *	Annual estimated take by serious injury or mortality (M/SI) [1]	Total annual M/SI * [2]	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions *	PBR *	NEFSC authorized take (annual)	Residual PBR—PBR minus annual M/SI and NEFSC authorized take [3]	Stock trend * [4]	UME (Y/N); number and year
Atlantic white-sided dolphin (Western N. Atlantic).	48,819	0.14	30	30	304	0.6	273.4	?	N.
Pantropical spotted dolphin (Northern GOMEX).	50,880	0.14	4.4	4.4	407	0	402.6	?	Y; 3 in 2010–2014.
Short-beaked common dolphin (Western N. Atlantic).	70,184	0.86	406	406	557	2	149	?	N.
Spinner dolphin (Northern GOMEX) ...	11,441	0.14	0	0	62	0	62	?	Y; 7 in 2010–2014.

* Presented in the draft 2018 SARS.
[1] This column represents the annual take by M/SI during ship shock trials and was calculated by the number of mortalities planned for authorization divided by seven years (the length of the rule and LOAs).
[2] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock. This number comes from the SAR, but deducts the takes accrued from either Navy or NEFSC takes as noted in the SARs to ensure they are not double-counted against PBR. However, for these species, there were no were no takes from either Navy or NEFSC as noted in the SARs to deduct that would be considered double-counting.
[3] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI, which is presented in the draft 2018 SARs) and authorized take for NEFSC.
[4] See relevant SARs for more information regarding stock status and trends.

The other facet of the analysis for which there is a quantitative change from the 2018 AFTT final rule is the number of potential mortalities due to ship strike proposed to be authorized over the seven-year period. First, based on the information and methods discussed in the *Estimated Take of Marine Mammals* section (which are identical to those used in the 2018 AFTT final rule), NMFS has predicted that mortal takes of four large whales over the course of the seven-year rule could occur (as compared to three large whales over five years in the 2018 AFTT final rule). Second, while no more than one whale over the seven years of any species of fin whale, sei whale, minke whale, or sperm whale (North Atlantic stock) would occur (which is the same as in the five-year 2018 AFTT final rule), as described above in the *Estimated Take of Marine Mammals* section, the number of potential mortality takes of humpback whales has increased from one to two. This means an annual average of 0.29 humpback whales and an annual average of 0.14 whales from each of the other four species or stocks as described in Table 17 (*i.e.,* one, or two, take(s) over seven years divided by seven to get the annual number) are expected to potentially occur and are proposed for authorization. As this annual number is less than that analyzed and authorized in the 2018 AFTT final rule for fin whale, sei whale, minke whale, and sperm whale (North Atlantic stock), which was an annual average of 0.2 whales for the same four species and stocks, and no other relevant information about the status, abundance, or effects of mortality on each species or stock has changed, the analysis of the effects of vessel strike mirrors that presented in the 2018 AFTT final rule. For humpback whales, the annual number for potential mortality takes is slightly higher than in the 2018 AFTT final rule, but the number still falls below the insignificance threshold of 10 percent of residual Potential Biological Removal (PBR), which indicates an insignificant incremental increase in ongoing anthropogenic mortality that alone will not adversely affect annual rates of recruitment or survival. The analysis of the effects of this potential mortality on humpback whales, considered in combination with other estimated harassment takes, on annual rates of recruitment and survival appears in the *Group and Species-Specific Analyses* section for Mysticetes below.

See the *Serious Injury and Mortality* subsection in the *Analysis and Negligible Impact Determination* section of the 2018 AFTT final rule (83 FR 57217–57223) for detailed discussions of the impacts of M/SI, including a description of how the agency uses the PBR metric and other factors to inform our analysis, and an analysis of the

impacts on each species and stock for which mortality is proposed for authorization including the relationship of potential mortality for each species to the insignificance threshold and residual PBR. Because the annual number of potential mortality takes for humpback whales remains below the insignificance threshold, the discussion for humpback whales (83 FR 57221–57222) remains fully applicable. For discussion specifically on the role of the calculated PBR in evaluating the effects of M/SI, see both the 2018 AFTT final rule and the 2018 HSTT final rule.

TABLE 17—SUMMARY INFORMATION RELATED TO AFTT SHIP STRIKE, 2018–2025

Species (stock)	Stock abundance (Nbest) *	Annual estimated take by serious injury or mortality (M/SI) [1]	Total annual M/SI * [2]	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions *	Vessel collisions (Y/N); annual rate of M/SI from vessel collision *	PBR *	NEFSC authorized take (annual)	Residual PBR—PBR minus annual M/SI and NEFSC authorized take [3]	Stock trend * [4]	UME (Y/N); number and year [5]
Fin whale (Western North Atlantic).	1,618	0.14	2.5	Y; 1.1	Y; 1.4	2.5	0	0	?	N.
Sei whale (Nova Scotia)	357	0.14	0.8	N; 0	† Y; 0.8	0.5	0	−0.3	?	N.
Minke Whale (Canadian East Coast).	2,591	0.14	7.5	Y; 6.5	† Y; 1	14	1	5.5	?	Y; 2 in 2019 as of 4/1/2019 (27 in 2017 and 20 in 2018).
Humpback whale (Gulf of Maine).	896	0.29	9.8	Y; 7.1	Y; 2.7	14.6	0	4.8	&↑NN∠	Y; 9 in 2019 as of 4/1/2019 (26 in 2016, 34 in 2017 and 25 in 2018).
Sperm whale (North Atlantic).	2,288	0.14	0.8	Y; 0.6	Y; 0.2	3.6	0	2.8	?	?.

* Presented in the draft 2018 SARS.
† Value presented incorrectly in the 2018 AFTT final rule and corrected here.
[1] This column represents the annual take by M/SI by vessel collision and was calculated by the number of mortalities planned for authorization divided by seven years (the length of the rule and LOAs).
[2] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock. This number comes from the SAR, but deducts the takes accrued from either Navy strikes or NEFSC takes as noted in the SARs to ensure they are not double-counted against PBR. However, for these species, there were no takes from either Navy or NEFSC as noted in the SARs to deduct that would be considered double-counting.
[3] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI, which is presented in the draft 2018 SARs) and authorized take for NEFSC.
[4] See relevant SARs for more information regarding stock status and trends.
[5] This column presents UME information updated since the 2018 AFTT final rule, as discussed in the earlier section *Potential Effects of Specified Activities on Marine Mammals and their Habitat.*

Group and Species-Specific Analyses

In addition to broader analyses of the impacts of the Navy's activities on mysticetes, odontocetes, and pinnipeds, the 2018 AFTT final rule contained detailed analyses of the effects of the Navy's activities in the AFTT Study Area on each affected species and stock. All of that information and analyses remain applicable and valid for our analyses of the effects of the same Navy activities on the same species and stocks for the seven-year period of this proposed rule. See the *Group and Species-Specific Analyses* subsection in the *Analysis and Negligible Impact Determination* section of the 2018 AFTT final rule (83 FR 57223–57247). In addition, no new information has been received since the publication of the 2018 AFTT final rule that significantly changes the analyses on the effects of the Navy's activities on each species and stock presented in the 2018 AFTT final rule.

In the discussions below, the estimated Level B harassment takes represent instances of take, not the number of individuals taken (the much lower and less frequent Level A harassment takes are far more likely to be associated with separate individuals), and in many cases some individuals are expected to be taken more than one time, while in other cases a portion of individuals will not be taken at all. Below, we compare the total take numbers (including PTS, TTS, and behavioral disruption for stocks to their associated abundance estimates to evaluate the magnitude of impacts across the stock and to individuals. Specifically, when an abundance percentage comparison is below 100, it means that that percentage or less of the individuals in the stock will be affected (*i.e.,* some individuals will not be taken at all), that the average for those taken is one day per year, and that we would not expect any individuals to be taken more than a few times in a year. When it is more than 100 percent, it means there will definitely be some number of repeated takes of individuals. For example, if the percentage is 300, the average would be each individual is taken on three days in a year if all were taken, but it is more likely that some number of individuals will be taken more than three times and some number of individuals fewer or not at all. While it is not possible to know the maximum number of days across which individuals of a stock might be taken, in acknowledgement of the fact that it is more than the average, for the purposes of this analysis, we assume a number approaching twice the average. For example, if the percentage of take compared to the abundance is 800, we estimate that some individuals might be taken as many as 16 times. Those comparisons are included in the sections below. For some stocks these numbers have been adjusted slightly (with these adjustments being in the single digits) so as to more consistently apply this approach, but these minor changes did not change the analysis or findings.

To assist in understanding what this analysis means, we clarify a few issues related to estimated takes and the analysis here. An individual that incurs a PTS or TTS take may sometimes, for example, also be behaviorally disturbed at the same time. As described in the *Harassment* subsection of the *Negligible Impact Analysis* section of the 2018 AFTT final rule, the degree of PTS, and the degree and duration of TTS, expected to be incurred from the Navy's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal accrues PTS or TTS and is also behaviorally harassed would result in impacts to reproduction or survival. Alternately, we recognize that if an individual is behaviorally harassed repeatedly for a longer duration and on consecutive days, effects could accrue to the point that reproductive success is jeopardized (as discussed below in the stock-specific summaries). Accordingly, in analyzing the number of takes and the likelihood of repeated and sequential takes (which could result in reproductive impacts), we consider the

total takes, not just the behavioral Level B harassment takes, so that individuals potentially exposed to both threshold shift and behavioral disruption are appropriately considered. We note that the same reasoning applies with the potential addition of behavioral disruption (harassment) to tissue damage from explosives, the difference being that we do already consider the likelihood of reproductive impacts whenever tissue damage occurs. Further, the number of Level A harassment takes by either PTS or tissue damage are so low compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

Having considered all of the information and analyses previously presented in the 2018 AFTT final rule, including the information presented in the *Overview,* the *Deepwater Horizon (DWH) Oil Spill* discussion, and the *Group and Species-Specific Analyses* discussions organized by the different groups and species, below we present tables showing instances of total take as a percentage of stock abundance for each group, updated with the new vessel strike and ship shock calculations for some species. We then summarize the information for each species or stock, considering the analysis from the 2018 AFTT final rule and any new analysis. The analyses below in some cases address species collectively if they occupy the same functional hearing group (*i.e.,* low, mid, and high-frequency cetaceans and pinnipeds in water), share similar life history strategies, and/or are known to behaviorally respond similarly to acoustic stressors. Because some of these groups or species share characteristics that inform the impact analysis similarly, it would be duplicative to repeat the same analysis for each species or stock. In addition, animals belonging to each stock within a species typically have the same hearing capabilities and behaviorally respond in the same manner as animals in other stocks within the species.

Mysticetes

In Table 18 below for mysticetes, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 18 is unchanged from Table 72 in the 2018 AFTT final rule, except for updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Mysticetes* discussion in the *Group and Species-Specific Analyses* section of the 2018 AFTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 18. Annual estimated takes by Level B harassment, Level A harassment, and mortality for mysticetes in the AFTT Study Area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Mysticeti (baleen whales)												
Family Balaenidae (right whales)												
North Atlantic right whale*	Western North Atlantic	203	268	0	0	0	471	471	343	343	137	137
Family Balaenopteridae (rorquals)												
Blue whale*	Western North Atlantic (Gulf of St. Lawrence)	12	35	0	0	0	44	47	9	104	489	45
Bryde's whale	Northern Gulf of Mexico	24	31	1	0	0	56	56	50	50	112	112
	NSD	77	260	0	0	0	313	337	50	563	626	60
Minke whale	Canadian East Coast	796	3,284	5	0	0.14	3,913	4,085	730	7,686	536	53
Fin whale*	Western North Atlantic	1,716	3,671	33	0	0.14	5,368	5,420	1,660	14,769	323	37
Humpback whale	Gulf of Maine	248	498	3	0	0.29	698	749	496	4,580	141	16
Sei whale*	Nova Scotia	245	556	4	0	0.14	779	805	246	11,737	317	7

Note: In the table we compare estimated takes to abundance estimates generated from the same underlying density estimate (as described in the *Estimated Take of Marine Mammals* section of the 2018 AFTT final rule), versus abundance estimates directly from NMFS' SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the U.S. EEZ only (where density estimates have lesser uncertainty) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing plus harassment take from one large ship shock trial.

The annual mortality of 0.14 is the result of no more than one mortality over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section. The annual mortality of 0.29 is the result of no more than two mortalities over the course of seven years from vessel strikes as described above in the same section.

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected mysticete species and stocks.

North Atlantic Right Whale (Western Stock)

As described in the 2018 AFTT final rule, the status of NARW is precarious and they are listed as endangered under the ESA. There is an active UME associated with the recent unusually high number of deaths, some of which have been attributed to entanglement or vessel strike, although no vessel strikes

have been attributed to the Navy and no new NARW deaths have been documented since the 2018 AFTT final rule was published. The number of births in recent years has been unusually low and recent studies have reported individuals showing poor health or high stress levels. Accordingly, as described above and in the 2018 AFTT final rule, the Navy is implementing and would continue to implement a suite of mitigation measures that not only avoid the likelihood of ship strikes, but also minimize the severity of behavioral disruption by minimizing impacts in areas that are important for feeding and calving, thus ensuring that the relatively small number of Level B harassment takes that do occur are not expected to affect reproductive success or survivorship via detrimental impacts to energy intake or cow/calf interactions. Specifically, no mortality or Level A harassment is anticipated or proposed for authorization. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances compared to the abundance (137 percent) combined with the fact that the AFTT Study Area overlaps most if not all of the range, suggests that many to most of the individuals in the stock will likely be taken, but only on one or two days per year, with no reason to think the days would likely be sequential. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short), the received sound levels are largely below 172 dB with some lesser portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response), and because of the mitigation measures the exposures will not occur in areas or at times where impacts would be likely to affect feeding and energetics or important cow/calf interactions that could lead to reduced reproductive success or survival. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival.

Altogether, any individual NARW is likely to be disturbed at a low-moderate level on no more than a couple of likely non-sequential days per year (and not in biologically important areas). Even given the fact that some of the affected individuals may have compromised health, there is nothing to suggest that such a low magnitude and severity of effects would result in impacts on reproduction or survival of any individual, much less annual rates of recruitment or survival for the stock. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on NARW.

Blue Whale (Western North Atlantic Stock)

This is a wide-ranging stock that is best considered as ''an occasional visitor'' to the U.S. EEZ, which may represent the southern limit of its feeding range (Hayes *et al.,* 2018), though no specific feeding areas have been identified. For this reason, the abundances calculated by the Navy based on survey data in the U.S. EEZ are very low (9 and 104, in the U.S. EEZ and throughout the range respectively) and while NMFS' SAR does not predict an abundance, it does report an Nmin (minimum abundance) of 440. There is no currently reported trend for the population and there are no specific issues with the status of the stock that cause particular concern (*e.g.,* no UMEs), although the species is listed as endangered under the ESA. We note, however, that this species was originally listed under the ESA as a result of the impacts from commercial whaling, which is no longer affecting the species. No mortality or Level A harassment is anticipated or proposed for authorization for blue whales. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), given the number of total takes (47), the large range and wide-ranging nature of blue whales, and the minimum abundance identified in the SAR, there is no reason to think that any single animal will be taken by Level B harassment more than one time (though perhaps a few could be) and less than 10 percent of the population is likely to be impacted. Regarding the severity of those individual Level B harassment behavioral takes, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels are largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities not at a level that would impact reproduction or survival.

Altogether, less than 10 percent of the stock is likely to be impacted and any individual blue whale is likely to be disturbed at a low-moderate level on no more than a day or two days per year and not in any known biologically important areas. This low magnitude and severity of effects is unlikely to result in impacts on the reproduction or survival of any individual, much less annual rates of recruitment or survival for the stock. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on blue whales.

Bryde's Whale (Northern Gulf of Mexico Stock)

The Northern Gulf of Mexico Bryde's whale is a small resident population and is listed as endangered under the ESA. Although there is no current UME, the small size of the population and its constricted range, combined with the lingering effects of exposure to oil from the DWH oil spill (which include adverse health effects on individuals, as well as population effects) are cause for considerable caution. Accordingly, as described above, the Navy is implementing and would continue to implement considerable time/area mitigation to minimize impacts within their limited range, including not planning major training exercises, which include the most powerful sound sources operating in a more concentrated area, limiting the hours of other sonar use, and not using explosives, with the exception of mine warfare activities, which has both reduced the amount of take and reduced the likely severity of impacts. No mortality or Level A harassment by tissue damage injury is anticipated or proposed for authorization, and only one Level A harassment by PTS take is estimated and proposed for authorization.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances compared to the abundance (112 percent, Table 18) combined with the fact that the AFTT Study Area overlaps all of the small range, suggests that most to all of the individuals in the stock will likely be taken, but only on one or two days per year, with no reason to think the days would likely be sequential. Regarding the severity of those individual Level B harassment behavioral takes, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between

minutes and hours (*i.e.,* relatively short); the received sound levels are largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response); and because of the mitigation the exposures will be of a less impactful nature. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities not at a level that would impact reproduction or survival. For similar reasons the one estimated Level A harassment take by PTS for this stock is unlikely to have any effect on the reproduction or survival of that individual, even if it were to be experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, any individual Bryde's whale is likely to be disturbed at a low-moderate level on no more than one or two days per year. Even given the fact that some of the affected individuals may have compromised health, there is nothing to suggest that such a low magnitude and severity of effects would result in impacts on the reproduction or survival of any individual, much less annual rates of recruitment or survival for the stock. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Mexico stock of Bryde's whales.

Bryde's Whale (No Stock Designated—NSD)

These Bryde's whales span the mid- and southern Atlantic and have not been designated as a stock under the MMPA. There is no currently reported trend for the population and there are no specific issues with the status of the stock that cause particular concern (*e.g.,* UMEs). No mortality or Level A harassment is anticipated or proposed for authorization. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 626 percent and 60 percent (Table 18), though the percentages would be far lower if compared against the abundance of the entire range of this species in the Atlantic. This information suggests that only a portion of the stock is likely impacted (significantly less than 60 percent given the large range), but that there is likely some repeat exposure (5 to 12 days within a year) of some subset of individuals within the U.S. EEZ if some animals spend extended time within the U.S. EEZ. Regarding the severity of those individual Level B harassment behavioral takes, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels are largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities not at a level that would impact reproduction or survival.

Altogether, only a portion of the population is impacted and any individual Bryde's whale is likely to be disturbed at a low to moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across 5 to 12 likely non-sequential days not in any known biologically important areas. This low magnitude and severity of effects is not expected to result in impacts on annual rates of recruitment or survival for the stock. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on the NSD stock of Bryde's whales.

Minke Whale (Canadian East Coast Stock)

This stock of minke whales spans the East Coast and far into Northern Canada waters. Minke whales in the Atlantic are currently experiencing a UME wherein there have been unexpectedly elevated deaths along the Atlantic Coast, some of which have been preliminarily attributed to human interaction (primarily fisheries interactions) or infectious disease. Two whales have stranded in 2019 (20 whales stranded in 2018 and 27 whales stranded in 2017). Because the most recent population estimate is based only on surveys in U.S. waters and slightly into Canada, and did not cover the habitat of the entire Canadian East Coast stock, the abundance is underestimated in the SAR and is likely significantly greater than what is reflected in the current SAR. NMFS proposes to authorize one mortality in seven years, and the resulting 0.14 annual mortality which falls below 10 percent of residual PBR (0.55), remains under the insignificance threshold, and would be considerably even lower if compared against a more appropriate PBR.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 536 percent and 53 percent (Table 18). This information suggests that something less than half of the individuals are likely impacted, but that there is likely some repeat exposure (5 to 10 days within a year) of some subset of individuals within the U.S. EEZ if some animals spend extended time within the U.S. EEZ. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB, with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Also, the Navy currently implements and would continue to implement time/area mitigation in the Northeast that minimizes major training exercises and total sonar hours in an area that significantly overlaps an important feeding area for minke whales. This mitigation will reduce the severity of impacts to minke whales by reducing interference in feeding that could result in lost feeding opportunities or necessitate additional energy expenditure to find other good foraging opportunities. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities not at a level that would impact reproduction or survival. For similar reasons the five estimated Level A harassment takes by PTS for this stock are unlikely to have an effect on the reproduction or survival of any individual, even if PTS were to be experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, only a portion of the stock would be impacted and any individual minke whale is likely to be disturbed at a low to moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across 5 to 10 likely non-sequential days, minimized in biologically important areas. Even given the potential for compromised health of some individuals, this low magnitude and severity of effects is not expected to result in impacts on the reproduction or survival of individuals, nor are these harassment takes combined with the

potential mortality expected to adversely affect this stock through impacts on annual rates of recruitment or survival for the stock. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on minke whales.

Fin Whale (Western North Atlantic Stock)

This stock spans the East Coast north into the Newfoundland waters of Canada. There is no currently reported trend for the population and there are no specific issues with the status of the stock that cause particular concern (*e.g.,* no UMEs), although the species is listed as endangered under the ESA. NMFS proposes to authorize one mortality over the seven years of the rule, or 0.14 annually. With the addition of this 0.14 annual mortality, residual PBR is exceeded, which means the total human-caused mortality would exceed residual PBR by 0.14. However, as explained in the 2018 AFTT final rule, this does not mean that the stock is not at or increasing toward its optimum sustainable population level (OSP) or that one lethal take by the Navy over the seven years covered by this rule would adversely affect the stock through effects on annual rates of reproduction or survival. Consideration of all applicable information indicates that the proposed authorized mortality would not result in more than a negligible impact on this stock.

The abundance of fin whales is likely significantly greater than what is reflected in the current SAR because, as noted in the SAR, the most recent population estimate is based only on surveys in U.S. waters and slightly into Canada which does not include the habitat of the entire stock as it extends over a very large additional area into Nova Scotian and Newfoundland waters. Accordingly, if the PBR in the SAR reflected the actual abundance across the entire range of the stock, residual PBR would be notably higher. Additionally, the current abundance estimate does not account for availability bias due to submerged animals (*i.e.,* estimates are not corrected to account for the fact that given X number of animals seen at the surface, we can appropriately assume that Y number were submerged and not counted). Without a correction for this bias, the abundance estimate is likely further biased low. Because of these limitations, the current calculated PBR is not a reliable indicator of how removal of animals will affect the stock's ability to reach or maintain OSP. We note that, generally speaking, while the abundance may be underestimated in this manner for some stocks due to the lack of surveys in areas outside of the U.S. EEZ, it is also possible that the human-caused mortality could be underestimated in the un-surveyed area. However, in the case of fin whales, most mortality is caused by entanglement in gear that is deployed relatively close to shore and, therefore, unrecorded mortality offshore would realistically be proportionally less as compared to the unsurveyed abundance and therefore the premise that PBR is likely underestimated still holds. Given the small amount by which residual PBR is exceeded and more significant degree (proportionally) to which abundance is likely underestimated, it is reasonable to conclude that if a more realistic PBR were used, the anticipated total human-caused mortality would be notably under it.

We also note that 0.14 mortalities/serious injuries means one mortality/serious injury in one of the seven years and zero mortalities/serious injuries in six of the seven years. Therefore residual PBR would not be exceeded in 86 percent of the years covered by this rule. In situations where mortality/serious injury is fractional, consideration must be given to the lessened impacts due to the absence of mortality in six of the seven years. Further, as described in the 2018 AFTT final rule, the Atlantic Large Whale Take Reduction Plan directs multiple efforts and requirements towards reducing mortality from commercial fishing (via gear modifications, area closures, and other mechanisms) and NOAA Office of Law Enforcement has reported high compliance rates. Nonetheless, the exceedance of residual PBR calls for close attention to the remainder of impacts on fin whales from this activity to ensure that the total authorized impacts would be negligible.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 323 percent and 37 percent (Table 18). This information suggests that something less than a third of the individuals are likely impacted, but that there is likely some repeat exposure (2–6 days within a year) of some subset of individuals within the U.S. EEZ if some animals spend extended time within the U.S. EEZ. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Also, the Navy currently implements, and would continue to implement time/area mitigation in the Northeast that minimizes major training exercises and total sonar hours in an area that significantly overlaps an important BIA feeding area for fin whales. This mitigation will reduce the severity of impacts to fin whales by reducing interference in feeding that could result in lost feeding opportunities or necessitate additional energy expenditure to find other good opportunities. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with fin whale communication or other important low-frequency cues, and the associated lost opportunities and capabilities are not at a level that would impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the 33 estimated Level A harassment takes by PTS for fin whales would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if PTS were experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, only a portion of the stock would be impacted and any individual fin whale is likely to be disturbed at a low to moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across approximately six likely non-sequential days, minimized in biologically important areas. This low magnitude and severity of effects is not expected to result in impacts on reproduction or survival of individuals, nor are these harassment takes combined with the single potential mortality expected to adversely affect this stock through impacts on annual rates of recruitment or survival for the stock. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on fin whales.

Humpback Whale (Gulf of Maine Stock)

This feeding group stock of humpback whales is one of several associated with the larger, and increasing, West Indies DPS. The Gulf of Maine stock is reported in the SAR as increasing in abundance. Nonetheless, humpback whales in the Atlantic are currently experiencing a UME in which a portion of the whales have shown evidence of entanglement or vessel strike. There have been nine strandings so far in 2019 (2018 had 25 total strandings and 2017 had 24 total strandings). NMFS proposes authorizing two mortalities over the seven-year period (versus the one mortality over the five-year period of the 2018 AFTT Final Rule), as described in the *Estimated Take of Marine Mammals* section above. Though an increase from the 2018 AFTT final rule, this amount of mortality (0.29 per year) still falls below the insignificance threshold of 10 percent of residual PBR (0.48) for the Gulf of Maine stock based on a stock abundance of 896 from the 2018 draft SAR. Also, importantly, deaths of humpback whales along the Atlantic coast (whether by ship strike or other source) must be considered within the context of the larger West Indies DPS, as animals along the coast could come from the Gulf of Maine stock or any of three or more other associated feeding groups. Specifically, the West Indies DPS numbers in excess of 10,000 whales and has an increasing growth trend of 3.1 percent (Bettridge *et al.,* 2015), with an associated PBR, if calculated, much larger than that presented for the Gulf of Maine stock. Further, as described in the 2018 AFTT final rule, the Atlantic Large Whale Take Reduction Plan directs multiple efforts and requirements towards reducing mortality from commercial fishing (via gear modifications, area closures, and other mechanisms) and NOAA Office of Law Enforcement has reported high compliance rates. Therefore, even though the potential for M/SI from the Navy's activities has increased since the 2018 AFTT final rule, there is no information to indicate that the loss of two whales over seven years, even if it were to occur, would adversely affect the stock through effects on annual rates of recruitment or survival. See the *Humpback Whale* section in the 2018 AFTT final rule for additional supporting information.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances (of any humpbacks) compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 141 percent and 16 percent (Table 18). This suggests that only a small portion of the humpback whales in the AFTT Study Area would be likely impacted, with perhaps some individuals taken on a few days of the year. It would be impossible to determine exactly what portion of the takes are from the Gulf of Maine stock. However, based on information in the 2018 AFTT final rule, which indicated about one third of the humpback whales traversing the Atlantic Coast likely come from the Gulf of Maine stock, we estimate that approximately 250 of the 749 total humpback whale takes might be from the Gulf of Maine stock. Two hundred and fifty represents about 28 percent of the minimum population estimate for the Gulf of Maine humpback whale abundance in NMFS' draft 2018 SAR, equating to an expectation that few animals would be exposed more than one time. The remaining approximately 499 Level B harassment takes would affect individuals from the much larger West Indies DPS, with a relatively small percentage of individuals affected as the estimated abundance is greater than 10,000. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion above 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Also, the Navy currently implements and would continue to implement time/area mitigation in the Northeast that minimizes major training exercises and total sonar hours in an area that significantly overlaps with an important feeding area for humpbacks. This mitigation will reduce the severity of impacts to humpbacks by reducing interference in feeding that could result in lost feeding opportunities or necessitate additional energy expenditure to find other good opportunities. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities not at a level that would impact reproduction or survival. For similar reasons the three estimated Level A harassment takes by PTS for this stock are unlikely to have any effect on the reproduction or survival of any individual, even if PTS were to be experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, only a portion of the stock or DPS is impacted and any individual humpback whale would likely be disturbed at a low-moderate level, with most animals exposed only once or twice, and minimized in biologically important areas. This low magnitude and severity of effects is not expected to result in impacts on the reproduction or survival of any individuals, nor are these harassment takes combined with the proposed authorized mortalities expected to adversely affect this stock through impacts on annual rates of recruitment or survival for the stock. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on humpback whales.

Sei Whale (Nova Scotia Stock)

This stock spans the northern East Coast and up to southern Newfoundland. There is no currently reported trend for the population and there are no specific issues with the status of the stock that cause particular concern (*e.g.,* no UMEs), although the species is listed as endangered under the ESA. NMFS would authorize one mortality over the seven years of the rule, or 0.14 annually. With the addition of this 0.14 annual mortality, residual PBR is exceeded, which means the total human-caused mortality would exceed residual PBR by 0.44. However, as explained in the 2018 AFTT final rule, this does not mean that the stock is not at or increasing toward its OSP or that one lethal take by the Navy over the seven years covered by this rule would adversely affect the stock through effects on annual rates of reproduction or survival. Consideration of all applicable information indicates that the proposed authorized mortality would not result in more than a negligible impact on this stock.

As noted in the SAR, the abundance of sei whales is likely significantly greater than what is reflected in the current SAR because the population estimate is based only on surveys in U.S. waters and slightly into Canada, which does not cover the habitat of the entire stock, as it extends over a large additional area around to the south of Newfoundland. Accordingly, if a PBR were calculated based on an appropriately enlarged abundance, it would be higher. Additionally, the current abundance estimate does not account for availability bias due to submerged animals (*i.e.,* estimates are not corrected to account for the fact that given X number of animals seen at the surface, we can appropriate assume that

Y number were submerged and not counted). Without a correction for this bias, the abundance estimate is likely biased low. Because of these limitations, the current calculated PBR is not a reliable indicator of how removal of animals will affect the stock's ability to reach or maintain OSP. We note that, generally speaking, while the abundance may be underestimated in this manner for some stocks due to the lack of surveys in areas outside of the U.S. EEZ, it is also possible that the human-caused mortality could be underestimated in the un-surveyed area. However, in the case of sei whales, most mortality is caused by ship strike and the density of ship traffic is higher the closer you are to shore (making strikes more likely closer to shore) and, therefore, unrecorded mortality offshore would realistically be proportionally less as compared to the unsurveyed abundance and therefore the premise that PBR is likely underestimated still holds.

Given the small amount by which residual PBR is exceeded and more significant degree (proportionally) to which abundance is likely underestimated, it is reasonable to think that if a more realistic PBR were used, the anticipated total human-caused mortality would be notably under residual PBR. We also note that 0.14 mortalities/serious injuries means one mortality/serious injury in one of the seven years and zero mortalities/serious injuries in six of the seven years. Further, as described in the 2018 AFTT final rule the Atlantic Large Whale Take Reduction Plan directs multiple efforts and requirements towards reducing mortality from commercial fishing (via gear modifications, area closures, and other mechanisms) and NOAA Office of Law Enforcement has reported high compliance rates.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 317 percent and 7 percent (Table 18). This information suggests that only a very small portion of individuals in the stock would be likely impacted, but that there would likely be some repeat exposure (several days within a year) of some subset of individuals within the U.S. EEZ if some animals spend extended time within the U.S. EEZ. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Also, the Navy implements time/area mitigation in the Northeast that minimizes major training exercises and total sonar hours in an area that significantly overlaps an important BIA feeding area for sei whales, which will reduce the severity of impacts to sei whales by reducing interference in feeding that could result in lost feeding opportunities or necessitate additional energy expenditure to find other good opportunities. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities not at a level that would impact reproduction or survival. For similar reasons the four estimated Level A harassment takes by PTS for this stock are unlikely to have any effect on the reproduction or survival of any individual, even if PTS were to be experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, only a small portion of the stock would be impacted and any individual sei whale would likely be disturbed at a low-moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across a few days, minimized in biologically important areas. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, nor are these harassment takes combined with the single potential mortality expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on sei whales.

Odontocetes

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales

In Table 19 below for sperm whale, dwarf sperm whales, and pygmy sperm whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 19 is unchanged from Table 73 in the 2018 AFTT final rule, except for updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales* discussion in the *Group and Species-Specific Analyses* section of the 2018 AFTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 19. Annual estimated takes by Level B harassment, Level A harassment, and mortality for sperm whales, dwarf sperm whales, and pygmy sperm whales in the AFTT Study Area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Odontoceti (toothed whales)												
Family Physeteridae (sperm whale)												
Sperm whale*	Gulf of Mexico Oceanic	1,107	25	0	0	0	1132	1132	2,114	2,114	54	54
	North Atlantic	24,703	662	3	1	0.14	21489	25369	3,950	61,700	544	41
Family Kogiidae (sperm whales)												
Dwarf sperm whale	Gulf of Mexico Oceanic	339	453	70	0	0	862	862	1,107	1,107	78	78
	Western North Atlantic	3,900	9,102	94	0	0	12852	13096	611	3,641	2105	360
Pygmy sperm whale	Northern Gulf of Mexico	339	453	70	0	0	862	862	1,107	1,107	78	78
	Western North Atlantic	3,900	9,102	94	0	0	12852	13096	611	3,641	2105	360

Note: In this table we compare estimated takes to abundance estimates generated from the same underlying density estimate (as described in the *Estimated Take of Marine Mammals* section in the 2018 AFTT final rule), versus abundance estimates directly from NMFS' SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the U.S. EEZ only (where density estimates have lesser uncertainty) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing plus harassment take from one large ship shock trial.

The annual mortality of 0.14 is the result of no more than one mortality over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section. .

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected species and stocks addressed in this section.

Sperm Whale (North Atlantic Stock)

This stock spans the East Coast out into oceanic waters well beyond the U.S. EEZ. There is no currently reported trend for the stock and, although the species is listed as endangered under the ESA, there are no specific issues with the status of the stock that cause particular concern (*e.g.,* no UMEs). NMFS proposes to authorize one mortality over the seven years covered by this rule, and the resulting 0.14 annual mortality which falls below 10 percent of residual PBR (0.28), remains below the PBR insignificance threshold. As discussed in the 2018 AFTT final rule, there are no known factors, information, or unusual circumstances that indicate that this potential M/SI below the insignificance threshold could have adverse effects on the stock through effects on annual rates of recruitment or survival. One Level A harassment take by tissue damage is also estimated and proposed for authorization which, as discussed in the 2018 AFTT final rule, could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's mitigation and the sperm whale's large size, which improves detection by Lookouts, exposure at the closer to the source and more severe end of the spectrum is less likely, and we cautiously assume some moderate impact for this single take that could lower one individual's fitness within the year such that a female (assuming a 50 percent chance of the one take being a female) might forego reproduction for one year. As discussed in the 2018 AFTT final rule, foregone reproduction has less of an impact on population rates than death (especially for one year) and one instance would not be expected to impact annual rates of recruitment or survival, even if it were a female.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 544 percent and 41 percent (Table 19). This information, combined with the known range of the stock, suggests that something less than one half of the individuals in the stock would likely be impacted, but that there would likely be some repeat exposure (2–11 days within a year) of some subset of individuals that remain within the U.S. EEZ for an extended time. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely between 160 and 172 dB (*i.e.,* of a lower, to occasionally moderate, level). Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level and of short duration and the associated lost opportunities and capabilities not at a level that would impact reproduction or survival. For similar reasons three estimated Level A harassment takes by PTS for this stock is unlikely to have any effect on the reproduction or survival of any individual, even if PTS were to be experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, only a small portion of the stock would be impacted and any individual sperm whale would likely be disturbed at a low-moderate level, with the majority of animals likely disturbed

once or not at all, and a subset potentially disturbed across 2–11 likely non-sequential days. Even for an animal disturbed at the high end of this range (11 days over a year), given the low to moderate impact from each incident, and the fact that few days with take would likely be sequential, no impacts to individual fitness are expected. This low to occasionally moderate magnitude and severity of effects is not expected to result in impacts on reproduction or survival, and nor are these harassment takes combined with the single proposed authorized mortality and one possible instance of foregone reproduction expected to adversely affect the stock through annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on North Atlantic sperm whales.

Sperm Whale, Dwarf Sperm Whale, and Pygmy Sperm Whale (Gulf of Mexico Stocks)

These stocks suffer from lingering health issues from the DWH oil spill (6–7 percent of individuals of these stocks with adverse health effects), which means that some could be more susceptible to exposure to other stressors, and negative population effects (21–42 years until the DWH oil-injured population trajectory is projected to catch up with the baseline population trajectory (*i.e.,* in the absence of DWH, reported as years to recovery). Neither mortality nor tissue damage from explosives is anticipated or proposed to be authorized for any of these three stocks, and sperm whales are not expected to incur PTS. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance is 54–78 percent (Table 19), which suggests that for each of the three species/stocks either this percentage of the individuals in these stocks would all be taken by harassment on a single day, or a small subset may be taken on a few days and the remainder not taken at all. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels are largely between 160 and 172 dB (*i.e.,* of a lower level, less likely to evoke a severe response). Additionally, the Navy is currently implementing and would continue to implement mitigation areas for sperm whales that are expected to reduce impacts in important feeding areas, further lessening the severity of impacts. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. Also, there is no reason to believe that any individual would incur these TTS takes more than a few days in a year, and the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, 70 estimated Level A harassment takes by PTS for each of the two Kogia stocks in the Gulf of Mexico would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individual, even if PTS were to be experienced by an animal that also experiences one or more Level B harassment takes.

Altogether, only a portion of these stocks would be impacted and any individual sperm, dwarf sperm, or pygmy sperm whale is likely to be disturbed at a low to occasionally moderate level and no more than a few days per year. Even given the fact that some of the affected individuals may have compromised health, there is nothing to suggest that such a low magnitude and severity of effects would result in impacts on the reproduction or survival of individuals, much less annual rates of recruitment or survival for any of the stocks. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Mexico stocks of sperm whales, dwarf sperm whales, and pygmy sperm whales.

Pygmy and Dwarf Sperm Whales (Western North Atlantic Stocks)

These stocks span the deeper waters of the East Coast north to Canada and out into oceanic waters beyond the U.S. EEZ. There is no currently reported trend for these populations and there are no specific issues with the status of the stocks that cause particular concern. Neither mortality nor tissue damage from explosives is anticipated or proposed to be authorized for these stocks. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 2,105 percent and 360 percent (Table 19). This information, combined with the known range of the stock, suggests that while not all of the individuals in these stocks would most likely be taken (because they span well into oceanic waters) of those that are taken, most would be taken over several repeated days (though likely not sequential) and some subset that spends extended time within the U.S. EEZ would likely be taken over a larger amount of days (likely 15–42 days during a year), some of which could be sequential.

Regarding the severity of the individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (and likely not more than 24 hours) and the received sound levels are largely between 160 and 172 dB (*i.e.,* of a lower level, less likely to evoke a severe response). Additionally, while interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. Also, there is no reason to believe that any individual would incur these TTS takes more than a few days in a year, and the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the 94 estimated Level A harassment takes by PTS for each of the two Kogia stocks in the North Atlantic would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individual, even if PTS were to be experienced by an individual that also

experiences one or more Level B harassment takes.

Altogether, most of the stock would likely be taken (at a low to occasionally moderate level) over several days a year, and some smaller portion of the stock would likely be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes (in total and for certain individuals) makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year (energetic impacts to males generally have little impact on population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal). As noted previously and discussed more fully in the 2018 AFTT final rule, however, foregone reproduction (especially for one year) has far less of an impact on population rates than mortality, and a small number of instances of foregone reproduction would not be expected to adversely impact annual rates of recruitment or survival, especially given that PBR for both of these stocks is 21. For these reasons, in consideration of all of the effects of the Navy's activities combined, we have preliminarily determined that the proposed authorized take would have a negligible impact on the Western North Atlantic stocks of pygmy and dwarf sperm whales.

Dolphins and Small Whales

In Table 20 below for dolphins and small whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 20 is unchanged from Table 74 in the 2018 AFTT final rule, except for updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Dolphins and Small Whales* discussion in the *Group and Species-Specific Analyses* section of the 2018 AFTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 20. Annual estimated takes by Level B harassment, Level A harassment, and mortality for dolphins and small whales in the AFTT Study Area and number indicating the instances of total take as a percentage of stock abundance.+

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Family Delphinidae (dolphins)												
Atlantic spotted dolphin	Northern Gulf of Mexico	69,225	3,610	3	0	0	72,838	72,838	47,676	47,676	153	153
	Western North Atlantic	208,201	19,383	26	6	0	209,814	227,616	52,118	250,648	403	91
Atlantic white-sided dolphin	Western North Atlantic	44,077	2,207	7	3	0.14	44,210	46,294	14,332	137,305	308	34
Bottlenose dolphin	Choctawhatchee Bay	941	32	0	0	0	973	973	99	99	984	984
	Gulf of Mexico Eastern Coastal	42	0	0	0	0	42	42	9,888	9,888	0	0
	Gulf of Mexico Northern Coastal	15,644	834	2	0	0	16,480	16,480	8,476	8,476	194	194
	Gulf of Mexico Western Coastal	7,191	635	0	0	0	7,826	7,826	33,903	33,903	23	23
	Indian River Lagoon Estuarine System	255	31	0	0	0	286	286	36	36	790	790
	Jacksonville Estuarine System	74	13	0	0	0	87	87	27	27	320	320
	Mississippi Sound, Lake Borgne, Bay Boudreau	1	0	0	0	0	1	1	198	198	1	1
	Northern Gulf of Mexico Continental Shelf	121,223	6,287	15	1	0	127,526	127,526	72,043	72,043	177	177
	Northern Gulf of Mexico Oceanic	13,947	706	8	2	0	14,663	14,663	18,364	18,364	80	80
	Northern North Carolina Estuarine System	2,844	483	0	0	0	3,327	3,327	3,622	3,622	92	92
	Southern North Carolina Estuarine System	0	0	0	0	0	0	0	0	0	0	0
	Western North Atlantic Northern Florida Coastal	1,145	90	0	0	0	1,235	1,235	906	906	136	136
	Western North Atlantic Central Florida Coastal	7,100	513	0	0	0	7,613	7,613	4,528	4,528	168	168
	Western North Atlantic Northern Migratory Coastal	33,993	3,051	7	0	0	37,051	37,051	9,962	9,962	372	372
	Western North Atlantic Offshore	393,416	34,686	77	9	0	421,295	428,188	64,298	186,260	655	230
	Western North Atlantic South Carolina/Georgia Coastal	5,544	416	0	0	0	5,960	5,960	3,622	3,622	165	165
	Western North Atlantic Southern Migratory Coastal	15,411	1,305	2	0	0	16,718	16,718	7,245	7,245	231	231
Clymene dolphin	Northern Gulf of Mexico	4,174	99	4	2	0	4,279	4,279	10,942	10,942	39	39
	Western North Atlantic	97,952	7,816	10	3	0	92,364	105,781	15,370	171,202	601	62
False killer whale	Northern Gulf of Mexico	1,902	72	1	0	0	1,975	1,975	3,136	3,136	63	63
	Western North Atlantic	11,176	863	0	0	0	11,131	12,039	1,254	16,144	888	75
Fraser's dolphin	Northern Gulf of Mexico	1,123	58	2	1	0	1,184	1,184	1,637	1,637	72	72
	Western North Atlantic	4,931	291	0	0	0	3,914	5,222	411	17,588	952	30
Killer whale	Northern Gulf of Mexico	33	0	0	0	0	33	33	176	176	19	19
	Western North Atlantic	113	6	0	0	0	112	119	15	472	747	25
Long-finned pilot whale	Western North Atlantic	35,890	1,656	7	1	0	33,769	37,554	3,863	447,431	874	8
Melon-headed whale	Northern Gulf of Mexico	3,067	66	3	1	0	3,137	3,137	6,725	6,725	47	47
	Western North Atlantic	50,058	3,792	3	0	0	49,707	53,853	5,821	69,526	854	77
Pantropical spotted dolphin	Northern Gulf of Mexico	25,924	596	15	6	0.14	26,541	26,541	82,055	82,055	32	32
	Western North Atlantic	207,279	15,304	8	1	0	196,098	222,592	30,088	275,964	652	81
Pygmy killer whale	Northern Gulf of Mexico	720	16	1	0	0	737	737	2,062	2,062	36	36
	Western North Atlantic	8,702	629	0	0	0	8,507	9,331	1,052	12,296	809	76
Risso's dolphin	Northern Gulf of Mexico	1,647	43	1	0	0	1,691	1,691	3,096	3,096	55	55
	Western North Atlantic	38,887	2,220	2	0	0	40,144	41,109	5,601	39,085	717	105
Rough-toothed dolphin	Northern Gulf of Mexico	3,849	177	1	1	0	4,028	4,028	4,824	4,824	83	83
	Western North Atlantic	25,857	2,476	0	0	0	26,450	28,333	2,793	34,768	947	81
Short-beaked common dolphin	Western North Atlantic	540,662	30,561	101	36	0.86	571,100	571,361	73,481	520,317	777	110
Short-finned pilot whale	Northern Gulf of Mexico	1,835	26	3	0	0	1,864	1,864	2,032	2,032	92	92
	Western North Atlantic	45,724	2,639	5	1	0	34,760	48,369	6,578	450,146	528	11
Spinner dolphin	Northern Gulf of Mexico	7,803	277	31	14	0.14	8,125	8,125	13,653	13,653	60	60
	Western North Atlantic	98,665	8,382	5	1	0	98,817	107,053	11,280	135,573	876	79
Striped dolphin	Northern Gulf of Mexico	2,449	69	2	1	0	2,521	2,521	4,871	4,871	52	52
	Western North Atlantic	181,103	11,992	16	4	0	167,438	193,115	52,222	322,542	321	60
White-beaked dolphin	Western North Atlantic	80	4	0	0	0	84	84	42	42	200	200

Note: In the table we compare estimated takes to abundance estimates generated from the same underlying density estimate (as described in the *Estimated Take of Marine Mammals* section of the 2018 AFFT final rule), versus abundance estimates directly from NMFS' SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the U.S. EEZ only (where density estimates have lesser uncertainty) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing plus take from one large ship shock trial.

For mortality takes there was an annual average of 0.14 dolphins from each dolphin species/stock listed above (*i.e.*, for those species or stocks where one take could potentially occur divided by seven years to get the annual number of mortalities/serious injuries) or 0.86 dolphins in the case of short-beaked common dolphin (*i.e.*, where six takes could potentially occur divided by seven years to get the annual number of mortalities/serious injuries).

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected species or stocks addressed in this section.

Atlantic White-Sided Dolphin and Short-Beaked Common Dolphin (Western North Atlantic Stocks)

There is no currently reported trend for these stocks and there are no specific issues with the status of these stocks that cause particular concern (*e.g.,* no UMEs). We anticipate and therefore propose to authorize one and six mortalities over the course of seven years for these two stocks, which is 0.14 and 0.86 annual mortalities for each stock, respectively. Given the large residual PBR values for these stocks (248 and 148), this number of mortalities falls well under the insignificance threshold. There are no known factors, information, or unusual circumstances that indicate that this estimated M/SI below the insignificance threshold could have adverse effects on these stocks through effects on annual rates of recruitment or survival. Some Level A harassment take by tissue damage from explosives has also been estimated and proposed to be authorized for these stocks (3 and 36, respectively). As discussed previously and in the 2018 AFTT final rule, tissue damage effects could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's mitigation, which makes exposure at the closer to the source and more severe end of the spectrum less likely, we cautiously assume some moderate impact for this category of take that could lower an individual's fitness within the year such that females (assuming a 50 percent chance that a take is a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for one year) and the number of takes anticipated for each stock would not be expected to impact annual rates of recruitment or survival, even if all of the takes were females (which would be highly unlikely), especially given the high residual PBRs of these stocks. In other words, if the stocks can absorb the numbers of mortalities indicated through each stock's residual PBR without impacting ability to approach OSP, they could absorb the significantly lesser effects of a small number of one-year delay in calving.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ for these two stocks, respectively, is 308–777 percent and 34–110 percent (Table 20). This information suggests that some portion of these stocks would likely not be taken at all, but that there would likely be some repeat exposure (2–15 days within a year) of some subset of individuals. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower level, less likely to evoke a severe response). Additionally, while we do not have a specific reason to expect that these takes would occur sequentially on more than several days in a row or be more severe in nature, the probability of this occurring increases the higher the total take numbers. While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. Given the higher number of takes and the associated abundances (especially for short-beaked common dolphin) we acknowledge the possibility that some smaller subset of individuals could experience behavioral disruption of a degree that impacts energetic budgets such that reproduction could be delayed for a year. However, considering the potential reproductive effects from tissue damage and from these levels of take by behavioral Level B harassment, in combination with the estimated mortality, this degree of effect on the small subset of individuals that could be affected is still not expected to adversely affect the stocks through effects on annual rates of recruitment or survival.

Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would be expected to significantly interfere with dolphin communication, or echolocation or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities would not be expected to impact reproduction or survival of any individuals. For these same reasons (low level and the likely frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the estimated Level A harassment takes by PTS for the two dolphin stocks (7 and 101, respectively) would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individual, even if PTS were to be experienced by an animal that also experiences one or more Level B harassment takes.

Altogether, individual dolphins would likely be taken at a low level, with some animals likely taken once or not at all, many potentially disturbed at low levels across 2–15 predominantly non-sequential days, and a small number potentially experiencing a level of effects that could result in curtailed reproduction for one year. This magnitude and severity of effects, including consideration of the estimated mortality, is not expected to result in impacts on annual rates of recruitment

or survival for either of the stocks, especially given the status of the stocks. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on these two Western North Atlantic stocks of dolphins.

Pantropical Spotted Dolphin and Spinner Dolphin (Gulf of Mexico Stocks)

As described in the 2018 AFTT final rule, the Gulf of Mexico dolphin stocks indicated in Table 20 suffer from lingering health issues resulting from the DWH oil spill (7 and 17 percent of individuals of these stocks, respectively, have adverse health effects), which means that some of them could be more susceptible to exposure to other stressors, as well as negative population effects (predicting it will take up to 39 and 105 years, respectively, for stocks to return to population growth rates predicted in the absence of DWH effects). We propose to authorize one mortality over the course of seven years for each of these two stocks, respectively, which is 0.14 annual mortalities for each stock. Given the large residual PBR values for these stocks (402 and 62, respectively), this number of mortalities falls well under the insignificance threshold. As discussed in the 2018 AFTT final rule, there are no known factors, information, or unusual circumstances that indicate that this estimated M/SI below the insignificance threshold could have adverse effects on these stocks through effects on annual rates of recruitment or survival. Some Level A harassment take by tissue damage from explosives has also been estimated and proposed to be authorized for these stocks (6 and 14, respectively). As noted previously, tissue damage effects could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's mitigation, which makes exposure at the closer to the source and more severe end of the spectrum less likely, we cautiously assume some moderate impact for this category of take that could lower an individual's fitness within the year such that females (assuming a 50 percent chance that a take is a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for one year) and the number of takes anticipated for each stock would not be expected to impact annual rates of recruitment or survival, even if all of the takes were females (which would be highly unlikely), especially given the high residual PBRs of these stocks. In other words, if the stocks can absorb the numbers indicated through each stock's residual PBR without impacting ability to approach OSP, they can absorb the significantly lesser effect of a very small number of one-year delay in calving.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance is 32 percent and 60 percent, respectively, reflecting that only a subset of each stock would be taken by behavioral Level B harassment within a year. Of that subset, those taken would likely be taken one time, but if taken more than that, the 2 or 3 days would not likely be sequential (Table 20). Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower to occasionally moderate severity).

Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would be expected to significantly interfere with dolphin communication, or echolocation or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities are not expected to impact reproduction or survival. For these same reasons (low level and the likely frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the estimated Level A harassment takes by PTS for the dolphin stocks addressed here (15 and 31, respectively) would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals.

Altogether, any individual dolphin would likely be taken at a low to occasionally moderate level, with most animals likely not taken at all and with a subset of animals being taken up to a few non-sequential days. Even given the fact that some of the affected individuals may have compromised health, there is nothing to suggest that such a low magnitude and severity of effects, including the potential tissue damage, would result in impacts on annual rates of recruitment or survival for either of these two stocks. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Mexico stocks of pantropical spotted dolphins and spinner dolphins.

Western North Atlantic Dolphin Stocks (All Stocks in Table 20 Except Atlantic White-Sided Dolphin and Short-Beaked Common Dolphin)

There are no specific issues with the status of these stocks that cause particular concern (*e.g.,* no UMEs). No mortality is expected nor it proposed for authorization for these stocks. For some of these stocks, some tissue damage has been estimated and proposed to be authorized (1–9 depending on the stock). As discussed previously, tissue damage effects could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's mitigation, which makes exposure at the closer to the source and more severe end of the spectrum less likely, we cautiously assume some moderate impact for all these takes that could lower an individual's fitness within the year such that a small number of females (assuming a 50 percent chance of being a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for one year) and one to a few instances would not be expected to impact annual rates of recruitment or survival, even if all of the takes were females (which would be highly unlikely), especially given the higher residual PBRs, which is known for the majority of stocks. For stocks with no calculated residual PBR or where abundance is unknown, the limited information available on population size indicates that the very low number of females who might forego reproduction would have no effect on annual rates of recruitment or survival.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance ranges up to 984 percent inside the U.S. EEZ (though some are significantly lower) and is generally much lower across the whole range of most stocks, reflecting that for many stocks only a subset of the stock will be impacted—although alternately for a few of the smaller bay stocks all individuals are expected to be taken across multiple days (Table 20). Generally, individuals of most stocks (especially bottlenose dolphins) might

be taken no more than several times each, while the other species in this group will only accrue takes to a portion of the stock, but individuals might be taken across 2–20 days within a year. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower level, less likely to evoke a severe response). While we do not have reason to expect that these takes would occur sequentially on more than several days in a row or be more severe in nature, the probability of this occurring increases the higher the total take numbers. Given higher percentages when compared to abundances, and especially where the absolute number of takes is higher (*e.g.,* spinner dolphin), we acknowledge the possibility that some smaller subset of individuals (especially in the larger stocks with higher total take numbers) could experience behavioral disruption of a degree that impacts energetic budgets such that reproduction could be delayed for a year. However, considering the very small number of potential reproductive effects from Level A harassment by tissue damage (1–9 depending on stock and assuming all individuals are female, which is very unlikely) in addition to the possible reproductive effect on a small subset of individuals from the takes by behavioral Level B harassment, this degree of effects on a small subset of individuals is still not expected to adversely affect annual rates of recruitment or survival. For the smaller Estuarine stocks with the potential repeated days of disturbance, we note that as described in the 2018 AFTT final rule, the activities that the Navy conducts in inland areas (not MTEs, etc.) are expected to generally result in lower severity responses, further decreasing the likelihood that they would cause effects on reproduction or survival, even if accrued over several sequential days.

Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would be expected to significantly interfere with dolphin communication, or echolocation or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For these same reasons (low level and the likely frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the estimated Level A harassment takes by PTS for the dolphin stocks addressed here (between 1 and 77) would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individual, even if PTS were to be experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, any individual dolphin would likely be taken at a low to occasionally moderate level, with some animals likely taken once or not at all, a subset potentially disturbed across 2–20 predominantly non-sequential days, and a small number potentially experiencing a level of effects that could curtail reproduction for one year. The magnitude and severity of effects described is not expected to result in impacts on annual rates of recruitment or survival for any of the stocks. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on these Western North Atlantic stocks of dolphins.

Gulf of Mexico Dolphin Stocks (All of the Stocks Indicated in Table 20 Except Pantropical Spotted Dolphin and Spinner Dolphin)

As mentioned above and discussed in the 2018 AFTT final rule, the Gulf of Mexico stocks indicated in Table 20 suffer from lingering health issues resulting from the DWH oil spill (3–30 percent of individuals of these stocks have adverse health effects), which means that some of them could be more susceptible to exposure to other stressors, as well as negative population effects (predicting it will take up to 76 years, with that number varying across stocks, for stocks to return to population growth rates predicted in the absence of DWH effects). Of note, the Northern Coastal bottlenose dolphin adverse effect statistics are about twice as high as the others (*i.e.,* all other stocks are below 17 percent). No mortality has been estimated or proposed to be authorized for these stocks, however a few Level A harassment takes by tissue damage from explosives (zero for most, 1–2 for a few, and 6 for the Atlantic spotted dolphin stock) are estimated and proposed to be authorized. As noted previously, tissue damage effects could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's mitigation, which makes exposure at the closer to the source and more severe end of the spectrum less likely, we cautiously assume some moderate impact for these Level A harassment takes that could lower an individual's fitness within the year such that a female (assuming a 50 percent chance of being a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for one year) and a few instances, even up to six for the Atlantic spotted dolphin stock, would not be expected to impact annual rates of recruitment or survival, even if all of the takes were of females (which is highly unlikely).

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance ranges up to 177 percent, but is generally much lower for most stocks, reflecting that generally only a subset of each stock would be taken, with those in the subset taken only a few non-sequential days of the year (Table 20). Regarding the severity of those individual takes by Level B behavioral harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower to occasionally moderate severity).

Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would be expected to significantly interfere with dolphin communication, or echolocation or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For these same reasons (low level and the likely frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the estimated Level A harassment takes by PTS for the dolphin stocks addressed here (all 3 or below, with the exception of three stocks with much larger abundances with 4, 8, and 15 PTS takes) would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individual, even if PTS were to be experienced by an animal that also

experiences one or more Level B harassment takes.

Altogether, any individual dolphin would likely be taken at a low to occasionally moderate level, with many animals likely not taken at all and with a subset of animals being taken up to a few times. A very small number could potentially experience tissue damage that could curtail reproduction for one year. Even given the fact that some of the affected individuals may have compromised health, there is nothing to suggest that such a low magnitude and severity of effects would result in impacts on annual rates of recruitment or survival for any of the Gulf of Mexico stocks indicated in Table 20. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on these Gulf of Mexico stocks of dolphins.

Harbor Porpoise

In Table 21 below for porpoises, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 21 is unchanged from Table 75 in the 2018 AFTT final rule. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Harbor Porpoise* discussion in the *Group and Species-Specific Analyses* section of the 2018 AFTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 21. Annual estimated takes by Level B harassment, Level A harassment, and mortality for porpoises in the AFTT Study Area and number indicating the instances of total take as a percentage of stock abundance.

Note: In the table we compare estimated takes to abundance estimates generated from the same underlying density estimate (as described in the *Estimated Take of Marine Mammals* section of the 2018 AFTT final rule), versus abundance estimates directly from NMFS' SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the U.S. EEZ only (where density estimates have lesser uncertainty) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing plus harassment take from one large ship shock trial.

Table 21. Annual estimated takes by Level B harassment, Level A harassment, and mortality for porpoises in the AFTT Study Area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Family Phocoenidae (porpoises)												
Harbor porpoise	Gulf of Maine/Bay of Fundy	133,396	21,917	454	0	0	155,767	155,767	16,552	195,727	941	80

Note: In the table we compare estimated takes to abundance estimates generated from the same underlying density estimate (as described in the *Estimated Take of Marine Mammals* section of the 2018 AFTT final rule), versus abundance estimates directly from NMFS' SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the U.S. EEZ only (where density estimates have lesser uncertainty) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing plus harassment take from one large ship shock trial.

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect harbor porpoises through effects on annual rates of recruitment or survival.

The Gulf of Maine/Bay of Fundy stock of harbor porpoise is found predominantly in northern U.S. coastal waters (<150 m depth) and up into Canada's Bay of Fundy. No mortality or tissue damage by explosives are anticipated or proposed for authorization for this stock and there are no specific issues with the status of the stock that cause particular concern (*e.g.,* no UMEs). Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ, respectively, is 941 percent and 80 percent (Table 21). This information, combined with the known range of the stock, suggests that only a portion of the individuals in the stock would likely be impacted (*i.e.,* notably less than 80 percent given the likely repeats; in other words more than 20 percent would be taken zero times), but that there would likely be some amount of repeat exposures across days (perhaps 6–19 days within a year) for some subset of individuals that spend extended times within the U.S. EEZ. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be from minutes to hours and not likely exceeding 24 hrs, and the received sound levels of the MF1 bin are largely between 154 and 166 dB, which, for a harbor porpoise (which have a lower behavioral Level B harassment threshold) would mostly be considered a moderate level.

Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would be expected to significantly interfere with harbor porpoise communication, or echolocation or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities would not be expected to impact reproduction or survival. For these same reasons (low level and the likely frequency band), while a small permanent loss of hearing sensitivity

may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the estimated 454 Level A harassment takes by PTS for harbor porpoise would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival for most individuals, even if PTS were to be experienced by an individual that also experiences one or more Level B harassment takes. Because of the high number of PTS takes, we acknowledge that a few animals could potentially incur permanent hearing loss of a higher degree that could potentially interfere with their successful reproduction and growth. However, given the status of the stock (high abundance and residual PBR of 451), even if this occurred, it would not adversely impact rates of recruitment or survival.

Altogether, because harbor porpoises are particularly sensitive, it is likely that a fair number of the responses would be of a moderate nature. Additionally, as noted, some portion of the stock may be taken repeatedly on up to 19 days within a year, with some of those being sequential. Given this and the larger number of total takes (both to the stock and to individuals), it is more likely (probabilistically) that some small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year (energetic impacts to males generally have limited impact on population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal). As noted previously, however, foregone reproduction (especially for one year) has far less of an impact on population rates than mortality and a small number of instances would not be expected to adversely impact annual rates of recruitment or survival, especially given that the residual PBR of harbor porpoises is 451. All indications are that the number of times in which reproduction would be likely to be foregone would not affect the stock's annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on harbor porpoises.

Beaked Whales

In Table 22 below for beaked whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 22 is unchanged from Table 76 in the 2018 AFTT final rule. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Beaked Whales* discussion in the *Group and Species-Specific Analyses* section of the 2018 AFTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 22. Annual estimated takes by Level B harassment, Level A harassment, and mortality for beaked whales in the AFTT Study Area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment								
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage	Mortality	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Odontoceti (toothed whales)												
Family Ziphiidae (beaked whales)												
Blainville's beaked whale	Northern Gulf of Mexico	1,420	8	0	0	0	1,428	1,428	966	966	148	148
	Western North Atlantic	22,902	197	1	0	0	19,959	23,100	1,274	14,277	1,567	162
Cuvier's beaked whale	Northern Gulf of Mexico	1,487	8	0	0	0	1,495	1,495	966	966	155	155
	Western North Atlantic	84,460	724	3	0	0	73,799	85,187	4,704	52,716	1,569	162
Gervais' beaked whale	Northern Gulf of Mexico	1,420	8	0	0	0	1,428	1,428	966	966	148	148
	Western North Atlantic	22,902	197	1	0	0	19,959	23,100	1,274	14,277	1,567	162
Northern bottlenose whale	Western North Atlantic	2,040	4	0	0	0	1,836	2,044	100	688	1,836	297
Sowersby's beaked whale	Western North Atlantic	22,930	197	1	0	0	19,987	23,128	1,274	14,277	1,569	162
True's beaked whale	Western North Atlantic	22,930	197	1	0	0	19,987	23,128	1,274	14,277	1,569	162

Note: In the table we compare estimated takes to abundance estimates generated from the same underlying density estimate (as described in the *Estimated Take of Marine Mammals* section of the 2018 AFTT final rule), versus abundance estimates directly from NMFS' SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the U.S. EEZ only (where density estimates have lesser uncertainty) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing plus harassment take from one large ship shock trial.

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected species or stocks addressed in this section.

Beaked Whales, Including Northern Bottlenose Whale (Western North Atlantic Stocks)

These stocks span the deeper waters of the East Coast of the U.S. north to Canada and out into oceanic waters beyond the U.S. EEZ. There is no currently reported trend for these populations and there are no specific issues with the status of the stocks that cause particular concern. Neither mortality nor tissue damage from explosives is anticipated or proposed for authorization for these stocks. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance within the U.S. EEZ and both in and outside of the U.S. EEZ is 1,567–1,836 percent and 148–297 percent, respectively (Table 22). This information, combined with the known

range of the stocks, suggests that while not all of the individuals in these stocks would most likely be taken (because they span well into oceanic waters), of those that are, most would be taken over a few days (though likely not sequential) and some subset that spends extended time within the U.S. EEZ would likely be taken over a larger amount of days (maybe 15–37), some of which could be sequential. Regarding the severity of those individual takes by behavioral Level B harassment, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to generally be between minutes and hours and largely between 148 and 160 dB, though with beaked whales, which are considered somewhat more sensitive, this could mean that some individuals will leave preferred habitat for a day or two. However, while interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity in the Western North Atlantic.

Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would adversely affect communication, inhibit echolocation, or otherwise interfere with other low-frequency cues. Therefore any associated lost opportunities and capabilities would not impact reproduction or survival. For the same reasons (low level and frequency band) the one to three estimated Level A harassment takes by PTS for these stocks are unlikely to have any effect on the reproduction or survival of any individual, even if PTS were to be experienced by an individual that also experiences one or more Level B harassment takes.

Altogether, a small portion of the stock would likely be taken (at a relatively moderate level) on a relatively moderate to high number of days across the year, some of which could be sequential. Though the majority of impacts are expected to be of a sometimes low, but more likely, moderate magnitude and severity, the sensitivity of beaked whales and larger number of takes makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year (energetic impacts to males generally have limited impact on population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal). As noted previously, however, foregone reproduction (especially for one year) has far less of an impact on population rates than mortality and a small number of instances would not be expected to adversely impact annual rates of recruitment or survival. Based on the abundance of these stocks in the area and the evidence of little, if any, known human-caused mortality, all indications are that the small number of times in which reproduction would be likely to be foregone would not affect the stocks' annual rates of recruitment or survival. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on the Western North Atlantic stocks of beaked whales.

Beaked Whales (Gulf of Mexico Stocks)

The animals in these stocks suffer from lingering health issues resulting from the DWH oil spill (four percent of individuals of these stocks have adverse health effects), which means that some of them could be more susceptible to exposure to other stressors, and negative population effects (10 years for their growth rate to recover to the rate predicted for the stocks if they had not incurred spill impacts). Neither mortality nor tissue damage from explosives is anticipated or proposed for authorization for these stocks. Level A harassment take from PTS is also unlikely to occur. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance is 148–155 percent (Table 22). This information indicates that either the individuals in these stocks would all be taken by harassment one or two days within a year, or that a subset would not be taken at all and a small subset may be taken several times. Regarding the severity of those individual takes, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to generally be between minutes and hours and largely between 148 and 160 dB, though with beaked whales, which are considered somewhat more sensitive, this could mean that some individuals will leave preferred habitat for a day or two. However, while interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity in the Gulf of Mexico. Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would adversely affect communication, inhibit echolocation, or otherwise interfere with other low frequency cues. Therefore any associated lost opportunities and capabilities would not impact reproduction or survival.

Altogether, likely only a portion of these stocks would be impacted and any individual beaked whale likely would be disturbed at a moderate level for no more than a few days per year. Even given the fact that some of the affected individuals may have compromised health, there is nothing to suggest that this magnitude and severity of effects would result in impacts on annual rates of recruitment or survival for any of the stocks. For these reasons, we have preliminarily determined, in consideration of all of the effects of the Navy's activities combined, that the proposed authorized take would have a negligible impact on the Gulf of Mexico stocks of beaked whales included in Table 22.

Pinnipeds

In Table 23 below for pinnipeds, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 23 is unchanged from Table 77 in the 2018 AFTT final rule. For additional information and analysis supporting the negligible-impact analysis, see the *Pinnipeds* discussion in the *Group and Species-Specific Analyses* section of the 2018 AFTT final rule, all of which remains applicable to this proposed rule unless specifically noted.

Table 23: Annual estimated takes by Level B harassment, Level A harassment, and mortality for pinnipeds in the AFTT Study Area and number indicating the instances of total take as a percentage of stock abundance.

		Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percentage of abundance	
		Level B Harassment		Level A Harassment		Mortality						
Species	Stock	Behavioral Disturbance	TTS (may also include disturbance)	PTS	Tissue Damage		In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ	In EEZ	Inside and Outside EEZ
Suborder Pinnipedia												
Family Phocidae (true seals)												
Gray seal	Western North Atlantic	810	1,528	2	0	0	2,340	2,340	2,472	2,472	95	95
Harbor seal	Western North Atlantic	1,312	2,477	4	0	0	3,793	3,793	11,122	11,122	34	34
Harp seal	Western North Atlantic	6,339	9,955	3	0	0	16,297	16,297	7,242	7,242	225	225
Hooded seal	Western North Atlantic	448	466	0	0	0	914	914	880	880	104	104

Note: In the table we compare estimated takes to abundance estimates generated from the same underlying density estimate (as described in the *Estimated Take of Marine Mammals* section of the 2018 AFTT final rule), versus abundance estimates directly from NMFS' SARs, which are not based on the same data and would not be appropriate for this purpose. Note that comparisons are made both within the U.S. EEZ only (where density estimates have lesser uncertainty) and across the whole Study Area (which offers a more comprehensive comparison for many stocks).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing plus harassment take from one large ship shock trial.

Below we compile and summarize the information that supports our determination that the Navy's activities would not adversely affect any pinnipeds through effects on annual rates of recruitment or survival for any of the affected species or stocks addressed in this section.

The Western North Atlantic pinniped (harp seal, harbor seal, hooded seal, and gray seal) stocks are northern, but highly migratory species. While harp seals are limited to the northern portion of the U.S. EEZ, gray and harbor seals may be found as far south as the Chesapeake Bay in late fall and hooded seals migrate as far south as Puerto Rico. A UME has been designated for seals from Maine to Virginia and the main pathogen found in the seals that have been tested is phocine distemper virus. Neither mortality nor tissue damage from explosives is anticipated or proposed for authorization for any of these stocks. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of harassment compared to the abundance that is expected within the AFTT Study Area is 34–225 percent, which suggests that only a subset of the animals in the AFTT Study Area would be taken, but that a few might be taken on several days within the year (1–5 days), but not likely on sequential days. When the fact that some of these seals are residing in areas near Navy activities is considered, we can estimate that perhaps some of those individuals might be taken some higher number of days within the year (up to approximately 10 days), but still with no reason to think that these takes would occur on sequential days, which means that we would not expect effects on reproduction or survival. Regarding the severity of those individual behavioral Level B harassment takes, as explained in the 2018 AFTT final rule, the duration of any exposure response is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels are largely below 172 dB, with some up to 178 dB (*i.e.,* of a lower to moderate level, less likely to evoke a severe response) and therefore there is no indication that the expected takes by behavioral Level B harassment would have any effect on annual rates of recruitment or survival.

Regarding the severity of TTS takes, as explained in the 2018 AFTT final rule, they are expected to be low-level, of short duration, and not in a frequency band that would adversely affect communication or otherwise interfere with other low-frequency cues. Therefore any associated lost opportunities and capabilities would not impact reproduction or survival. For the same reasons (low level and frequency band) the two to four estimated Level A harassment takes by PTS for these stocks are unlikely to have any effect on the reproduction or survival of any individual, even if PTS were to be experienced by an animal that also experiences one or more Level B harassment takes.

Even given the fact that some of the affected harbor seal individuals may have compromised health due to the UME, there is nothing to suggest that such a low magnitude and severity of effects would result in impacts on annual rates of recruitment or survival, especially given that the stock abundance in the SAR is 75,839 with a residual PBR of 1,651. Similarly, given the low magnitude and severity of effects, there is no indication that these activities would affect reproduction or survival of harp or hooded seals, much less adversely affect rates of recruitment or survival, especially given that harp seal abundance is estimated at 6.9 million and hooded seal residual PBR is 13,950. Gray seals are experiencing a UME as well as an exceedance of more than 4,299 M/SI above PBR. The NMFS SAR notes that the U.S. portion of average annual human-caused M/SI in U.S. waters does not exceed the portion of PBR in U.S. waters, and that while the status of the gray seal population relative to OSP in U.S. Atlantic EEZ waters is unknown the stock abundance appears to be increasing in U.S. and Canadian waters (Hayes *et al.,* 2018). Also, given the low magnitude (take compared to abundance is 95 percent, meaning the subset of individuals taken may be taken a few times on non-sequential days) and low to occasionally moderate severity of impacts, no impacts to individual reproduction or survival are expected and therefore no effects on annual rates of recruitment or survival would occur. For these reasons, in consideration of all of the effects of the Navy's activities combined, we have preliminarily determined that the proposed authorized take would have a

negligible impact on the Western North Atlantic stocks of gray seals, harbor seals, hooded seals, and harp seals.

Determination

The 2018 AFTT final rule included a detailed discussion of all of the anticipated impacts on the affected species and stocks from serious injury and mortality, Level A harassment, and Level B harassment; impacts on habitat; and how the Navy's mitigation and monitoring measures reduced the number and/or severity of adverse effects. We evaluated how these impacts and mitigation measures are expected to combine, annually, to affect individuals of each stock. Those effects were then evaluated in the context of whether they are reasonably likely to impact reproductive success or survivorship of individuals and then, if so, further analyzed to determine whether there would be effects on annual rates of recruitment or survival that would adversely affect the species or stock.

As described above, the basis for the negligible impact determination is the assessment of effects on annual rates of recruitment and survival. Accordingly, the analysis included in the 2018 AFTT final rule used annual activity levels, the best available science, and approved methods to predict the annual impacts to marine mammals, which were then analyzed in the context of whether each species or stock would incur more than a negligible impact based on anticipated adverse impacts to annual rates of recruitment or survival. As we have described above, none of the factors upon which the annually-based conclusions in the 2018 AFTT final rule were based have changed in a manner that would change our determinations. Therefore, even though this proposed rule includes two additional years, because our findings are based on annual rates of recruitment and survival, and nothing has changed in a manner that would change our 2018 AFTT rule annual analyses, it is appropriate to rely on those analyses, as well as the information and analysis discussed above, for this proposed rule.

Based on the applicable information and analysis from the 2018 AFTT final rule as updated with the information and analysis contained herein on the potential and likely effects of the specified activities on the affected marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS preliminarily finds that the incidental take from the specified activities will have a negligible impact on all affected marine mammal species and stocks.

Subsistence Harvest of Marine Mammals

There are no subsistence uses or harvest of marine mammals in the geographic area affected by the specified activities. Therefore, NMFS has determined that the total taking affecting species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

ESA

There are six marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the AFTT Study Area: Blue whale (Western North Atlantic stock), fin whale (Western North Atlantic stock), sei whale (Nova Scotia stock), sperm whale (Gulf of Mexico Oceanic stock and North Atlantic stock), North Atlantic right whale (Western North Atlantic stock), and Bryde's whale (Northern Gulf of Mexico stock). The Navy consulted with NMFS pursuant to section 7 of the ESA for AFTT activities. NMFS also consulted internally on the issuance of the 2018 AFTT regulations and LOAs under section 101(a)(5)(A) of the MMPA. NMFS issued a Biological and Conference Opinion on October 22, 2018 concluding that the issuance of the 2018 AFTT final rule and subsequent LOAs are not likely to jeopardize the continued existence of the threatened and endangered species under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of critical habitat in the AFTT Study Area. The Biological and Conference Opinion for this action is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* NMFS' Permits and Conservation Division is currently discussing the 2019 Navy application with NMFS' ESA Interagency Cooperation Division.

National Marine Sanctuaries Act

Federal agency actions that are likely to injure national marine sanctuary resources are subject to consultation with the Office of National Marine Sanctuaries (ONMS) under section 304(d) of the National Marine Sanctuaries Act (NMSA).

On December 15, 2017, the Navy initiated consultation with ONMS and submitted a Sanctuary Resource Statement (SRS) that discussed the effects of the Navy's AFTT activities in the vicinity of Stellwagen Bank, Gray's Reef, and Florida Keys National Marine Sanctuaries on sanctuary resources. NMFS worked with the Navy in the development of the SRS to ensure that it could serve jointly as an SRS for NMFS' action under the MMPA as well.

On December 20, 2017, NMFS initiated consultation with ONMS on MMPA incidental take regulations for the Navy's AFTT activities. NMFS requested that ONMS consider the description and assessment of the effects of the Navy's activities, which included an assessment of the effects on marine mammals, included in the joint SRS submitted by the Navy as satisfying NMFS' need to provide an SRS.

ONMS reviewed the SRS, as well as an addendum the Navy provided on April 3, 2018. On April 12, 2018, ONMS found the SRS addendum sufficient for the purposes of making an injury determination to develop recommended alternatives as required by the NMSA. On May 15, 2018, ONMS recommended two reasonable and prudent measures to Navy and NMFS (one of which applied to NMFS) to minimize injury and to protect sanctuary resources. ONMS subsequently provided a slight modification of those recommendations to the Navy and NMFS on August 1, 2018. On August 17, 2018, the Navy agreed to implement both ONMS recommendations and on October 30, 2018, NMFS agreed to implement the recommendation that applied to NMFS. NMFS' Permits and Conservation Division is currently discussing the 2019 Navy application with ONMS.

NEPA

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 evaluate our proposed actions and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the 2018 AFTT FEIS/OEIS (published on September 14, 2018, *http://www.aftteis.com*) which evaluated impacts from Navy training and testing activities in the AFTT Study Area for the reasonably foreseeable future. In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2018 AFTT FEIS/OEIS and determined that it was adequate and sufficient to meet our responsibilities under NEPA for the issuance of the 2018 AFTT final rule and associated LOAs. NOAA therefore adopted the 2018 AFTT FEIS/OEIS. In accordance with 40 CFR 1502.9 and the information and analysis contained in this proposed rule, the Navy and NMFS as a

cooperating agency have made a preliminary determination that this proposed rule and any subsequent LOAs would not result in impacts that were not fully considered in the 2018 AFTT FEIS/OEIS. As indicated in this proposed rule, the Navy has made no substantial changes to the proposed action nor are there significant new circumstances or information relevant to environmental concerns or its impacts. NMFS will make a final NEPA determination prior to a decision whether to issue a final rule.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the sole entity that would be affected by this rulemaking, and the Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Navy. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: May 6, 2019.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Revise subpart I of part 218 to read as follows:

Subpart I—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Training and Testing (AFTT)

Sec.

218.80 Specified activity and specified geographical region.
218.81 Effective dates.
218.82 Permissible methods of taking.
218.83 Prohibitions.
218.84 Mitigation requirements.
218.85 Requirements for monitoring and reporting.
218.86 Letters of Authorization.
218.87 Renewals and modifications of Letters of Authorization.
218.88–218.89 [Reserved]

Subpart I—Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Training and Testing (AFTT)

§ 218.80 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy under this subpart may be authorized in Letters of Authorization (LOAs) only if it occurs within the Atlantic Fleet Training and Testing (AFTT) Study Area, which includes areas of the western Atlantic Ocean along the East Coast of North America, portions of the Caribbean Sea, and the Gulf of Mexico. The AFTT Study Area begins at the mean high tide line along the U.S. East Coast and extends east to the 45-degree west longitude line, north to the 65-degree north latitude line, and south to approximately the 20-degree north latitude line. The AFTT Study Area also includes Navy pierside locations, bays, harbors, and inland waterways, and civilian ports where training and testing occurs.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy conducting training and testing activities, including:

(1) *Training.* (i) Amphibious warfare;
(ii) Anti-submarine warfare;
(iii) Electronic warfare;
(iv) Expeditionary warfare;
(v) Mine warfare;
(vi) Surface warfare, and
(vii) Pile driving.

(2) *Testing.* (i) Naval Air Systems Command Testing Activities;
(ii) Naval Sea System Command Testing Activities; and
(iii) Office of Naval Research Testing Activities.

§ 218.81 Effective dates.

Regulations in this subpart are effective from [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] through November 13, 2025.

§ 218.82 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.86, the Holder of the LOAs (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.80(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives as well as serious injury or mortality associated with ship shock trials and vessel strikes, provided the activity is in compliance with all terms, conditions, and requirements of these regulations in this subpart and the applicable LOAs.

(b) The incidental take of marine mammals by the activities listed in § 218.80(c) is limited to the following species:

TABLE 1 TO § 218.82

Species	Stock
Suborder Mysticeti (baleen whales)	
Family Balaenidae (right whales):	
North Atlantic right whale *	Western.

TABLE 1 TO § 218.82—Continued

Species	Stock
Family Balaenopteridae (roquals):	
Blue whale *	Western North Atlantic (Gulf of St. Lawrence).
Bryde's whale *	Northern Gulf of Mexico.
	NSD.
Minke whale	Canadian East Coast.
Fin whale *	Western North Atlantic.
Humpback whale	Gulf of Maine.
Sei whale *	Nova Scotia.
Suborder Odontoceti (toothed whales).	
Family Physeteridae (sperm whale):	
Sperm whale *	Gulf of Mexico Oceanic.
	North Atlantic.
Family Kogiidae (sperm whales):	
Dwarf sperm whale.	Gulf of Mexico Oceanic.
	Western North Atlantic.
Pygmy sperm whale	Northern Gulf of Mexico.
	Western North Atlantic.
Family Ziphiidae (beaked whales):	
Blainville's beaked whale	Northern Gulf of Mexico.
	Western North Atlantic.
Cuvier's beaked whale	Northern Gulf of Mexico.
	Western North Atlantic.
Gervais' beaked whale	Northern Gulf of Mexico.
	Western North Atlantic.
Northern bottlenose whale	Western North Atlantic.
Sowersby's beaked whale	Western North Atlantic.
True's beaked whale	Western North Atlantic.
Family Delphinidae (dolphins)	
Atlantic spotted dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
Atlantic white-sided dolphin	Western North Atlantic.
Bottlenose dolphin	Choctawhatchee Bay.
	Gulf of Mexico Eastern Coastal.
	Gulf of Mexico Northern Coastal.
	Gulf of Mexico Western Coastal.
	Indian River Lagoon Estuarine System.
	Jacksonville Estuarine System.
	Mississippi Sound, Lake Borgne, Bay Boudreau.
	Northern Gulf of Mexico Continental Shelf.
	Northern Gulf of Mexico Oceanic.
	Northern North Carolina Estuarine System.
	Southern North Carolina Estuarine System.
	Western North Atlantic Northern Florida Coastal.
	Western North Atlantic Central Florida Coastal.
	Western North Atlantic Northern Migratory Coastal.
	Western North Atlantic Offshore.
	Western North Atlantic South Carolina/Georgia Coastal.
	Western North Atlantic Southern Migratory Coastal.
Clymene dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
False killer whale	Northern Gulf of Mexico.
	Western North Atlantic.
Fraser's dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
Killer whale	Northern Gulf of Mexico.
	Western North Atlantic.
Long-finned pilot whale	Western North Atlantic.
Melon-headed whale	Northern Gulf of Mexico.
	Western North Atlantic.
Pantropical spotted dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
Pygmy killer whale	Northern Gulf of Mexico.
	Western North Atlantic.
Risso's dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
Rough-toothed dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
Short-beaked common dolphin	Western North Atlantic.
Short-finned pilot whale	Northern Gulf of Mexico.
	Western North Atlantic.

TABLE 1 TO § 218.82—Continued

Species	Stock
Spinner dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
Striped dolphin	Northern Gulf of Mexico.
	Western North Atlantic.
White-beaked dolphin	Western North Atlantic.
Family Phocoenidae (porpoises):	
Harbor porpoise	Gulf of Maine/Bay of Fundy.
Suborder Pinnipedia	
Family Phocidae (true seals):	
Gray seal	Western North Atlantic.
Harbor seal	Western North Atlantic.
Harp seal	Western North Atlantic.
Hooded seal	Western North Atlantic.

§ 218.83 Prohibitions.

Notwithstanding incidental takings contemplated in § 218.82(a) and authorized by LOAs issued under §§ 216.106 of this chapter and 218.86, no person in connection with the activities listed in § 218.80(c) may:

(a) Violate, or fail to comply with the terms, conditions, and requirements of this subpart or an LOA issued under § 216.106 of this chapter and § 218.86;

(b) Take any marine mammal not specified in § 218.82(b);

(c) Take any marine mammal specified § 218.82(b) in any manner other than as specified in the LOAs; or

(d) Take a marine mammal specified § 218.82(b) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal.

§ 218.84 Mitigation requirements.

When conducting the activities identified in § 218.80(c), the mitigation measures contained in any LOAs issued under §§ 216.106 of this chapter and 218.86 must be implemented. These mitigation measures include, but are not limited to:

(a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy must implement whenever and wherever an applicable training or testing activity takes place within the AFTT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.,* active sonar, air guns, pile driving, weapons firing noise), explosive stressors (*i.e.,* sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, sinking exercises, mines, anti-swimmer grenades, line charge testing and ship shock trials), and physical disturbance and strike stressors (*i.e.,* vessel movement; towed in-water devices; small-, medium-, and large-caliber non-explosive practice munitions; non-explosive missiles and rockets; non-explosive bombs and mine shapes).

(1) *Environmental awareness and education.* Appropriate personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specified activities must complete one or more modules of the U.S. Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training Series, Marine Species Awareness Training, U.S. Navy Protective Measures Assessment Protocol, and U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting.

(2) *Active sonar.* Active sonar includes low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar. For vessel-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (*e.g.,* sonar sources towed from manned surface platforms). For aircraft-based active sonar activities, mitigation applies only to sources that are positively controlled and deployed from manned aircraft that do not operate at high altitudes (*e.g.,* rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (*e.g.,* maritime patrol aircraft).

(i) *Number of Lookouts and observation platform.* (A) *Hull-mounted sources.* One Lookout for platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside); two Lookouts for platforms without space or manning restrictions while underway (at the forward part of the ship); and four Lookouts for pierside sonar testing activities at Port Canaveral, Florida and Kings Bay, Georgia.

(B) *Sources that are not hull-mounted sources.* One Lookout on the ship or aircraft conducting the activity.

(ii) *Mitigation zones and requirements.* During the activity, at 1,000 yard (yd) Navy personnel must power down 6 decibels (dB), at 500 yd Navy personnel must power down an additional 4 dB (for a total of 10 dB), and at 200 yd Navy personnel must shut down for low-frequency active sonar ≥200 dB and hull-mounted mid-frequency active sonar; or at 200 yd Navy personnel must shut down for low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of active sonar transmission.

(B) During low-frequency active sonar at or above 200 dB and hull-mounted mid-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down by an additional 4 dB (10 dB total) if marine mammals are observed within 500 yd of the sonar source; and cease transmission if marine mammals are observed within 200 yd of the sonar source.

(C) During low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull mounted, and high-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and cease active sonar transmission if marine mammals are observed within 200 yd of the sonar source.

(D) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; the mitigation zone has been clear from any additional sightings for 10 minutes (min) for aircraft-deployed sonar sources or 30 min for vessel-deployed sonar sources; for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or for activities using hull-mounted sonar where a dolphin(s) is observed in the mitigation zone, the Lookout concludes that the dolphin(s) is deliberately closing in on the ship to ride the ship's bow wave, and is therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

(3) *Air guns.* (i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a ship or pierside.

(ii) *Mitigation zone and requirements.* 150 yd around the air gun.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of air gun use.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease use of air guns.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air gun use) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the air gun; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the air gun has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(4) *Pile driving.* Pile driving and pile extraction sound during Elevated Causeway System training.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the shore, the elevated causeway, or a small boat.

(ii) *Mitigation zone and requirements.* 100 yd around the pile driver.

(A) Prior to the initial start of the activity (for 30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of pile driving or vibratory pile extraction.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease impact pile driving or vibratory pile extraction.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing pile driving or pile extraction) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the pile driving location; or the mitigation zone has been clear from any additional sightings for 30 min.

(5) *Weapons firing noise.* Weapons firing noise associated with large-caliber gunnery activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the ship conducting the firing. Depending on the activity, the Lookout could be the same as the one provided for under Explosive medium-caliber and large-caliber projectiles or under Small-, medium-, and large-caliber non-explosive practice munitions in paragraph (a)(8)(i) and (a)(19)(i) of this section.

(ii) *Mitigation zone and requirements.* Thirty degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(A) Prior to the initial start of the activity, Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of weapons firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease weapons firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(6) *Explosive Sonobuoys.* (i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft or on small boat. If additional platforms are participating in the activity, personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 600 yd around an explosive sonobuoy.

(A) Prior to the initial start of the activity (*e.g.,* during deployment of a sonobuoy field, which typically lasts 20–30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate

or delay the start until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease sonobuoy or source/receiver pair detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints (*e.g.,* helicopter), or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station)—when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(7) *Explosive torpedoes.* (i) *Number of Lookouts and observation platform.* One Lookout positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,100 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.,* during deployment of the target), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, relocate or delay the start until the mitigation zone is clear. Navy personnel also must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station)—when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(8) *Explosive medium-caliber and large-caliber projectiles.* Gunnery activities using explosive medium-caliber and large-caliber projectiles. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel or aircraft conducting the activity. For activities using explosive large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described in Weapons Firing Noise in paragraph (a)(5)(i) of this section. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles.

(B) 600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles.

(C) 1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles.

(D) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(E) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(G) After completion of the activity (*e.g.,* prior to maneuvering off station)—when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(9) *Explosive missiles and rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 900 yd around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight.

(B) 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight.

(C) Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(D) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (*e.g.,* prior to maneuvering off station)—when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(10) *Explosive bombs.* (i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,500 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment.

(B) During the activity (*e.g.,* during target approach), Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station)—when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(11) *Sinking exercises.* (i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned in an aircraft and one must be positioned on a vessel). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2.5 nautical miles (nmi) around the target ship hulk.

(A) Prior to the initial start of the activity (90 min prior to the first firing), Navy personnel must conduct aerial observations of the mitigation zone for floating vegetation; if floating vegetation is observed Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must conduct aerial observations of the mitigation zone for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must delay the start of firing.

(B) During the activity, Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. Immediately after any planned or unplanned breaks in weapons firing of longer than two hours, Navy personnel must observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed,

Navy personnel must delay recommencement of firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the target ship hulk; or the mitigation zone has been clear from any additional sightings for 30 min.

(D) After completion of the activity (for two hours after sinking the vessel or until sunset, whichever comes first), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(12) *Explosive mine countermeasure and neutralization activities.* (*i*) Number of Lookouts and observation platform. (A) One Lookout must be positioned on a vessel or in an aircraft when implementing the smaller mitigation zone defined at paragraph (a)(12)(ii)(A) of this section (using 0.1–5 lb net explosive weight charges).

(B) Two Lookouts (one must be in an aircraft and one must be on a small boat) when implementing the larger mitigation zone defined at paragraph (a)(12)(ii)(B) of this section (using 6–650 lb net explosive weight charges).

(C) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 600 yd around the detonation site for activities using 0.1–5 lb net explosive weight.

(B) 2,100 yd around the detonation site for activities using 6–650 lb net explosive weight (including high explosive target mines).

(C) Prior to the initial start of the activity (*e.g.,* when maneuvering on station; typically, 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, the Navy must cease detonations.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(13) *Explosive mine neutralization activities involving navy divers*—(i) *Number of Lookouts and observation platform.* (A) Two Lookouts must be positioned (two small boats with one Lookout each, or one Lookout must be on a small boat and one must be in a rotary-wing aircraft) when implementing the smaller mitigation zone defined at paragraph (a)(13)(ii)(A) of this section.

(B) Four Lookouts must be positioned (two small boats with two Lookouts each), and a pilot or member of an aircrew must serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone defined at paragraph (a)(13)(ii)(B) of this section.

(C) All divers placing the charges on mines must support the Lookouts while performing their regular duties and must report applicable sightings to their supporting small boat or Range Safety Officer.

(D) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight.

(B) 1,000 yd around the detonation site during all activities using time-delay fuses (0.1–20 lb net explosive weight) and during activities under positive control using 21–60 lb net explosive weight charges.

(C) Prior to the initial start of the activity (*e.g.,* when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonation or fuse initiation.

(D) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease detonation or fuse initiation. To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, boats must position themselves near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), must position themselves on opposite sides of the detonation location (when two boats are used), and must travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site and the other observing outward toward the perimeter of the mitigation zone. If used, aircraft must travel in a circular pattern around the detonation location to the maximum extent practicable. Navy personnel must not set time-delay firing devices (0.1–20 lb. net explosive weight) to exceed 10 min.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or the mitigation zone has been clear from any additional sightings for 10 min during activities under positive control with aircraft that have fuel constraints, or 30 min during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices.

(F) After completion of an activity (for 30 min), Navy personnel must observe for marine mammals in the vicinity of where any detonations have occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(14) *Maritime security operations—anti-swimmer grenades*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the small boat conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 200 yd around the intended detonation location.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonation.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease detonation.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; the mitigation zone has been clear from any additional sightings for 30 min; or the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(15) *Line charge testing*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a vessel. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 900 yd around the intended detonation location.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of detonations.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; or the mitigation zone has been clear from any additional sightings for 30 min.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(16) *Ship shock trials*—(i) *Number of Lookouts and observation platform.* (A) A minimum of ten Lookouts or trained marine species observers (or a combination thereof) must be positioned either in an aircraft or on multiple vessels (*i.e.,* a Marine Animal Response Team boat and the test ship).

(*1*) If aircraft are used, Lookouts or trained marine species observers must be in an aircraft and on multiple vessels.

(*2*) If aircraft are not used, a sufficient number of additional Lookouts or trained marine species observers must be used to provide vessel-based visual observation comparable to that achieved by aerial surveys.

(B) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 3.5 nmi around the ship hull.

(A) The Navy must not conduct ship shock trials in the Jacksonville Operating Area during North Atlantic right whale calving season from November 15 through April 15.

(B) The Navy must develop detailed ship shock trial monitoring and mitigation plans approximately one-year

prior to an event and must continue to provide these to NMFS for review and approval.

(C) Pre-activity planning must include selection of one primary and two secondary areas where marine mammal populations are expected to be the lowest during the event, with the primary and secondary locations located more than 2 nmi from the western boundary of the Gulf Stream for events in the Virginia Capes Range Complex or Jacksonville Range Complex.

(D) If it is determined during pre-activity surveys that the primary area is environmentally unsuitable (*e.g.,* observations of marine mammals or presence of concentrations of floating vegetation), the shock trial can be moved to a secondary site in accordance with the detailed mitigation and monitoring plan provided to NMFS.

(E) Prior to the initial start of the activity at the shock trial location (in intervals of 5 hrs, 3 hrs, 40 min, and immediately before the detonation), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay triggering the detonation.

(F) During the activity, Navy personnel must observe for marine mammals, large schools of fish, jellyfish aggregations, and flocks of seabirds; if marine mammals, large schools of fish, jellyfish aggregations, and flocks of seabirds are observed, Navy personnel must cease triggering the detonation. After completion of each detonation, Navy personnel must observe the mitigation zone for marine mammals; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures and halt any remaining detonations until Navy personnel can consult with NMFS and review or adapt the mitigation, if necessary.

(G) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: the animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the ship hull; or the mitigation zone has been clear from any additional sightings for 30 min.

(H) After completion of the activity (during the following two days at a minimum, and up to seven days at a maximum), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(17) *Vessel movement.* The mitigation must not be applied if: The vessel's safety is threatened; the vessel is restricted in its ability to maneuver (*e.g.,* during launching and recovery of aircraft or landing craft, during towing activities, when mooring, etc.); or the vessel is operated autonomously.

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel that is underway.

(ii) *Mitigation zone and requirements.* (A) 500 yd around whales.

(B) 200 yd around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels).

(C) During the activity, when underway, Navy personnel must observe the mitigation zone for marine mammals; if any marine mammals are observed, Navy personnel must maneuver to maintain distance.

(D) Additionally, Navy personnel must broadcast awareness notification messages with North Atlantic right whale Dynamic Management Area information (*e.g.,* location and dates) to applicable Navy assets operating in the vicinity of the Dynamic Management Area. The information will alert assets to the possible presence of a North Atlantic right whale to maintain safety of navigation and further reduce the potential for a vessel strike. Platforms must use the information to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation, including but not limited to, mitigation for vessel movement. If a marine mammal vessel strike occurs, Navy personnel must follow the established incident reporting procedures.

(18) *Towed in-water devices.* Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. The mitigation will not be applied if the safety of the towing platform or in-water device is threatened.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a manned towing platform.

(ii) *Mitigation zone and requirements.* 250 yd around marine mammals. During the activity, when towing an in-water device, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(19) *Small-, medium-, and large-caliber non-explosive practice munitions.* Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the platform conducting the activity. Depending on the activity, the Lookout could be the same as the one described for Weapons Firing Noise in paragraph (a)(5)(i) of this section.

(ii) *Mitigation zone and requirements.* 200 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(20) *Non-explosive missiles and rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 900 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(21) *Non-explosive bombs and mine shapes.* Non-explosive bombs and non-explosive mine shapes during mine laying activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 1,000 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying.

(B) During the activity (*e.g.,* during approach of the target or intended minefield location), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment or mine laying.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity: Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(b) *Mitigation areas.* In addition to procedural mitigation, the Navy must implement mitigation measures within mitigation areas to avoid potential impacts on marine mammals.

(1) *Mitigation areas off the Northeastern United States for sonar, explosives, and physical disturbance and strikes.* (i) *Mitigation area requirements.* (A) *Northeast North Atlantic Right Whale Mitigation Area (year-round):*

(*1*) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area (which includes North Atlantic right whale ESA-designated critical habitat) in its annual training and testing activity reports submitted to NMFS.

(*2*) Navy personnel must minimize the use of low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar to the maximum extent practicable within the mitigation area.

(*3*) Navy personnel must not use Improved Extended Echo Ranging sonobuoys in or within 3 nmi of the mitigation area or use explosive and non-explosive bombs, in-water detonations, and explosive torpedoes within the mitigation area.

(*4*) For activities using non-explosive torpedoes within the mitigation area, Navy personnel must conduct activities during daylight hours in Beaufort sea state 3 or less. The Navy must use three Lookouts (one positioned on a vessel and two positioned in an aircraft during dedicated aerial surveys) to observe the vicinity of the activity. An additional Lookout must be positioned on the submarine, when surfaced. Immediately prior to the start of the activity, Navy personnel must observe for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel must not commence the activity until the vicinity is clear or the activity is relocated to an area where the vicinity is clear. During the activity, Navy personnel must observe for marine mammals; if observed, Navy personnel must cease the activity. To allow a sighted marine mammal to leave the area, Navy personnel must not recommence the activity until one of the following conditions has been met: The animal is observed exiting the vicinity of the activity; the animal is thought to have exited the vicinity of the activity based on a determination of its course, speed, and movement relative to the activity location; or the area has been clear from any additional sightings for 30 min. During transits and normal firing, ships must maintain a speed of no more than 10 knots (kn). During submarine target firing, ships must maintain speeds of no more than 18 kn. During vessel target firing, vessel speeds may exceed 18 kn for brief periods of time (*e.g.,* 10–15 min).

(*5*) For all activities, before a vessel transits within the mitigation area, Navy personnel must conduct a web query or email inquiry to the National Oceanographic and Atmospheric Administration Northeast Fisheries Science Center's North Atlantic Right Whale Sighting Advisory System to obtain the latest North Atlantic right whale sightings information. Navy personnel on vessels must use the sightings information to reduce potential interactions with North Atlantic right whales during transits. Navy personnel on vessels must implement speed reductions within the mitigation area after observing a North Atlantic right whale, if transiting within 5 nmi of a sighting reported to the North Atlantic Right Whale Sighting Advisory System within the past week, and if transiting at night or during periods of reduced visibility.

(B) *Gulf of Maine Planning Awareness Mitigation Area (year-round):*

(*1*) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training

and testing activity reports submitted to NMFS.

(*2*) Navy personnel must not conduct greater than 200 hrs of hull-mounted mid-frequency active sonar per year within the mitigation area.

(*3*) Navy personnel must not conduct major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) within the mitigation area. If the Navy needs to conduct a major training exercise within the mitigation area in support of training requirements driven by national security concerns, Navy personnel must confer with NMFS to verify that potential impacts are adequately addressed.

(C) *Northeast Planning Awareness Mitigation Areas (year-round):* (*1*) Navy personnel will avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) within the mitigation area to the maximum extent practicable.

(*2*) Navy personnel must not conduct more than four major training exercises per year (all or a portion of the exercise) within the mitigation area.

(*3*) If the Navy needs to conduct additional major training exercises in the mitigation area in support of training requirements driven by national security concerns, Navy personnel must provide NMFS with advance notification and include the information in its annual training and testing activity reports submitted to NMFS.

(ii) [Reserved]

(2) *Mitigation areas off the Mid-Atlantic and Southeastern United States for sonar, explosives, and physical disturbance and strikes.*

(i) *Mitigation area requirements.* (A) *Southeast North Atlantic Right Whale Mitigation Area (November 15 through April 15):*

(*1*) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports submitted to NMFS.

(*2*) The Navy must not conduct: Low-frequency active sonar (except as noted in paragraph (b)(2)(i)(A)(*3*) of this section), mid-frequency active sonar (except as noted in paragraph (b)(2)(i)(A)(*3*) of this section), high-frequency active sonar, missile and rocket activities (explosive and non-explosive), small-, medium-, and large-caliber gunnery activities, Improved Extended Echo Ranging sonobuoy activities, explosive and non-explosive bombing activities, in-water detonations, and explosive torpedo activities within the mitigation area.

(*3*) To the maximum extent practicable, Navy personnel must minimize the use of: helicopter dipping sonar, low-frequency active sonar and hull-mounted mid-frequency active sonar used for navigation training, and low-frequency active sonar and hull-mounted mid-frequency active sonar used for object detection exercises within the mitigation area.

(*4*) Before transiting or conducting training or testing activities within the mitigation area, Navy personnel must initiate communication with the Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System North Atlantic right whale sightings data. The Fleet Area Control and Surveillance Facility, Jacksonville must advise Navy personnel on vessels of all reported whale sightings in the vicinity to help Navy personnel on vessels and aircraft reduce potential interactions with North Atlantic right whales. Commander Submarine Force U.S. Atlantic Fleet must coordinate any submarine activities that may require approval from the Fleet Area Control and Surveillance Facility, Jacksonville. Navy personnel on vessels must use the sightings information to reduce potential interactions with North Atlantic right whales during transits.

(*5*) Navy personnel on vessels must implement speed reductions after they observe a North Atlantic right whale, if they are within 5 nmi of a sighting reported within the past 12 hrs, or when operating in the mitigation area at night or during periods of poor visibility.

(*6*) To the maximum extent practicable, Navy personnel on vessels must minimize north-south transits in the mitigation area.

(B) *Southeast North Atlantic Right Whale Critical Habitat Special Reporting Area (November 15 through April 15):*

(*1*) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the Special Reporting Area (which includes southeast North Atlantic right whale ESA-designated critical habitat) in its annual training and testing activity reports submitted to NMFS.

(*2*) [Reserved]

(C) *Jacksonville Operating Area (November 15 through April 15):*

(*1*) Navy units conducting training or testing activities in the Jacksonville Operating Area must initiate communication with the Fleet Area Control and Surveillance Facility, Jacksonville to obtain Early Warning System North Atlantic right whale sightings data. The Fleet Area Control and Surveillance Facility, Jacksonville must advise Navy personnel on vessels of all reported whale sightings in the vicinity to help Navy personnel on vessels and aircraft reduce potential interactions with North Atlantic right whales. Commander Submarine Force U.S. Atlantic Fleet must coordinate any submarine activities that may require approval from the Fleet Area Control and Surveillance Facility, Jacksonville. Navy personnel must use the reported sightings information as they plan specific details of events (*e.g.,* timing, location, duration) to minimize potential interactions with North Atlantic right whales to the maximum extent practicable. Navy personnel must use the reported sightings information to assist visual observations of applicable mitigation zones and to aid in the implementation of procedural mitigation.

(*2*) [Reserved]

(D) *Navy Cherry Point Range Complex Nearshore Mitigation Area (March through September):*

(*1*) Navy personnel must not conduct explosive mine neutralization activities involving Navy divers in the mitigation area.

(*2*) To the maximum extent practicable, Navy personnel must not use explosive sonobuoys, explosive torpedoes, explosive medium-caliber and large-caliber projectiles, explosive missiles and rockets, explosive bombs, explosive mines during mine countermeasure and neutralization activities, and anti-swimmer grenades in the mitigation area.

(E) *Mid-Atlantic Planning Awareness Mitigation Areas (year-round):*

(*1*) Navy personnel will avoid planning major training exercises (Composite Training Unit Exercises or Fleet Exercises/Sustainment Exercises) to the maximum extent practicable.

(*2*) Navy personnel must not conduct more than four major training exercises per year (all or a portion of the exercise) within the mitigation area.

(*3*) If the Navy needs to conduct additional major training exercises in the mitigation area in support of training requirements driven by national security concerns, Navy personnel must provide NMFS with advance notification and include the information in its annual training and testing activity reports submitted to NMFS.

(ii) [Reserved]

(3) *Mitigation areas in the Gulf of Mexico for sonar and explosives.* (i) *Mitigation area requirements.* (A) *Gulf of Mexico Planning Awareness Mitigation Areas (year-round):*

(*1*) Navy personnel must not conduct major training exercises within the mitigation area (all or a portion of the exercise).

(*2*) If the Navy needs to conduct a major training exercise within the mitigation areas in support of training requirements driven by national security concerns, Navy personnel must confer with NMFS to verify that potential impacts are adequately addressed.

(B) *Bryde's Whale Mitigation Area (year-round):*

(*1*) Navy personnel must report the total hours and counts of active sonar and in-water explosives used in the mitigation area in its annual training and testing activity reports submitted to NMFS.

(*2*) Navy personnel must not conduct greater than 200 hrs of hull-mounted mid-frequency active sonar per year within the mitigation area.

(*3*) Navy personnel must not use explosives (except during mine warfare activities) within the mitigation area.

(ii) [Reserved]

§ 218.85 Requirements for monitoring and reporting.

(a) *Unauthorized take.* The Navy must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.80 is thought to have resulted in the mortality or serious injury of any marine mammals, or in any Level A or Level B harassment take of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOAs.* The Navy must conduct all monitoring and required reporting under the LOAs, including abiding by the AFTT Study Area monitoring program. Details on program goals, objectives, project selection process, and current projects are available at *www.navymarinespeciesmonitoring.us.*

(c) *Notification of injured, live stranded, or dead marine mammals.* The Navy must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

(d) *Annual AFTT Study Area marine species monitoring report.* The Navy must submit an annual report of the AFTT Study Area monitoring describing the implementation and results from the previous calendar year. Data collection methods must be standardized across range complexes and study areas to allow for comparison in different geographic locations. The report must be submitted to the Director, Office of Protected Resources of NMFS either within 90 days after the calendar year, or within 90 days after the conclusion of the monitoring year to be determined by the Adaptive Management process. This report will describe progress of knowledge made with respect to monitoring plan study questions across all Navy ranges associated with the Integrated Comprehensive Monitoring Program. Similar study questions must be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions.

(e) *Annual AFTT Study Area training and testing reports.* Each year, the Navy must submit a preliminary report (Quick Look Report) detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. Each year, the Navy must submit a detailed report within 3 months after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. The annual reports must contain information on Major Training Exercises (MTEs), Sinking Exercise (SINKEX) events, and a summary of all sound sources used, including within specified mitigation reporting areas, as described in paragraph (e)(3) of this section. The analysis in the detailed report must be based on the accumulation of data from the current year's report and data collected from the previous report. The detailed reports must contain information identified in paragraphs (e)(1) through (5) of this section.

(1) *Major Training Exercises (MTEs).* This section of the report must contain the following information for MTEs conducted in the AFTT Study Area:

(i) Exercise information (for each MTE):

(A) Exercise designator;

(B) Date that exercise began and ended;

(C) Location;

(D) Number and types of active sonar sources used in the exercise;

(E) Number and types of passive acoustic sources used in exercise;

(F) Number and types of vessels, aircraft, and other platforms participating in exercise;

(G) Total hours of all active sonar source operation;

(H) Total hours of each active sonar source bin; and

(I) Wave height (high, low, and average) during exercise.

(ii) Individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented:

(A) Date/time/location of sighting;

(B) Species (if not possible, indication of whale/dolphin/pinniped);

(C) Number of individuals;

(D) Initial detection sensor (*e.g.,* sonar, Lookout);

(E) Indication of specific type of platform observation made from (including, for example, what type of surface vessel or testing platform);

(F) Length of time observers maintained visual contact with marine mammal;

(G) Sea state;

(H) Visibility;

(I) Sound source in use at the time of sighting;

(J) Indication of whether animal was less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd from sonar source;

(K) Mitigation implementation (*e.g.,* whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was);

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (opening, closing, parallel); and

(M) Lookouts must report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.) and if any calves were present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) *Sinking exercises (SINKEXs).* This section of the report must include the following information for each SINKEX completed that year:

(i) Exercise information (gathered for each SINKEX):

(A) Location;

(B) Date and time exercise began and ended;

(C) Total hours of observation by Lookouts before, during, and after exercise;

(D) Total number and types of explosive source bins detonated;

(E) Number and types of passive acoustic sources used in exercise;

(F) Total hours of passive acoustic search time;

(G) Number and types of vessels, aircraft, and other platforms participating in exercise;

(H) Wave height in feet (high, low, and average) during exercise; and

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal sighting information for each sighting where mitigation was implemented:

(A) Date/time/location of sighting;

(B) Species (if not possible, indicate whale, dolphin, or pinniped);

(C) Number of individuals;

(D) Initial detection sensor (*e.g.,* sonar or Lookout);

(E) Length of time observers maintained visual contact with marine mammal;

(F) Sea state;

(G) Visibility; and

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (*e.g.* less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd, or target spot if not yet detonated).

(J) Lookouts must report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction and if any calves were present.

(K) Resulting mitigation implementation: The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used.* This section must include the following information summarized from the authorized sound sources used in all training and testing events:

(i) Total annual hours or quantity (per the LOA) of each bin of sonar or other acoustic sources (pile driving and air gun activities); and

(ii) Total annual expended/detonated ordnance (missiles, bombs, sonobuoys, etc.) for each explosive bin.

(4) *Geographic information presentation.* The reports must present an annual (and seasonal, where practical) depiction of training and testing bin usage (as well as pile driving activities) geographically across the AFTT Study Area.

(5) *Sonar exercise notification.* The Navy must submit to NMFS (contact as specified in the LOA) an electronic report within fifteen calendar days after the completion of any MTE indicating:

(i) Location of the exercise;

(ii) Beginning and end dates of the exercise; and

(iii) Type of exercise.

(f) *Seven-year close-out comprehensive training and testing report.* This report must be included as part of the 2025 annual training and testing report. This report must provide the annual totals for each sound source bin with a comparison to the annual allowance and the seven-year total for each sound source bin with a comparison to the seven-year allowance. Additionally, if there were any changes to the sound source allowance, this report must include a discussion of why the change was made and include the analysis to support how the change did or did not result in a change in the EIS and final rule determinations. The draft report must be submitted within three months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS must submit comments on the draft close-out report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

§ 218.86 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain Letters of Authorization (LOAs) in accordance with § 216.106 of this chapter.

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of the regulations in this subpart.

(c) If an LOA expires prior to the expiration date of the regulations in this subpart, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of § 218.87(c)(1) as required by an LOA issued under this subpart, the Navy must apply for and obtain a modification of the LOA as described in § 218.87.

(e) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species or stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) will be based on a determination that the level of taking must be consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) will be published in the **Federal Register** within 30 days of a determination.

§ 218.87 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this subchapter and 218.86 may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) under the regulations in this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish a notice of planned LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this subchapter and 218.86 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the

mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.86, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ § 218.88–218.89 [Reserved]

[FR Doc. 2019–09541 Filed 5–10–19; 8:45 am]

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Part V

Department of the Treasury

Internal Revenue Service

21 CFR Part 1

Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in the Conduct of a U.S. Trade or Business; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105476–18]

RIN 1545–BO60

Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in the Conduct of a U.S. Trade or Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations implementing certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States. The proposed regulations affect certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in the conduct of a trade or business within the United States, and persons that acquire those interests. The proposed regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

DATES: Written or electronic comments and requests for a public hearing must be received by July 12, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–105476–18), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–105476–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–105476–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Chadwick Rowland, 202–317–6937; concerning submissions of comments or requests for a public hearing, Regina L. Johnson (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

I. Section 1446(f)

Section 1446(f), which was added to the Internal Revenue Code (the ''Code'') by section 13501 of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), provides rules for withholding on the transfer of a partnership interest described in section 864(c)(8). Section 1446(f)(1) provides that, except as otherwise provided in section 1446(f), if a portion of the gain (if any) on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, the transferee is required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

Section 1446(f)(2)(A) provides an exception to the general withholding requirement described in section 1446(f)(1) if the transferor furnishes an affidavit to the transferee stating, under penalties of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person. Section 1446(f)(2)(B)(i) provides that the exception to withholding described in section 1446(f)(2)(A) will not apply if the transferee has actual knowledge that the affidavit furnished is false, or if the transferee receives a notice from a transferor's agent or transferee's agent that the affidavit is false.

Section 1446(f)(3) provides that, at the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that reducing the amount to be withheld will not jeopardize the collection of tax on gain treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.

Section 1446(f)(4) provides that if a transferee fails to withhold any amount required to be withheld under section 1446(f)(1) then the partnership must deduct and withhold from distributions to the transferee a tax in an amount equal to the amount the transferee failed to withhold, plus interest.

Section 1446(f)(6) generally provides that the Secretary shall prescribe such regulations as may be necessary to carry out the purposes of section 1446(f), including regulations providing for exceptions from the provisions of section 1446(f). Section 1446(f) is effective for sales, exchanges, and other dispositions after December 31, 2017.

On December 29, 2017, the Department of the Treasury (the ''Treasury Department'') and the Internal Revenue Service (the ''IRS'') released Notice 2018–08, 2018–7 I.R.B. 352, which temporarily suspends the requirement to withhold on amounts realized in connection with the sale, exchange, or disposition of certain interests in a publicly traded partnership not treated as a corporation under section 7704 and the regulations thereunder. On April 2, 2018, the Treasury Department and the IRS released Notice 2018–29, 2018–16 I.R.B. 495, which provides temporary guidance and announces an intent to issue proposed regulations under section 1446(f) with respect to the sale, exchange, or disposition of certain interests in non-publicly traded partnerships. Notice 2018–29, and section 1446(f)(1) generally, rely on the principles contained within the section 1445 withholding regime. Under section 1445, if a foreign person disposes of a United States real property interest (''U.S. real property interest''), as defined in section 897(c), a withholding obligation is imposed on the transferee of the interest.

On December 27, 2018, the Treasury Department and the IRS published in the **Federal Register** a notice of proposed rulemaking at 83 FR 66647 (REG–113604–18) under section 864(c)(8) (the ''proposed section 864(c)(8) regulations''). The proposed section 864(c)(8) regulations provide rules for determining the amount of gain or loss treated as effectively connected with the conduct of a trade or business within the United States (''effectively connected gain'' or ''effectively connected loss'') described in section 864(c)(8), including rules coordinating section 864(c)(8) with sections 741 and 751 (relating to the character of gain or loss realized in connection with the sale or exchange of an interest in a partnership). They also provide rules for coordination of section 864(c)(8) with section 897 (relating to amounts treated as effectively connected gain or loss with respect to U.S. real property interests), tiered partnerships, and U.S. income tax treaties.

II. Rules for Withholding Under Section 1446(a) on Distributions by Publicly Traded Partnerships

Generally, withholding under section 1446(a) is required by a partnership when effectively connected taxable income (''ECTI'') is allocable to a foreign person. *See* §§ 1.1446–2 and 1.1446–3. However, withholding on ECTI earned by a publicly traded partnership is required when the ECTI is distributed to the foreign person. *See* § 1.1446–4. Often, an interest in the publicly traded partnership is held by a nominee, such

as a domestic financial institution that holds the publicly traded partnership interest as a custodian for a foreign partner. Section 1.1446–4 provides rules for applying the withholding tax under section 1446(a) to distributions by publicly traded partnerships. Under those rules, when a publicly traded partnership provides a qualified notice (within the meaning of § 1.1446–4(b)(4)), a nominee, which must be a domestic person, may be treated as a withholding agent with respect to a distribution. *See* § 1.1446–4(b)(4) and 1.1446–4(d). The qualified notice must be given in accordance with notice requirements with respect to dividends under regulations under the Securities Exchange Act of 1934. Section 1.1445–8(f) provides similar qualified notice rules that apply to certain distributions subject to withholding when attributable to the disposition of a U.S. real property interest.

Section 1.1446–4(f)(3) provides an ordering rule for situations in which the distribution is attributable to multiple types of income (such as amounts attributable to income described in section 1441 or 1442 or amounts subject to withholding under section 1446). However, no rule is provided for situations in which a qualified notice does not provide information regarding the types of income being distributed.

Explanation of Provisions

The proposed regulations provide rules for withholding, reporting, and paying tax under section 1446(f) upon the sale, exchange, or other disposition of an interest in a partnership described in section 864(c)(8) and proposed § 1.864(c)(8)–1.[1] The proposed regulations would, when finalized, adopt many of the rules that were described in Notice 2018–29, with certain modifications provided, in part, in response to comments. In addition, the proposed regulations provide reporting rules relating to section 864(c)(8) and rules implementing withholding under section 1446(f)(4). They also contain rules clarifying the reporting rules applicable to transfers of partnership interests subject to section 6050K. Further, the proposed regulations provide rules implementing withholding by brokers on transfers of certain interests in publicly traded partnerships subject to section 1446(f)(1), and make related changes to the reporting rules and procedures for adjusting withholding under sections 1461, 1463, and 1464. They also make changes to the rules regarding withholding on distributions by publicly traded partnerships under § 1.1446–4, including the rules that apply to qualified notices and nominees. Finally, the proposed regulations provide rules coordinating withholding under section 1446(f) with other withholding regimes to prevent overwithholding of tax.

I. Reporting Requirements for Foreign Transferors and Partnerships With Foreign Transferors

A partnership that is engaged in the conduct of a trade or business within the United States is required to file an annual information return, Form 1065, *U.S. Return of Partnership Income,* and also provide information to its partners on Schedule K–1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.,* with respect to each partner's distributive share of partnership items and other information. *See* section 6031 and §§ 1.6031(a)–1 and 1.6031(b)–1T. Domestic partners generally report the information from the Schedule K–1 (Form 1065) on their income tax return, typically Form 1040, *U.S. Individual Income Tax Return,* for an individual, or Form 1120, *U.S. Corporation Income Tax Return,* for a corporation. A foreign partner with a U.S. income tax return filing obligation generally files Form 1040NR, *U.S. Nonresident Alien Income Tax Return,* or Form 1120–F, *U.S. Income Tax Return of a Foreign Corporation.*

A partner (foreign or domestic) that transfers an interest in a partnership in an exchange described in section 751(a) (relating to an exchange of an interest in a partnership that holds unrealized receivables or inventory) generally has an obligation both to inform the partnership of the transfer and to include a statement with respect to the exchange on the partner's income tax return under § 1.751–1(a)(3). *See* section 6050K(c) and § 1.6050K–1(d). A partnership also has an obligation to provide information with respect to the exchange to the transferee and transferor under section 6050K(c) and § 1.6050K–1(c). *See also* Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests.*

Because section 864(c)(8) requires a deemed sale at the partnership level to determine a foreign partner's effectively connected gain or loss, a foreign person that transfers its partnership interest generally will not be able to compute its income tax liability under section 864(c)(8) unless the partnership provides certain information to the foreign partner. The proposed regulations therefore provide rules that facilitate the transfer of information between a foreign partner and the partnership for purposes of section 864(c)(8).

The proposed regulations generally provide that a notifying transferor (generally, any foreign person and certain domestic partnerships that have a foreign person as a direct or indirect partner) that transfers (within the meaning of proposed § 1.864(c)(8)–1(g)(5)) an interest in a partnership (other than certain interests in a publicly traded partnership) in a transaction described in section 864(c)(8) must notify the partnership within 30 days of the transfer by providing a statement that includes information relevant to the partnership for making calculations under section 864(c)(8), including the date on which the notifying transferor transferred its interest, and other identifying information regarding the transferor and transferee. *See* proposed § 1.864(c)(8)–2(a). This rule generally parallels § 1.6050K–1, including the content of the information and when it must be provided.

Proposed § 1.864(c)(8)–2(b) requires a specified partnership (generally, a partnership that is engaged in the conduct of a trade or business within the United States or a partnership that owns, directly or indirectly, an interest in a partnership so engaged) to furnish to a notifying transferor the information necessary for the transferor to comply with section 864(c)(8) by the due date of the Schedule K–1 (Form 1065) for the tax year of the partnership in which the transfer occurred. Proposed § 1.864(c)(8)–2(b) applies if a specified partnership receives the notification described in proposed § 1.864(c)(8)–2(a), or otherwise knows that a relevant transfer has occurred, and the notifying transferor would have had a distributive share of deemed sale EC gain or deemed sale EC loss (within the meaning of proposed § 1.864(c)(8)–1(c)) at the time of the transfer. For these purposes, a notifying transferor that is a partnership is treated as a nonresident alien. Proposed § 1.864(c)(8)–2(b) provides that, for purposes of the reporting requirements described in proposed § 1.864(c)(8)–2, a partnership that makes a distribution to a transferor that qualifies as a transfer under section 864(c)(8) and proposed § 1.864(c)(8)–1(b) will be treated as having actual knowledge that a transfer occurred, thereby triggering the reporting requirement of proposed § 1.864(c)(8)–2(b) to the extent that the transferee would have had a distributive share of deemed sale EC gain or deemed sale EC loss within the meaning of proposed § 1.864(c)(8)–1(c).

[1] § 1.864(c)(8)–1 was proposed to be added on December 27, 2018; 83 FR 66647, 66651.

Relatedly, the proposed regulations clarify that the information a partnership must provide under section 6050K upon being notified of a transfer includes the information necessary for a transferor to make the transferor's required statement under § 1.751–1(a)(3). *See* proposed § 1.6050K–1(c)(2).

II. Definitions and General Rules of Applicability

A. Definitions

For purposes of the proposed regulations under section 1446(f), the term ''transfer'' means a sale, exchange, or other disposition, and includes a distribution from a partnership to a partner. *See* proposed § 1.1446(f)–1(b)(9). A ''transferee'' is any person, foreign or domestic, that acquires a partnership interest through a transfer. *See* proposed § 1.1446(f)–1(b)(10). The term ''transferor'' generally means any person, foreign or domestic, that transfers a partnership interest, and therefore refers to the person that directly owns the interest in the partnership. For a trust, to the extent all or a portion of the trust is treated as owned by the grantor or another person under sections 671 through 679 (such trust, ''a grantor trust''), the term ''transferor'' means the grantor or other person. *See* proposed § 1.1446(f)–1(b)(11). *See also* Rev. Rul. 85–13, 1985–1 C.B. 184.

B. Certifications and Books and Records

Similar to the approach described in Notice 2018–29, the proposed regulations provide various exceptions to withholding and procedures for determining the amount to withhold. Under these rules, the person required to withhold may generally rely on information provided in certifications that it receives or that is contained in its own books and records. The general rules of applicability provide the requirements for providing a valid certification and for retaining certifications or information in books and records. *See* proposed § 1.1446(f)–1(c)(2). A certification includes any documents associated with the certification, such as statements from the partnership, IRS forms, withholding certificates, withholding statements, certifications, or other documentation. *Id.*

C. Determination Dates

Notice 2018–29 required determinations to be made as of the date of transfer when applying many of its rules and exceptions. Because it may be difficult to make these determinations on the precise date of transfer, the proposed regulations generally allow the choice of one of several dates solely for purposes of making determinations under section 1446(f)(1) with regard to a transfer. This date is referred to as the determination date. It is chosen on a transfer-by-transfer basis and must be used for a transfer for all purposes of section 1446(f). The determination date must be one of the following: the date of the transfer, any date no more than 60 days before the transfer, or, with respect to a transferor that is not a controlling partner, the later of either the first day of the partnership's taxable year in which the transfer occurs or the date before the transfer of the most recent revaluation described in § 1.704–1(b)(2)(iv)(*f*)(*5*) or 1.704–1(b)(2)(iv)(*s*)(*1*). *See* proposed § 1.1446(f)–1(c)(4). As the determination date applies only for purposes of determining the withholding obligation under section 1446(f), the calculation of tax resulting from the application of section 864(c)(8) and the reporting requirements under proposed § 1.864(c)(8)–2 are determined based on the date of the transfer.

D. IRS Forms and Instructions

Proposed § 1.1446(f)–1(c)(5) provides that any reference in the proposed regulations to an IRS form includes its successor form and that any form must be filed in the manner provided in the instructions to the forms or in other guidance. The IRS intends to modify publications, instructions and forms (including forms discussed in this Explanation of Provisions) as appropriate to take into account sections 864(c)(8) and 1446(f).

E. Coordination With Other Withholding Rules

Proposed § 1.1446(f)–1(d) provides a rule coordinating section 1446(f)(1) with section 1445. Specifically, the rule provides that if a transferee is required to withhold under section 1445(e)(5) or § 1.1445–11T(d)(1) and section 1446(f)(1), then the transferee will be subject to the payment and reporting requirements of section 1445 only. This rule clarifies that even though proposed § 1.864(c)(8)–1(d) provides that section 897(g) does not apply to a transfer that is also subject to section 864(c)(8), the withholding regime provided in section 1445 and the regulations thereunder applies under these circumstances, rather than the rules described in section 1446(f)(1). Thus, if a foreign transferor disposes of an interest in a partnership that is engaged in the conduct of a trade or business within the United States (not taking into account the application of section 897(a)) and in which fifty percent or more of the value of the gross assets consist of U.S. real property interests, and ninety percent or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents, a transferee must generally withhold under section 1445(a) (at 15 percent of the amount realized) and not section 1446(f). However, this rule applies only if the transferor has not applied for a withholding certificate under § 1.1445–11T(d)(1). *See* proposed § 1.1446(f)–1(d). If the transferor has applied for a withholding certificate, then the transferee must withhold the greater of the amounts required under section 1445(e)(5) or section 1446(f)(1).

Because gain that an upper-tier partnership recognizes on the transfer of an interest in a lower-tier partnership engaged in the conduct of a trade or business within the United States is included when calculating the upper-tier partnership's ECTI, the proposed regulations also provide a coordination rule that allows a partnership that is withheld upon under section 1446(f)(1) (in its capacity as a transferor) to claim a credit for the amount withheld against its withholding tax liability under section 1446(a) (if any). *See* proposed § 1.1446–3(c)(4). *See also* § 1.1446–3(d)(2) for rules on how the partnership or its partners may claim a credit or refund for tax paid under section 1446.

III. Withholding on the Transfer of a Non-Publicly Traded Partnership Interest by a Foreign Person

A. In General

Under section 1446(f)(1), a transferee of a partnership interest must withhold a tax equal to 10 percent of the amount realized on any disposition when the disposition results in gain that is treated as effectively connected with the conduct of a trade or business within the United States under section 864(c)(8). Proposed § 1.1446(f)–2(a) implements this rule by requiring any transferee to withhold a tax equal to 10 percent of the amount realized on any transfer of a partnership interest (other than certain publicly traded partnership interests) under section 1446(f)(1), unless an exception to withholding applies under proposed § 1.1446(f)–2(b). If an exception does not apply and withholding is required, proposed § 1.1446(f)–2(c) provides rules for determining and adjusting the amount required to be withheld under section 1446(f)(1). The exceptions and determination procedures in the proposed regulations apply solely for purposes of section 1446(f)(1) and do not affect a foreign person's filing obligation under the Code or a foreign

person's tax liability resulting from the application of section 864(c)(8).

B. Exceptions to Withholding

1. In General

The proposed regulations provide six exceptions to withholding by a transferee under section 1446(f)(1). These exceptions generally allow the transferee to rely on certain certifications that it receives from the transferor or partnership unless it has actual knowledge that the certifications are incorrect or unreliable. *See* proposed § 1.1446(f)–2(b)(1). When the partnership is a transferee because it makes a distribution, it may instead rely on its books and records unless it knows, or has reason to know, that the information is incorrect or unreliable. *Id.*

2. Certification of Non-Foreign Status by Transferor

Consistent with section 6.01 of Notice 2018–29, proposed § 1.1446(f)–2(b)(2) provides the requirements for a certification of non-foreign status (including the requirement that it include the transferor's TIN), and clarifies that a valid Form W–9, *Request for Taxpayer Identification Number and Certification,* may be used for this purpose, including a Form W–9 for the transferor that is already in the transferee's possession. The proposed regulations also clarify that a Form W–9 may be used to establish non-foreign status of a transferor for purposes of section 1445. *See* proposed §§ 1.1445–2(b)(2)(v) and 1.1445–5(b)(3)(iv).

3. No Realized Gain by Transferor

Section 1446(f)(1) applies only when there is gain described in section 864(c)(8) on the transfer of a partnership interest. Consistent with section 6.02 of Notice 2018–29, the proposed regulations provide that a transferee is not required to withhold if the transferor provides the transferee with a certification stating that the transferor would not realize any gain on the transfer of the partnership interest determined as if the transfer occurred on the determination date. Proposed § 1.1446(f)–2(b)(3)(i) provides that this certification of no realized gain must take into account any ordinary income arising from application of section 751(a) and the regulations thereunder. Therefore, a transferor may not provide the certification if section 751(a) and the regulations thereunder require the transferor to realize ordinary income, even if the transferor would realize an overall loss on the transfer.

A similar rule in proposed § 1.1446(f)–2(b)(3)(ii) applies to partnership distributions. Section 731 generally provides that if a distribution of money to a partner exceeds the partner's adjusted basis in its interest in the partnership, then gain will be recognized to the extent of the difference between the money distributed and the partner's basis. That gain or loss is considered as gain or loss from the sale or exchange of the partnership interest of the distributee partner. *See* section 731(a). Consistent with section 9 of Notice 2018–29, proposed § 1.1446(f)–2(b)(3)(ii) provides that for purposes of determining whether withholding is required on a distribution, a partnership is permitted to rely on its books and records or on a certification provided by the transferor (the distributee partner) to determine if there is realized gain to the distributee partner.

4. Effectively Connected Gain Upon a Partnership's Deemed Sale

To make the determination of whether there is a transfer to which withholding applies more administrable for transferors and transferees, proposed § 1.1446(f)–2(b)(4) provides that no withholding is required if the transferee receives a certification from the partnership stating that if the partnership sold all of its assets at fair market value, the amount of net effectively connected gain resulting from the deemed sale would be less than 10 percent of the total net gain. Section 6.04 of Notice 2018–29 provided a similar rule, but at a threshold of 25 percent. Proposed § 1.1446(f)–2(b)(4) lowers the percentage threshold in accordance with section 2 of Notice 2018–29, which stated that the Treasury Department and the IRS intend to provide future guidance reducing the percentage threshold provided in section 6.04 of Notice 2018–29. The proposed regulations also allow a partnership that is a transferee because it makes a distribution to use this exception when it determines that the 10-percent test is satisfied from its books and records.

To make it easier for the partnership to calculate its effectively connected gain from the deemed sale, the proposed regulations allow this amount to be determined as of the determination date. Further, the proposed regulations allow a partnership to make this determination when no gain on the deemed sale would have been effectively connected with the conduct of a trade or business within the United States (for example, when the deemed sale would result in a loss that would have been effectively connected with the conduct of a trade or business within the United States). *See* proposed § 1.1446(f)–2(b)(4)(i)(B).

5. Allocable Share of ECTI

Section 6.03 of Notice 2018–29 provided an exception to withholding under section 1446(f)(1) for situations in which a transferor's distributive share of ECTI during the previous three taxable years was less than 25 percent of the transferor's total distributive share of income in each year (the ''three-year ECTI exception''). Section 2 of Notice 2018–29 provided that the Treasury Department and the IRS intended to lower the three-year ECTI exception's 25 percent threshold in proposed regulations, and that other limitations for this rule were under consideration. *See also* section III.B.4 of this Explanation of Provisions (describing modifications to the threshold set forth in section 6.04 of Notice 2018–29).

The three-year ECTI exception was intended to relieve potentially significant overwithholding that could arise when a partner transfers an interest in a partnership, recognizes relatively little effectively connected gain under section 864(c)(8), but cannot obtain information from the partnership at the time of the transfer necessary to qualify for the deemed sale exception described in section III.B.4 of this Explanation of Provisions. The three-year ECTI exception uses a transferor's allocable share of ECTI as a proxy for distributive share of effectively connected gain recognized in connection with a deemed sale described in section 864(c)(8)(B). The Treasury Department and the IRS are aware that the amount of a partner's recent allocable share of ECTI may not accurately indicate whether, and to what extent, the partner would recognize gain taxable under section 864(c)(8) and proposed § 1.864(c)(8)–1. For example, a partnership may recognize relatively little effectively connected income for several years while nonetheless holding assets with significant built-in gain that would be taxable as effectively connected gain. The three-year ECTI exception may in certain cases increase compliance and collection risks if foreign partners with limited connections to the United States and significant tax liability under section 864(c)(8) are not withheld on under section 1446(f)(1).

In the interest of striking the appropriate balance between the risk of noncompliance and the potential for overwithholding, the proposed regulations adopt the three-year ECTI exception from Notice 2018–29 with the

modifications described in this section III.B.5 of this Explanation of Provisions. The Treasury Department and the IRS continue to study whether the three-year ECTI exception is appropriate in light of the risk of noncompliance, and request comments on the utility of the rule and modifications to the rule that would reduce that risk.

Accordingly, proposed § 1.1446(f)–2(b)(5)(i) provides that no withholding is required if a transferee receives a certification from a transferor stating that the transferor was at all times a partner in the partnership for the immediately prior taxable year and the two taxable years that precede it and that the transferor's allocable share of ECTI for each of those taxable years was less than 10 percent of the transferor's total distributive share of the partnership's net income for that year. *See* proposed § 1.1446(f)–2(b)(5)(i)(A) and (C). In addition, a transferor must certify that, in the immediately prior taxable year and the two that preceded it, the transferor's allocable share of ECTI was less than $1 million (including ECTI allocated to certain persons related to the transferor). *See* proposed § 1.1446(f)–2(b)(5)(i)(B). A transferor must also certify that its distributive share of income or gain that is effectively connected with the conduct of a trade or business within the United States or deductions or losses properly allocated and apportioned to that income in each of the taxable years described in proposed § 1.1446(f)–2(b)(5)(i)(A) has been reported on a Federal income tax return (filed on or before the due date (including extensions) for filing the return (and all amounts due with respect to the return are timely paid)) for each of the three preceding taxable years, if required to be filed, before the date on which the transferor furnishes the certification. *See* proposed § 1.1446(f)–2(b)(5)(i)(D). For this purpose, if the transferor is a nonresident alien individual or foreign corporation, the Federal income tax return is the transferor's Form 1040NR or Form 1120–F; if the transferor is a partnership, the Federal income tax returns are the Forms 1040NR or 1120–F of the direct or indirect partners of the transferor.

For purposes of this rule, the immediately prior taxable year is the transferor's most recent taxable year with or within which a taxable year of the partnership ended and for which a Schedule K–1 (Form 1065) was due or furnished (if earlier) before the date of the transfer. *See* proposed § 1.1446(f)–2(b)(5)(ii). Consistent with the three-year ECTI exception described in Notice 2018–29, a transferor does not satisfy this requirement if for any of the relevant years it did not receive Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax,* unless the transferor was allocated an item of deduction or loss that is effectively connected with the conduct of a trade or business within the United States, in which case it is treated as having an allocable share of ECTI for that year of zero. *See* proposed § 1.1446(f)–2(b)(5)(iii).

When a transferor has had neither ECTI nor a net distributive share of income allocated to it in the previous three taxable years, the composition of the income the partnership allocates to the transferor does not provide any indication of the amount of effectively connected gain realized by the transferor in connection with the transfer. Accordingly, the proposed regulations also provide that a transferor does not qualify for the exception provided in proposed § 1.1446(f)–2(b)(5) if the transferor did not have a net distributive share of income allocated to it in any of its previous three taxable years. *See* proposed § 1.1446(f)–2(b)(5)(iv).

Section 6.03 of Notice 2018–29 provided that the three-year ECTI exception does not apply when a partnership is a transferee by reason of making a distribution. Comments noted that, particularly in tiered partnership structures, a distributing partnership may not be able to obtain the information necessary to use the deemed sale exception described in section 6.04 of Notice 2018–29, such that the partnership would be required to withhold under section 1446(f)(1) in cases in which there was relatively limited effectively connected income earned by the partnership. In response to the comments, the proposed regulations allow a distributing partnership to use this exception when it determines that the three-year ECTI exception is applicable based on its books and records, provided that it receives a representation from the transferor stating that income tax returns have been filed, and tax has been paid, for each of the relevant years for which the transferor was allocated effectively connected income (or loss). *See* proposed § 1.1446(f)–2(b)(5)(v).

Finally, proposed § 1.1446(f)–2(b)(5)(vi) provides that a transferor may not make the certification if it has actual knowledge that the information relevant to the certification that is reported by the partnership on any Form 8805 or Schedule K–1 (Form 1065) is incorrect.

6. Nonrecognition by Transferor

Section 864(c)(8) and proposed § 1.864(c)(8)–1 provide that gain from the transfer of a partnership interest that is treated as effectively connected with the conduct of a trade or business within the United States is limited to gain otherwise recognized under the Code. If a nonrecognition provision of the Code applies to all of the gain realized on a transfer, withholding under section 1446(f)(1) does not apply. Accordingly, section 6.05 of Notice 2018–29 provided an exception to withholding for certain nonrecognition transactions if the transferee receives a notice from the transferor describing the application of a nonrecognition provision. This exception was based on the rules in § 1.1445–2(d)(2).

Consistent with the rule provided in Notice 2018–29, the proposed regulations generally permit a transferee to rely on a certification of nonrecognition from the transferor. *See* proposed § 1.1446(f)–2(b)(6). The certification provided by the transferor must include a brief description of the transfer and the relevant law and facts relating to the application of the nonrecognition provision.

If only a portion of the gain realized on the transfer is subject to a nonrecognition provision, an adjustment to the amount required to be withheld may be permitted under proposed § 1.1446(f)–2(c)(4), discussed in section III.C.4 of this Explanation of Provisions (describing the rules in proposed § 1.1446(f)–2(c)(4)(vi) for the certification of maximum tax liability that may be relied upon in these situations).

7. Claim of Treaty Benefits

Notice 2018–29 did not contain specific rules addressing the application of income tax treaties, instead including them in section 6.05 by adopting a modified version of § 1.1445–2(d) (providing an exception from withholding under section 1445 when the transferor certifies that it is not required to recognize gain either under a provision of the Code or under a treaty). The proposed regulations provide an exception to withholding under section 1446(f)(1) when a transferor certifies that it is not subject to tax on any gain from the transfer pursuant to an income tax treaty in effect between the United States and a foreign country. *See* proposed § 1.1446(f)–2(b)(7)(i). This exception applies only when a transferor (as opposed to owners of an interest in the transferor, including partners in a partnership that is a transferor) qualifies

for the benefits of an income tax treaty in order to reduce the burden on a transferee of reviewing documentation from multiple persons. The certification to the transferee must include a valid Form W–8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals),* or W–8BEN–E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)* (as applicable), that contains the information necessary to support the claim for treaty benefits, and the transferee must mail a copy of the certification to the IRS by the 30th day after the date of the transfer in order to rely upon it. *Id. See also* Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b),* and the instructions to the form regarding the requirement for the transferor to disclose a claim for treaty benefits with a return.

To ensure that these procedures are followed for claims involving treaty benefits, this exception is the sole method by which a transferor may claim an exception to withholding by reason of a claim of treaty benefits. *See* proposed § 1.1446(f)–2(b)(7)(iii). For claims involving transfers with respect to which treaty benefits apply to only a portion of the gain from the transfer, see section III.C.4 of this Explanation of Provisions (describing the rules in proposed § 1.1446(f)–2(c)(4)(vi) for the certification of maximum tax liability that that may be relied upon in these situations).

C. Determining the Amount To Withhold

1. In General

The proposed regulations provide certain procedures for determining the amount to withhold under section 1446(f)(1). The rules are intended to provide administrable procedures for transferees to determine the amount to withhold, and in some cases, provide procedures intended to better reflect the amount of the transferor's actual tax liability under section 864(c)(8). When applicable, these procedures generally allow the transferee to rely on certifications that it receives from the transferor (or, in certain cases, from the partnership) to determine the amount to withhold unless it has actual knowledge that the certification is incorrect or unreliable. *See* proposed § 1.1446(f)–2(c)(1). In cases in which a partnership is the transferee because it makes a distribution, it may instead rely on its books and records unless it knows, or has reason to know, that the information is incorrect or unreliable. *Id.*

2. Amount Realized

i. In General

The amount required to be withheld under section 1446(f)(1) is determined by reference to the transferor's amount realized on the transfer. *See* section 1446(f)(1). The proposed regulations provide that the amount realized for purposes of proposed § 1.1446(f)–2 is determined under section 1001 and the regulations thereunder and section 752 and the regulations thereunder. *See* proposed § 1.1446(f)–2(c)(2)(i); *see also* §§ 1.752–1(h) and 1.1001–2.

The proposed regulations also clarify that in the case of a distribution, the amount realized is the sum of the amount of cash distributed (or to be distributed), the fair market value of property distributed (or to be distributed), and the reduction in the transferor's share of partnership liabilities. *Id.*

ii. Procedures To Determine Share of Partnership Liabilities

Comments stated that the allocation of liabilities to a partner under section 752 is not information that normally would be available to a transferee and may be difficult for a transferor to determine as of the date of transfer. To address these issues, section 7.02 of Notice 2018–29 provided that a transferee may in certain cases rely on a certification from the transferor as to the amount of the transferor's share of partnership liabilities reported on the transferor's most recently received Schedule K–1 (Form 1065), provided that the form was for a partnership taxable year that closed no more than 10 months before the date of transfer and the transferor is not a controlling partner. Section 7.03 of Notice 2018–29 allowed a transferee to rely on a certification from the partnership that provided the transferor's share of partnership liabilities as reflected on the most recently prepared Schedule K–1 (Form 1065).

The proposed regulations provide procedures similar to sections 7.02 and 7.03 of Notice 2018–29 that allow a transferee to rely on a certification from the transferor or the partnership. Proposed § 1.1446(f)–2(c)(2)(ii)(B) provides that a transferee may generally rely on a certification from a transferor that provides the amount of the transferor's share of partnership liabilities reported on the most recent Schedule K–1 (Form 1065) issued by the partnership. In response to comments stating that a transferor may not possess a Schedule K–1 (Form 1065) that satisfies the 10 month requirement in Notice 2018–29 because of the timing of the extended due date for Schedule K–1 (Form 1065), the proposed regulations provide that a transferee may generally rely on a certification if the last day of the partnership taxable year for which the Schedule K–1 (Form 1065) was provided was no more than 22 months before the date of the transfer. *See* proposed § 1.1446(f)–2(c)(2)(ii)(B). Consistent with Notice 2018–29, a transferor that is a controlling partner may not provide this certification because it will generally be able to require the partnership to provide a partnership-level certification as to the controlling partner's share of partnership liabilities. *Id.*

Proposed § 1.1446(f)–2(c)(2)(ii)(C) allows a transferee to rely on a certification from the partnership that provides the amount of the transferor's share of partnership liabilities. However, unlike the rule in Notice 2018–29, the partnership is required to make this determination as of the determination date rather than relying on its most recently prepared Schedule K–1 (Form 1065). *Id.* The proposed regulations also provide a new procedure that allows a partnership that is a transferee because it makes a distribution to rely on its books and records to determine the transferor's share of partnership liabilities as of the determination date. *See* proposed § 1.1446(f)–2(c)(2)(iii).

If a transferee does not use one of these determination procedures, the reduction in the transferor's share of partnership liabilities must be determined as of the date of the transfer for purposes of computing the amount realized.

iii. Modified Amount Realized for Foreign Partnerships

As discussed in section III.B of this Explanation of Provisions, section 1446(f)(2) and proposed § 1.1446(f)–2(b)(2) provide an exception to withholding when the transferor is not a foreign person. A transferor that is a foreign partnership may not rely on this exception even though it may have U.S. persons (which are not subject to tax under section 864(c)(8)) as its partners. To avoid overwithholding when a foreign partnership transfers its interest in a partnership, proposed § 1.1446(f)–2(c)(2)(iv) provides a procedure to limit the amount realized for withholding purposes to the portion of the amount realized that is attributable to foreign persons. For this purpose, the portion of the amount realized attributable to a direct or indirect partner is determined based on the percentage of gain allocable to that partner. Any partner that does not provide a valid

certification of non-foreign status (including a Form W–9) is treated as a foreign person for this purpose.

To make the certification for a modified amount realized, the transferor must provide to the transferee a Form W–8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting,* that includes a certification of non-foreign status for each partner that is treated as a U.S. person. It must also include a withholding statement that provides the percentage of gain allocable to each direct or indirect partner and that indicates whether that person is a U.S. person or is treated as a foreign person.

3. Lack of Money or Property or Lack of Knowledge Regarding Liabilities

As described in section 8 of Notice 2018–29, in some cases, a reduction in the transferor's share of partnership liabilities may cause the amount otherwise required to be withheld to exceed the cash or other property that the transferee actually pays to the transferor. In other cases, a transferee may have not received, or cannot rely upon, a certification regarding the transferor's share of partnership liabilities, and may not otherwise know the transferor's share of partnership liabilities. In these situations, the proposed regulations generally provide that the amount required to be withheld is equal to the amount realized determined without regard to the decrease in the transferor's share of partnership liabilities. *See* proposed § 1.1446(f)–2(c)(3).

4. Certification of Maximum Tax Liability

To more closely align the amount to withhold with the transferor's tax liability under section 864(c)(8), the proposed regulations provide a procedure to determine the amount to withhold that is intended to estimate the amount of tax the transferor is required to pay under section 864(c)(8). *See* proposed § 1.1446(f)–2(c)(4).

For this procedure to apply, a transferee must receive a certification from the transferor containing certain information relating to the transferor and the transfer. *See* proposed § 1.1446(f)–2(c)(4)(iii). One of the requirements for this certification is for the transferor to identify the amount of outside capital gain and outside ordinary gain that would be treated as effectively connected gain on the determination date. *See* proposed § 1.1446(f)–2(c)(4)(iii)(E). Further, to provide this certification, the transferor must represent that it has obtained a statement from the partnership that includes, among other things, information relating to the transferor's distributive share of effectively connected gain in connection with a deemed sale described in section 864(c)(8)(B) as of the determination date. *See* proposed § 1.1446(f)–2(c)(4)(iii)(G).

When a transferor provides a transferee this information, proposed § 1.1446(f)–2(c)(4)(i) allows the transferee to withhold based on the transferor's maximum tax liability on the transfer. The transferor's maximum tax liability is the amount of the transferor's effectively connected gain multiplied by the applicable percentage. *See* section 1446(b) and § 1.1446–3(a)(2). The applicable percentage applies the highest rate of tax for each particular type of income or gain allocable to a foreign person. *Id.*

Special rules apply for a transfer in which only a portion of the gain is subject to tax under section 864(c)(8) because a nonrecognition provision of the Code or an income tax treaty in effect between the United States and a foreign country applies (for example, when the partnership carries on one trade or business through a U.S. permanent establishment, and another trade or business that is not carried on through a U.S. permanent establishment). *See* proposed § 1.1446(f)–2(c)(4)(v) and (vi). These rules provide that the transferor must, in addition to providing the maximum tax liability certification, comply with the procedural requirements that would otherwise apply when claiming a full exception to withholding based on a nonrecognition provision or treaty benefits.

D. Reporting and Paying Withheld Amounts

1. In General

A transferee required to withhold must report and pay any tax withheld by the 20th day after the date of the transfer. *See* proposed § 1.1446(f)–2(d)(1). To report and pay the amount withheld, the proposed regulations direct the transferee to use Forms 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests,* and 8288–A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.* The IRS will stamp a valid Form 8288–A to show receipt and mail a copy to the transferor.

2. Transferee's Obligation To Certify the Amount Withheld to the Partnership

As discussed in section IV of this Explanation of Provisions, a partnership must withhold on distributions to a transferee under section 1446(f)(4) to the extent the transferee fails to properly withhold under section 1446(f)(1) and proposed § 1.1446(f)–2(a). *See* proposed § 1.1446(f)–3. In order for the partnership to determine whether it must withhold under these rules, proposed § 1.1446(f)–2(d)(2) requires a transferee to timely furnish certain information regarding its compliance with section 1446(f)(1) to the partnership.

Specifically, proposed § 1.1446(f)–2(d)(2) requires a transferee (other than a partnership that is a transferee because it makes a distribution) to furnish, no later than 10 days after the transfer, a certification to the partnership that either includes a copy of the Form 8288–A that it files with the IRS, or states the amount realized on the transfer and any amount withheld by the transferee. The certification must also include any underlying certifications that the transferee has relied upon that claim an exception or adjustment to withholding. As discussed in section IV.B of this Explanation of Provisions, the partnership must conduct its own review of the certification provided by the transferee, including any underlying certifications. Therefore, a transferee that has relied on a certification claiming an exception or adjustment to withholding may want to ensure that the partnership has determined the certification to be correct and reliable before the due date for payment of any withheld amounts to the IRS.

E. Effect of Withholding on Transferor

Proposed § 1.1446(f)–2(e) states that a foreign person must file a U.S. tax return and pay any tax due with respect to a transfer that is subject to section 864(c)(8) regardless of whether there is withholding under section 1446(f)(1) and proposed § 1.1446(f)–2. To claim a credit under section 33, a transferor that is an individual or corporation must attach to its return the stamped copy of Form 8288–A, as referenced in section III.D of this Explanation of Provisions. *See* proposed § 1.1446(f)–2(e)(2)(i). If a stamped copy of Form 8288–A has not been provided to the transferor by the IRS, proposed § 1.1446(f)–2(e)(3) provides that a transferor may establish the amount of tax withheld by furnishing substantial evidence of the amount. For a discussion of the rule regarding a transferor that is a foreign

partnership claiming a credit for withholding under section 1446(f)(1), see section II.E of this Explanation of Provisions.

IV. Partnership's Requirement To Withhold Under Section 1446(f)(4) on Distributions to Transferee

A. In General

Proposed § 1.1446(f)–3 provides rules under section 1446(f)(4) that would implement the partnership's requirement to withhold on distributions to a transferee on any amount that the transferee failed to properly withhold under section 1446(f)(1), plus any interest on this amount. The rules, when made applicable as final rules, would end the suspension of section 1446(f)(4) withholding provided in section 11 of Notice 2018–29.

B. Requirement To Withhold

The proposed regulations provide that, if a transferee fails to withhold any amount required to be withheld under proposed § 1.1446(f)–2 in connection with the transfer of a partnership interest, the partnership must withhold from any distributions made to the transferee in accordance with the rules in proposed § 1.1446(f)–3. Under the general rule, a partnership determines whether a transferee has withheld the amount required to be withheld under proposed § 1.1446(f)–2 by relying on the certification described in proposed § 1.1446(f)–2(d)(2) that it receives from the transferee. *See* proposed § 1.1446(f)–3(a)(1). The partnership may rely on this certification unless it knows, or has reason to know, that the certification is incorrect or unreliable. *Id.* Therefore, the partnership must review the certification received from the transferee, which includes any underlying certifications that the transferee relied on to reduce or eliminate withholding. Because the partnership may have information that may not be available to the transferee (for example, information in its books and records), a partnership may know, or have reason to know, that an underlying certification is incorrect or unreliable even though the transferee properly relied on the certification. In this case, the partnership would be required to withhold on the transferee under section 1446(f)(4) to the extent required in proposed § 1.1446(f)–3.

If the partnership timely receives (within 10 days from the transfer), and may rely on, a certification from the transferee stating that an exception to withholding applies or establishing that the transferee has withheld the amount required to be withheld under proposed § 1.1446(f)–2, then the partnership is not required to withhold under the general rule in proposed § 1.1446(f)–3(a)(1). *See* proposed § 1.1446(f)–3(b)(1). For this purpose, the amount required to be withheld may take into account any adjustment procedures under § 1.1446(f)–2(c) (for which any documents, including underlying certifications, are attached to the certification provided by the transferee). The proposed regulations thus reduce the burden imposed by section 1446(f)(4) by allowing transferees and partnerships to rely on the information produced under the regulations implementing section 1446(f)(1).

The proposed regulations provide an additional rule that allows the IRS, in limited circumstances, to require a partnership to withhold under section 1446(f)(4) when the IRS notifies the partnership that it has determined that the transferee has provided incorrect information on the certification described in proposed § 1.1446(f)–2(d)(2) regarding the amount realized or the amount withheld, or that the transferee failed to pay the amounts reported as withheld to the IRS. *See* proposed § 1.1446(f)–3(a)(2). This rule is meant to induce the transferee to properly determine the amount realized on transfer (in accordance with the rules in proposed § 1.1446(f)–2(c)(2)), and to correctly report to the partnership the amount of tax withheld and paid to the IRS.

Under the proposed regulations, withholding under section 1446(f)(4) does not apply when a partnership is a transferee because it makes a distribution. *See* proposed § 1.1446(f)–3(b)(3). Section 1446(f)(4) imposes a withholding obligation on a secondary party, the partnership, when the transferee fails to withhold under section 1446(f)(1). When the partnership is the transferee because it made a distribution and failed to withhold under section 1446(f)(1) and proposed § 1.1446(f)–2, imposing a section 1446(f)(4) withholding obligation on it does not provide an additional party to ensure the 1446(f) liability is paid. Furthermore, the partnership remains liable for its failure to withhold in its capacity as a transferee. *See* section VI.A of this Explanation of Provisions.

A publicly traded partnership generally is also not required to withhold on distributions made to a transferee under section 1446(f)(4). *See* proposed § 1.1446(f)–3(b)(2)(i). As described in section V of this Explanation of Provisions, it would be administratively difficult for a publicly traded partnership to determine when a transfer of its interest has occurred, and whether the correct amount has been withheld under section 1446(f)(1). However, the proposed regulations do require a publicly traded partnership to withhold under section 1446(f)(4) in certain limited instances. Specifically, a publicly traded partnership may publish a qualified notice that states that withholding under section 1446(f)(1) does not apply with respect to a distribution. *See* section V.B.2 and 3 of this Explanation of Provisions. To ensure that publicly traded partnerships exercise due diligence when publishing these qualified notices, proposed § 1.1446(f)–3(b)(2)(ii) provides that the exception from section 1446(f)(4) withholding applicable to publicly traded partnerships does not apply if a publicly traded partnership determines (including by reason of having received notification from the IRS) that it has published a qualified notice that falsely states that an exemption applied. When a publicly traded partnership makes this determination, it must withhold on distributions to the transferees an amount equal to the amount that any brokers failed to withhold under proposed § 1.1446(f)–4 due to reliance on the qualified notice, plus interest.

C. Withholding Rules

A partnership that does not receive, or cannot rely on, a timely certification from a transferee stating that an exception to withholding applies or that the proper amount has been withheld must begin to withhold under the general rule on distributions made to the transferee on the later of the date that is 30 days after the transfer or the date that is 15 days after the partnership acquires actual knowledge of the transfer. *See* proposed § 1.1446(f)–3(c)(1)(i).

The partnership must withhold on the entire amount of each distribution made to the transferee until it may rely on a certification from the transferee that states that an exception to withholding applies or that provides the information necessary to determine the amount required to be withheld. *See* proposed § 1.1446(f)–3(c)(1)(ii). The partnership may rely on this certification to determine its withholding obligation regardless of whether it is provided within the time prescribed in proposed § 1.1446(f)–2(d)(2). If the partnership has not already satisfied the amount required to be withheld, as determined from the certification from the transferee, it must continue to withhold on distributions to the transferee until it has done so. *Id.* However, the partnership may stop withholding if the transferee disposes of all of its interest

in the partnership, unless the partnership has actual knowledge that any successor to the transferee is related to the transferee or the transferor from which the transferee acquired the interest. *Id.*

The amount required to be withheld under proposed § 1.1446(f)–3(a)(1), as determined from the certification provided by the transferee, is a tax equal to 10 percent of the amount realized on the transfer, reduced by any amount already withheld by the transferee, plus any computed interest. *See* proposed § 1.1446(f)–3(c)(2)(i). The proposed regulations provide that a partnership that is required to withhold under proposed § 1.1446(f)–3(a)(1) may not take into account any adjustment procedures that would otherwise affect the amount required to be withheld under proposed § 1.1446(f)–2(c)(2)(i). *See* proposed § 1.1446(f)–3(c)(2)(i)(A). Thus, for example, a partnership may not reduce the amount that it is required to withhold under the procedures described in proposed § 1.1446(f)–2(c)(4) (adjusting the amount subject to withholding based on a transferor's maximum tax liability). The Treasury Department and the IRS have determined that it would be inappropriate to permit adjustments that may reduce the amount required to be withheld under section 1446(f)(4). Withholding on distributions to transferees under section 1446(f)(4) applies only after the transferee has either failed to properly withhold under section 1446(f)(1) or has not complied with the applicable procedural requirements in the proposed regulations. Accordingly, permitting adjustments to the amount a partnership is required to withhold under section 1446(f)(4) would reduce transferees' incentive to comply with their obligations under section 1446(f)(1) while potentially increasing the partnership's administrative burden associated with that withholding.

Proposed § 1.1446(f)–3(c)(2)(ii) provides rules for the partnership to compute interest on the amount that the transferee failed to withhold. Proposed § 1.1446(f)–3(c)(3) provides that any amount required to be withheld on a distribution under any other withholding provision in the Code is not required to be withheld under section 1446(f)(4). For example, if a partnership is required to withhold $30 under section 1441 on a $100 distribution, the maximum amount required to be withheld on that distribution under section 1446(f)(4) is $70.

Proposed § 1.1446(f)–3(d) provides that a partnership required to withhold under section 1446(f)(4) must report and pay the tax withheld using Forms 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests,* and 8288–C, *Statement of Withholding Under Section 1446(f)(4) for Withholding on Dispositions by Foreign Persons of Partnership Interests,* as provided in forms, instructions, or other guidance.

D. Effect of Withholding on the Transferor and Transferee

The withholding of tax under section 1446(f)(4) does not relieve a nonresident alien individual or foreign corporation subject to tax under section 864(c)(8) from filing a U.S. income tax return with respect to the transfer and paying any tax due with the return. *See* proposed § 1.1446(f)–3(e)(1). Because this tax is withheld from the transferee rather than from the transferor, the transferor is not allowed a credit under section 33. *Id.* However, the proposed regulations clarify that tax will not be collected from the transferor to the extent it has already been collected from another person under these rules. *See* section VI.A of this Explanation of Provisions. Therefore, the transferor will not be required to pay tax to the extent the tax (but not any portion treated as interest) has been paid through withholding on the transferee.

A transferee remains liable under section 1446(f)(1) even when the partnership is required to withhold under section 1446(f)(4). However, the transferee is treated as satisfying this withholding tax liability under section 1446(f)(1) to the extent that it is withheld upon under section 1446(f)(4). *See* proposed § 1.1446(f)–3(e)(2). Any amount withheld that is treated as interest is not treated as satisfying the transferee's liability under section 1446(f)(1), but that amount will instead be treated as interest paid by the transferee with respect to its section 1446(f)(1) liability. *Id.* Under the proposed regulations, if the amount of tax withheld from the transferee exceeds its liability under section 1446(f)(1), only the partnership may claim a refund on behalf of the transferee for the excess amount. *Id.* This rule is meant to make the refund process more administrable by having the partnership act on behalf of each of its transferees for purposes of claiming any excess amounts withheld under section 1446(f)(4). The Treasury Department and the IRS anticipate that partnerships and transferees will make arrangements by contract so that the transferees may be reimbursed for amounts refunded to the partnership. The Treasury Department and the IRS request comments on this issue.

V. Withholding on the Transfer of a Publicly Traded Partnership Interest by a Foreign Person

The proposed regulations provide rules for withholding and reporting on the transfer of an interest in a publicly traded partnership if the interest is publicly traded on an established securities market or is readily tradable on a secondary market or the substantial equivalent thereof (such interests, ''PTP interests''). The rules, when made applicable as final rules, would end the suspension of section 1446(f)(1) withholding on the disposition of PTP interests provided in Notice 2018–08.

A. In General

A transfer of a PTP interest raises unique issues for withholding under section 1446(f). For example, when a transfer of a PTP interest is effected through one or more brokers, the transferee will generally not know the identity of the transferor. Accordingly, the Conference Report for the Act acknowledged that transfers involving PTP interests could require withholding rules different from those that apply to transfers involving non-PTP interests. *See* Conference Report on H.R. 1, Tax Cuts and Jobs Act, H. Rep. No. 115–466, at 511 (''[T]he Secretary may provide guidance permitting a broker, as agent of the transferee, to deduct and withhold the tax . . . such guidance may provide that if an interest in a publicly traded partnership is sold by a foreign partner through a broker, the broker may deduct and withhold the 10-percent tax on behalf of the transferee.'').

Consistent with the Conference Report, proposed § 1.1446(f)–4(a)(1) provides that if a transfer of a PTP interest is effected through one or more brokers, the transferee is not required to withhold, and the withholding obligation is instead imposed on certain brokers involved with the transfer. Generally, the proposed regulations define a broker to include any person, foreign or domestic, that in the ordinary course of a trade or business during the calendar year stands ready to effect sales made by others, and that, in connection with a transfer of a PTP interest, receives all or a portion of the amount realized on behalf of the transferor. *See* proposed § 1.1446(f)–1(b)(1). For example, when a transfer of a PTP interest occurs through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, this definition would include a broker that receives an amount realized from the sale against delivery of the PTP interest and any other broker that receives an amount

realized from that broker. Therefore, the withholding obligation under proposed § 1.1446(f)–4 is generally limited to brokers that receive proceeds from the sale and act on behalf of the transferor. The definition of broker also includes any clearing organization that effects a transfer of a PTP interest on behalf of the transferor. While comments have stated that clearing organizations may not have the capability to complete the withholding required under section 1446(f), the Treasury Department and the IRS anticipate that clearing organizations will make arrangements to ensure that, when effecting the transfer of a PTP interest on behalf of foreign brokers, they act on behalf of brokers that assume withholding responsibility when clearing sales of PTP interests (such as a qualified intermediary (''QI'')).

If a transfer of a PTP interest is effected through multiple brokers, proposed § 1.1446(f)–4(a)(2) provides rules that specify which broker or brokers have a withholding obligation. Under proposed § 1.1446(f)–4(a)(2)(i), a broker that pays the amount realized to a foreign broker is required to withhold unless the foreign broker is either a U.S branch treated as a U.S. person or a QI that assumes primary withholding responsibility for the payment. Consistent with this rule, the Treasury Department and the IRS intend to modify the QI agreement provided in Revenue Procedure 2017–15, 2017–3 I.R.B. 437, to allow QIs to assume primary withholding responsibility on the amount realized. Proposed § 1.1446(f)–4(a)(2)(ii) provides an additional rule requiring the broker that effects a transfer for the transferor as its customer to satisfy the withholding obligation. This rule ensures that withholding will be completed on payment of the amount realized to the transferor when another broker has not already satisfied the withholding.

To avoid withholding by multiple brokers, proposed § 1.1446(f)–4(a)(2)(iii) provides the general rule that a broker is not required to withhold when it knows that the withholding obligation has been satisfied by another broker. Proposed § 1.1446(f)–4(a)(2)(iv) provides that a broker must treat another broker as a foreign person unless it obtains documentation (including a certification of non-foreign status) establishing that the other broker is a U.S. person.

If the transfer of a PTP interest is not effected through one or more brokers, then proposed § 1.1446(f)–4 does not apply, and the general rules of section 1446(f)(1) and proposed § 1.1446(f)–2 apply. A transfer that is effected through a broker includes a distribution with respect to a PTP interest held through an account with a broker.

B. Exceptions to Withholding

The proposed regulations provide five exceptions to withholding that apply to the transfer of a PTP interest. The exceptions are intended to both reduce the compliance burden placed on brokers and provide rules that are administrable.

1. Certification of Non-Foreign Status

As mentioned in section III.B.2 of this Explanation of Provisions, withholding under section 1446(f)(1) is limited to transfers by foreign partners. Accordingly, a broker is not required to withhold to the extent that it relies on a certification of non-foreign status that it receives from the transferor that claims an exception to withholding. *See* proposed § 1.1446(f)–4(b)(2). For purposes of proposed § 1.1446(f)–4, a certification of non-foreign status means a Form W–9, or valid substitute form, that meets the requirements of § 1.1441–1(d)(2). A broker may rely on a valid Form W–9 that it already possesses, and in certain cases, may instead rely on a certification that it receives from another broker that states the TIN and status of the transferor when that other broker acts as an agent for the transferor and possesses the Form W–9 (for example, from an introducing broker). A broker will not qualify for the exception provided in proposed § 1.1446(f)–4(b)(2) if it has actual knowledge that the certification is incorrect or unreliable.

2. 10-Percent Exception

The proposed regulations include an exception to withholding that may apply if, on a deemed sale of the assets of the publicly traded partnership the interest in which is transferred, the amount of effectively connected gain would be less than 10 percent of the total gain. Specifically, proposed § 1.1446(f)–4(b)(3) provides that a broker is not required to withhold under proposed § 1.1446(f)–4 if it properly relies on a qualified notice stating that the 10-percent exception applies.

The 10-percent exception applies if a hypothetical sale by the publicly traded partnership of all of its assets at fair market value on a specified date would result in an amount of gain effectively connected with the conduct of a trade or business within the United States that is less than 10 percent of the total gain. The specified date must be a date designated by the publicly traded partnership that is within the 92-day period ending on the date that it posts a qualified notice. Unlike the similar exception described in section III.B.4 of this Explanation of Provisions that applies to transfers of non-PTP interests, this rule requires a publicly traded partnership to designate a date for this purpose that generally occurs within the most recent calendar quarter. *Cf.* proposed § 1.1446(f)–2(b)(4) (permitting the deemed sale computation to occur on a determination date, which would allow the deemed sale date to be determined as of the first day of a partnership's taxable year in which the transfer occurred in certain cases). The Treasury Department and the IRS have determined that it is appropriate to limit the availability of this exception to cases in which a publicly traded partnership has designated a deemed sale date occurring within the most recent calendar quarter because publicly traded partnerships are in a better position to determine the value of their assets, and in some cases determine the basis of their assets, on a quarterly basis. The proposed regulations limit reliance on a qualified notice depending on its date of posting. *See* proposed § 1.1446(f)–4(b)(3)(iii).

For a discussion of rules regarding when a publicly traded partnership may be liable under section 1446(f)(4) because it falsely states on a qualified notice that this exception applies, see section IV.B of this Explanation of Provisions. For a discussion of the proposed changes to existing qualified notice rules, see section VII of this Explanation of Provisions.

3. Qualified Current Income Distributions

As discussed in section III.B.3 of this Explanation of Provisions, the proposed regulations allow a transferor of a non-PTP interest to provide a certification stating that the transferor would not realize any gain on the transfer. Because it would be administratively difficult for a broker to timely obtain this type of certification from the transferor of a PTP interest, and difficult for the transferor to determine its basis in the PTP interest, the proposed regulations do not provide a similar exception for transfers of PTP interests.

The Treasury Department and the IRS have determined, however, that it would be appropriate to eliminate withholding under section 1446(f)(1) on distributions (the full amount of which is generally treated as an amount realized under the proposed regulations) by a publicly traded partnership when it is likely that the transferor would realize no gain. In general, under section 705(a)(1), a partner's basis in its interest is increased by its distributive share of income for the taxable year, such that a distribution by the partnership not in

excess of that income generally does not result in the recognition of gain under section 731(a)(1). Accordingly, the proposed regulations provide that when a qualified notice posted by a publicly traded partnership indicates that the distribution does not exceed the net income the partnership earned since the record date of the partnership's last distribution, no withholding is required with respect to the distribution. *See* proposed § 1.1446(f)–4(b)(4).

4. Proceeds Subject to Withholding Under Section 3406

A broker may also be required to withhold on gross proceeds from the transfer of a PTP interest under section 3406 when a payment is treated as being made to a non-exempt U.S. recipient. To prevent withholding twice on the same payment, proposed § 1.1446(f)–4(b)(5) provides an exception to withholding under section 1446(f)(1) if the amount realized is subject to withholding under section 3406.

5. Claim of Treaty Benefits

The proposed regulations provide an exception similar to the one described in section III.B.6 of this Explanation of Provisions when a transferor states that it is not subject to tax on any gain from the transfer pursuant to an income tax treaty in effect between the United States and a foreign country. *See* proposed § 1.1446(f)–4(b)(6). The exception also requires the transferor to furnish a valid Form W–8 with the information necessary to support the claim. *Id.* Unlike the exception for non-PTP interests, a broker is not required to mail the certification to the IRS because under the proposed regulations brokers are required to file a Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding,* to report a transfer of a PTP interest that includes information about the claim of treaty benefits. *See* section V.D of this Explanation of Provisions for reporting requirements with respect to transfers of PTP interests.

C. Determining the Amount To Withhold

1. Amount Realized

i. In General

A broker that is required to withhold under proposed § 1.1446(f)–4(a) must withhold 10 percent of the amount realized on the transfer of a PTP interest. As explained in section III.C.2 of this Explanation of Provisions, a reduction in a partner's share of partnership liabilities is treated as an amount realized under proposed § 1.1446(f)–2(c). However, because of the difficulties involved with requiring a broker to timely determine a transferor's share of partnership liabilities, proposed § 1.1446(f)–4(c)(2)(i) provides a special rule that treats the amount realized on the transfer of a PTP interest as the amount of gross proceeds (as defined in § 1.6045–1(d)(5)) paid or credited to the customer or another broker (as applicable). If a publicly traded partnership makes a distribution to a partner, the amount realized is the amount of cash distributed (or to be distributed) and the fair market value of property distributed (or to be distributed).

ii. Modified Amount Realized for Foreign Partnerships

Consistent with the rule described in section III.C.2.iii of this Explanation of Provisions that applies to transfers of non-PTP interests, the proposed regulations include a rule that allows brokers to rely on a certification from a foreign partnership to modify the amount realized based on the extent to which the amount realized is attributable to persons who are (or are presumed to be) foreign persons. *See* proposed § 1.1446(f)–4(c)(2)(ii).

D. Reporting and Paying Withheld Amounts

A broker required to withhold under § 1.1446(f)–4 must pay the withheld tax pursuant to the deposit rules in § 1.6302–2, and report the withholding on Forms 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,* and 1042–S pursuant to the procedures in § 1.1461–1(b) and (c). The proposed regulations treat as a recipient for Form 1042–S reporting purposes a partner that receives an amount realized from a transfer of a PTP interest subject to § 1.1446(f)–4. *See* proposed § 1.1461–1(c)(1)(ii)(A)(8). This rule also clarifies that a foreign partnership is treated as a recipient for this purpose to ensure that the foreign partnership receives a Form 1042–S that it may use to claim credit for any withholding under proposed § 1.1446(f)–4 against its tax liability under section 1446(a). *See* section II.E of this Explanation of Provisions for discussion of the general coordination rule.

To implement the reporting requirements, the proposed regulations add to the list of amounts subject to reporting on Form 1042–S an amount realized on the transfer of a PTP interest subject to § 1.1446(f)–4 (with limited exceptions). *See* proposed § 1.1461–1(c)(2). The proposed regulations also add to this list any distributions of effectively connected income by a publicly traded partnership subject to § 1.1446–4 to clarify that these amounts are reportable on Form 1042–S. *Id.*

E. Effect of Withholding on Transferor

As mentioned in section III.E of this Explanation of Provisions, the proposed regulations neither relieve a transferor of its substantive tax liability under section 864(c)(8), nor relieve a transferor subject to section 864(c)(8) from its filing obligation. *See* proposed § 1.1446(f)–4(e)(1). However, a transferor is allowed a credit under section 33 for the amount withheld under section 1446(f)(1) and proposed § 1.1446(f)–4. *Id.* To claim the credit, the transferor must attach to its return a copy of the Form 1042–S that includes the transferor's TIN. *Id.* For a discussion of the rules regarding a transferor that is a foreign partnership claiming a credit for withholding under section 1446(f)(1), see section II.E of this Explanation of Provisions.

F. Procedures To Adjust Overwithholding

Section 1.1461–2(a) allows a withholding agent that overwithheld under chapter 3 of the Code, and made a deposit of tax as provided in § 1.6302–2(a), to adjust the overwithheld amount using either a reimbursement or a set-off procedure. Because these rules are meant to allow withholding agents to adjust overwithholding for any deposited amounts that are reportable on Forms 1042 and 1042–S, the proposed regulations modify § 1.1461–2(a) to allow use of the adjustment procedures for amounts withheld by a broker pursuant to proposed § 1.1446(f)–4 (which are reported on Forms 1042 and 1042–S, as noted in section V.D. of this Explanation of Provisions).

G. Procedures To Adjust Underwithholding

In general, § 1.1461–2(b) allows a withholding agent that underwithheld on a beneficial owner under chapter 3 of the Code to withhold from future payments made to the beneficial owner, or satisfy the tax from property or additional contributions of the beneficial owner, before the earlier of the due date for filing Form 1042 or the date on which the form is actually filed. The proposed regulations amend this provision to allow the use of this procedure by brokers that underwithheld under proposed § 1.1446(f)–4 on the transfer of a PTP interest.

H. Refunds and Credits

Section 1.1464–1 generally provides that if an overpayment of tax has actually been withheld from the beneficial owner of the income, any refund or credit will be made to that beneficial owner. If, however, the tax was not withheld at source, but was instead paid by the withholding agent, the refund or credit will be made to the withholding agent. The proposed regulations clarify that these rules apply for purposes of section 1446(f). *See* proposed § 1.1464–1(a).

VI. Liability for Failure To Withhold

A. In General

Proposed § 1.1446(f)–5(a) provides that every person required to deduct and withhold tax under section 1446(f), including under proposed §§ 1.1446(f)–2 through 1.1446(f)–4, but that fails to do so is liable under section 1461. If the tax required to be withheld is paid by another person required to withhold, or by the nonresident alien individual or foreign corporation subject to tax under section 864(c)(8), section 1463 and the proposed regulations clarify that the tax will only be collected once. However, the satisfaction of this liability does not relieve a person that failed to withhold under section 1446(f) from any interest, penalties, or additions to tax that would otherwise apply. The proposed regulations also provide that a partnership that fails to withhold under proposed § 1.1446(f)–3 is liable under section 1461 only for the amount of tax that it failed to withhold, and not any interest computed under § 1.1446(f)–3(c)(2)(ii). This rule ensures that interest will be computed and assessed only once with respect to the same underlying tax liability.

B. Liability of Agents

Proposed § 1.1446(f)–5(b) provides rules for the liability of agents, which generally require an agent of a transferor or transferee to notify the transferee (or other person required to withhold) if it has knowledge that a certification furnished to that person is false. A person that receives notice from an agent may not rely on the certification to apply an exception to withholding or for determining the amount to withhold. Proposed § 1.1446(f)–5(b)(2) provides procedural rules regarding the timing and content of the notice, and requires the agent to furnish a copy of the notice to the IRS. An agent that fails to provide the required notice is liable for the tax that the person that should have received the notice would have been required to withhold under section 1446(f). However, under proposed § 1.1446(f)–5(b)(4), this liability is limited to the amount of compensation that the agent derives from the transaction (and any civil or criminal penalties that may apply). The proposed regulations clarify that brokers required to withhold under § 1.1446(f)–4 are not treated as agents for purposes of this rule, and are instead liable for any failure to withhold under the rules described in section V of this Explanation of Provisions.

VII. Amendments to Existing Section 1446 Regulations Relating to Distributions by Publicly Traded Partnerships

In response to comments received outside the context of section 1446(f), the proposed regulations also contain changes to the existing qualified notice rules that apply to distributions that publicly traded partnerships make to foreign partners. The Treasury Department and the IRS are aware that in certain cases nominees receive notices of distribution from publicly traded partnerships that do not provide detailed information regarding the amounts of income comprising the distribution as specified in § 1.1446–4(f)(3) (such as amounts described in section 1441 or section 1442 or subject to withholding under section 1446). The term ''qualified notice'' under § 1.1446–4(b)(4) is currently defined by reference to the reporting requirements of 17 CFR 240.10b–17(b)(1) or (3), which do not include a requirement to report information regarding the types of income comprising the distribution. Unless a notice provides that information, however, a nominee will not have the information necessary to apply the ordering rule of § 1.1446–4(f)(3) to the distribution for purposes of determining the amount required to be withheld.

The proposed regulations make two changes to resolve this issue. First, proposed § 1.1446–4(b)(4) revises the method for a publicly traded partnership to provide a nominee a qualified notice by requiring that the notice be posted in a readily accessible format in an area of the primary public website of the publicly traded partnership that is dedicated to this purpose. Second, proposed § 1.1446–4(d) creates a default withholding rule subjecting gross distributions to the higher of the withholding percentage required under sections 1441 and 1442 or the applicable percentage under section 1446(b)(2), unless a qualified notice provides the nominee sufficient detail to determine the types of income distributed and the appropriate withholding rates to apply. Thus, if a publicly traded partnership is unable to determine the makeup of a distribution when it is made, the nominee must withhold at the highest applicable rate.

The proposed regulations also expand the definition of a nominee for withholding under § 1.1446–4 to include certain foreign persons that agree to assume primary withholding responsibility. Therefore, a QI or a U.S. branch treated as a U.S. person that assumes primary withholding responsibility for a distribution by a publicly traded partnership under proposed § 1.1446–4(b)(3) can act as a nominee with respect to the distribution. The Treasury Department and the IRS intend to modify the QI agreement provided in Revenue Procedure 2017–15 to allow QIs to assume primary withholding responsibility for distributions by publicly traded partnerships under section 1446(a).

The proposed regulations also make changes to the qualified notice rules applicable to publicly traded partnerships, publicly traded trusts, and real estate investment trusts (''REITs'') under section 1445 that conform to proposed § 1.1446–4(b)(4) so that those rules also provide more readily available information for nominees. *See* proposed § 1.1445–8(f).

As discussed in sections V.F and V.G of this Explanation of Provisions, the proposed regulations modify § 1.1461–2(a) and (b) to allow use of procedures to adjust overwithholding and underwithholding for amounts withheld by a broker pursuant to proposed § 1.1446(f)–4. The proposed regulations also amend § 1.1461–2(a) to allow the use of reimbursement and set-off procedures with respect to amounts withheld under section 1446(a) on distributions of ECTI by publicly traded partnerships (which are reported on Forms 1042 and 1042–S, as opposed to Forms 8804, *Annual Return for Partnership Withholding Tax (Section 1446),* and 8805 used by non-publicly traded partnerships to report withholding on ECTI allocable to foreign partners). They also amend § 1.1461–2(b) to clarify that the existing reference to ''distributions of effectively connected income under section 1446'' is meant to apply only to those distributions that are made by publicly traded partnerships.

Applicability Dates

Proposed § 1.864(c)(8)–2(a) and proposed § 1.6050K–1(d)(3) apply to transfers that occur on or after the date that these regulations are published as final regulations in the **Federal Register** (the ''finalization date''). Proposed

§ 1.864(c)(8)–2(b) and (c) and proposed § 1.6050K–1(c)(2) and (c)(3) apply to returns filed on or after the finalization date. Proposed § 1.864(c)(8)–2(d) applies beginning on the finalization date.

Proposed §§ 1.1445–2(b)(2)(v) and 1.1445–5(b)(3)(iv) apply to certifications provided on or after May 7, 2019, except that a taxpayer may apply those provisions with respect to certifications provided before that date. A taxpayer may rely on the proposed amendments to §§ 1.1445–2 and 1.1445–5 with respect to any period before the finalization date. Proposed § 1.1445–8(f)(1) applies to distributions made on or after the date that is 60 days after the finalization date.

Proposed § 1.1446–3(c)(4) applies to partnership taxable years that include transfers that occur on or after the date that is 60 days after the finalization date. Proposed § 1.1446–4(b)(2), (b)(3), (c), (d), and (f) apply to distributions made on or after the date that is 60 days after the finalization date.

Proposed §§ 1.1446(f)–1 through 1.1446(f)–5 apply to transfers that occur on or after the date that is 60 days after the finalization date. For transfers that occur before the date that is 60 days after the finalization date, taxpayers may apply the rules described in Notice 2018–08 and Notice 2018–29. Alternatively, instead of applying the rules described in Notice 2018–29, taxpayers and other affected persons may choose to apply §§ 1.1446(f)–1, 1.1446(f)–2, and 1.1446(f)–5 of the proposed regulations in their entirety to all transfers as if they were final regulations.

The proposed amendments to § 1.1461–1(a)(1), (c)(1)(i), (c)(1)(ii), (c)(2)(i) and (c)(4) apply with respect to returns for transfers occurring on or after the date that is 60 days after the finalization date. The proposed amendments to § 1.1461–2(a)(1) and (b) apply to transfers occurring on or after the date that is 60 days after the finalization date. The proposed amendments to § 1.1461–3 apply to returns for transfers occurring on or after the date that is 60 days after the finalization date.

The proposed amendments to § 1.1463–1(a) apply to transfers that occur on or after the date that is 60 days after the finalization date.

The proposed amendments to § 1.1464–1(a) apply to transfers that occur on or after the date that is 60 days after the finalization date.

The Treasury Department and the IRS intend to obsolete Notice 2018–08 and Notice 2018–29 effective on the date that is 60 days after the finalization date.

Special Analyses

I. Regulatory Planning and Review

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

The collection of information in these proposed regulations is in proposed § 1.864(c)(8)–2 regarding reporting for transactions described in section 864(c)(8) and proposed § 1.864(c)(8)–1, and proposed §§ 1.1446(f)–1, 1.1446(f)–2, 1.1446(f)–3, and 1.1446(f)–4 regarding the withholding, reporting, and paying of tax under section 1446(f) following the transfer of an interest described in section 864(c)(8) and proposed § 1.864(c)(8)–1. Section II.1 of this Special Analyses discusses the collections of information that will be conducted using IRS forms. The information collections that will not be conducted through IRS forms are discussed in section II.2 of this Special Analyses.

A. Collections of Information—Forms 1042, 1042–S, 8288, 8288–A, 8288–C, W–8IMY, W–8BEN, and W–8BEN–E

Under proposed §§ 1.1446(f)–2(b)(2) and 1.1446(f)–4(b)(2), a transferor qualifies for an exception from withholding if it provides to the transferee or broker (as applicable) a certification of non-foreign status, which includes a valid Form W–9 (at the transferor's option). The IRS has determined that Form W–9 is not a collection of information under 5 CFR 1320.3(h)(1) and is exempt from the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (''PRA'').

The collection of information in proposed § 1.1446(f)–2(b)(7) is provided by the transferor by submitting a certification and Form W–8BEN or W–8BEN–E to the transferee and is optional. The information will be used by the transferor to determine whether an exception to withholding applies based on an income tax treaty.

The information in proposed § 1.1446(f)–2(c)(2)(iv)(C) by the transferor to the transferee is provided on Form W–8IMY and is optional. This information will be used by the transferee to determine the modified amount realized.

The collection of information in proposed § 1.1446(f)–2(d)(1) will be provided on Forms 8288 and 8288–A by the transferee to the IRS and is mandatory if the transferee withholds tax under section 1446(f)(1). These forms will be used by the transferee to report and pay any tax under section 1446(f)(1) and proposed § 1.1446(f)–2.

The information provided in proposed § 1.1446(f)–3(d) by the partnership to the IRS will be used by the partnership to report and pay any tax under section 1446(f)(4) and proposed § 1.1446(f)–3 and will be provided on new Form 8288–C. The IRS anticipates that the burden associated with this collection of information will be reflected in OMB control number 1545–0902.

The collection of information provided in proposed § 1.1446(f)–4(a)(2)(i) from certain U.S. branches of foreign persons and qualified intermediaries to the broker that effected the transfer of an interest described in section 864(c)(8) and proposed § 1.1446(f)–4 will be provided on Form W–8IMY. This information will be used by the broker to determine its withholding obligation under section 1446(f)(1) and proposed § 1.1446(f)–4.

The collection of information in proposed § 1.1446(f)–4(b)(6) is provided by the transferor by submitting a certification and Form W–8BEN or W–8BEN–E to the broker and is optional. The information will be used by the broker to determine whether an exception to withholding applies based on an income tax treaty.

The information in proposed § 1.1446(f)–4(c)(2)(ii)(C) by the transferor to the broker is provided on Form W–8IMY and is optional. This information will be used by the broker to determine the modified amount realized.

The information in proposed § 1.1446(f)–4(d) will be provided on Forms 1042 and 1042–S submitted by the broker to the IRS and is mandatory if the broker withholds tax under section 1446(f)(1) or if it applies the exception described in proposed § 1.1446(f)–4(b)(6). These forms will be used to report and pay any tax under section 1446(f)(1) and proposed § 1.1446(f)–4.

The information in proposed § 1.1446(f)–4(e)(2) provided by the transferor to the IRS will be used to claim a credit for an amount withheld under section 1446(f)(1) and proposed § 1.1446(f)–4, and will be satisfied by submitting Form 1042–S with an income tax return (Form 1040NR or 1120–F) to the IRS.

The Treasury Department and the IRS intend that the information collection requirements described in this section II.1 will be set forth in the forms and instructions identified in the Revision of

Existing Forms and New Forms table. As a result, for purposes of the PRA, the reporting burdens associated with the collections of information in those forms will be reflected in the PRA submissions associated with those forms.

REVISION OF EXISTING FORMS AND NEW FORMS

	New	Revision of existing form	Number of additional respondents (estimated, rounded to nearest 1,000)
Form 1042–S		Y	<6,000
Form 8288		Y	<70,000
Form 8288–A		Y	<70,000
Form 8288–C	Y		<70,000
Form W–8BEN		Y	<70,000
Form W–8BEN–E		Y	<70,000
Form W–8IMY		Y	<70,000

Source: RAAS:CDW and SOI.

The numbers of respondents in the Revision of Existing Forms and New Forms table were estimated by the Research, Applied Analytics and Statistics Division of the IRS from the Compliance Data Warehouse and Statistics of Income, using tax years 2013 through 2015. Data for each of the Forms 1042, 1042–S, 8288, 8288–A, W–8BEN, W–8BEN–E, and W–8IMY represent preliminary estimates of the total number of additional taxpayers that are expected to file these forms. The tax data for 2016 and 2017 are not yet available. Data for Forms 8288, 8288–A, W–8BEN, W–8BEN–E, and W–8IMY represent preliminary estimates of the total number of interests in partnerships, other than publicly traded partnership interests, engaged in the conduct of a trade or business in the United States that will be transferred by foreign persons. Data for Form 8288–C represent preliminary estimates of the total number of transferees on whom partnerships must withhold tax under section 1446(f)(4) if the transferees do not fully withhold tax under section 1446(f)(1). Data for Form 1042–S represent preliminary estimates of the total number of interests in publicly traded partnership engaged in the conduct of a trade or business in the United States that will be transferred by foreign persons.

The current status of the PRA submissions related to the tax forms that will be used to conduct the information collections in the proposed regulations is provided in the Current Status of PRA Submissions table. The overall burden estimates provided for the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the information collections in the proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the proposed regulations. No burden estimates specific to the forms affected by the proposed regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden.

CURRENT STATUS OF PRA SUBMISSIONS

	Type of filer	OMB No.(s)	Status
Form 1042, Form 1042–S	All filers (Legacy Model)	1545–0096	Approved 12/27/2016 until 12/31/2019.
	Link: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201606-1545-025.		
Form 8288, Form 8288–A	All filers (Legacy system)	1545–0902	Approved 1/2/2017 until 1/31/2020.
	Link: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201608-1545-015.		
Form W–8BEN, Form W–8BEN–E, Form W–8IMY.	Business (NEW Model)	1545–0123	Approved 12/21/2018 until 12/31/2019.
	Link: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1545-019.		
	All other filers (Legacy system)	1545–1621	Approved 12/19/18 until 12/31/2021.
	Link: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201708-1545-002.		

B. Collections of Information—Proposed §§ 1.864(c)(8)–2(a) and (b), 1.1446(f)–1(c)(3), 1.1446(f)–2(b)(2) Through (7), (c)(2), and (c)(4), 1.1446(f)–4(b)(2) and (6), 1.1446(f)–4(b)(3) and (4), and 1.1446(f)–2(d)(2)

These proposed regulations contain collections of information that are not on existing or new IRS forms. These collections of information include:

(a) Notification by a transferor to a partnership that a transfer has occurred (proposed § 1.864(c)(8)–2(a));

(b) Statement provided by a partnership to a transferor necessary for the transferor to calculate its tax liability (proposed § 1.864(c)(8)–2(b));

(c) Retention of information by partnership in its books and records (proposed § 1.1446(f)–1(c)(3));

(d) Certifications from a transferor (or partnership) to a transferee for an exception from withholding or adjustment to amount realized (proposed § 1.1446(f)–2(b)(2) through (7), (c)(2), and (c)(4));

(e) Certification from a transferee to partnership regarding the transferee's withholding (proposed § 1.1446(f)–2(d)(2)).

(f) Certifications from a transferor to a broker to apply an exception from withholding (proposed § 1.1446(f)–4(b)(2) and (6)); and

(g) Information provided by a publicly traded partnership to a broker (proposed § 1.1446(f)–4(b)(3) and (4)).

The collections of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the PRA. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 12, 2019. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (including underlying assumptions and methodology);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information provided in proposed § 1.864(c)(8)–2 will be used by both the partnership engaged in the conduct of a trade or business in the United States and the foreign partner that transfers an interest in the partnership and are mandatory. The notification provided to the partnership by the foreign transferor in proposed § 1.864(c)(8)–2(a) will serve as notice to the partnership that a transfer described in section 864(c)(8) and proposed § 1.864(c)(8)–1 occurred. The statement provided to the foreign transferor by the partnership in proposed § 1.864(c)(8)–2(b) is necessary for the foreign transferor to determine its effectively connected gain or loss as described in proposed § 1.864(c)(8)–1(b) and (c).

The collection of information provided in proposed § 1.1446(f)–1(c)(3) requires a partnership to retain certain identified information in its books and records regarding its obligation to withhold under section 1446(f). The identified information will be used by a partnership to determine the application, and the extent, of withholding under section 1446(f).

The collections of information provided in proposed § 1.1446(f)–2(b)(2) through (7), (c)(2), and (c)(4) from the transferor of an interest described in section 1446(f), or from the partnership whose interest is transferred, to the transferee of the interest will be used by the transferee to determine whether an exception applies or to determine the amount realized. These collections of information are optional. The certification in proposed § 1.1446(f)–2(b)(7) includes the submission of Form W–8BEN or W–8BEN–E and is also discussed in section II.1 of this Special Analyses.

The information provided in proposed § 1.1446(f)–2(d)(2) by the transferee to the partnership will be used by the partnership to determine whether it has a withholding obligation under section 1446(f)(4) and proposed § 1.1446(f)–3.

The collection of information provided in proposed § 1.1446(f)–4(b)(6) by the transferor to the broker will be used by the broker to determine if an exception applies that relieves the broker from its withholding obligation under section 1446(f)(1) and proposed § 1.1446(f)–4. The certification in proposed § 1.1446(f)–4(b)(6) includes the submission of Form W–8BEN or W–8BEN–E and is also discussed in section II.1 of this Special Analyses.

Estimated total annual reporting burden: 50,920 hours.

Estimated average annual burden hours per respondent: Approximately 0.67 hours (40 minutes).

Estimated cost per respondent ($2016): $26.00.

Estimated total annual monetized cost ($2016): $1,827,938.00.

Estimated number of respondents: 76,000.

Estimated annual frequency of responses: 0.4 (as the collections of information do not occur on an annual basis).

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 control number assigned by the Office of Management and Budget.

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.

III. Regulatory Flexibility Act

It is hereby certified that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The proposed regulations affect (i) foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in the conduct of a trade or business within the United States, and who are not subject to the Regulatory Flexibility Act, (ii) U.S. persons that are transferors providing Forms W–9 to transferees to certify that they are not foreign persons, (iii) persons who acquire those interests, (iv) partnerships that, directly or indirectly, have foreign persons as partners, and (v) brokers that effect transfers of interests in publicly traded partnerships.

The Treasury Department and the IRS do not have data readily available to assess the number of small entities potentially affected by the proposed regulations. However, entities potentially affected by these proposed regulations are generally not small entities, because of the resources and investment necessary to acquire a

partnership interest from a foreign person or to directly, or indirectly, have foreign persons as partners. Therefore, the Treasury Department and the IRS do not believe that a substantial number of domestic small entities will be subject to the proposed regulation's information collections. Consequently, the Treasury Department and the IRS certify that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The IRS invites the public to comment on the impact of these regulations on small entities.

Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Subin Seth, Ronald M. Gootzeit, and Chadwick Rowland, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding sectional authorities for §§ 1.864(c)(8)–2, 1.1445–5, 1.1445–8, 1.1446–3 through 1.1446–4, 1.1446(f)–1 through 1.1446(f)–5, and 1.6050K–1 in numerical order to read in part as follows:

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

Section 1.864(c)(8)–2 also issued under 26 U.S.C. 864(c)(8)(E), 6001 and 6031(b).

* * * * *

Section 1.1445–5 also issued under 26 U.S.C. 1445(e)(7).

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Section 1.1445–8 also issued under 26 U.S.C. 1445(e)(7).

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Section 1.1446–3 also issued under 26 U.S.C. 1446(g).

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Section 1.1446–4 also issued under 26 U.S.C. 1446(g).

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Section 1.1446(f)–1 also issued under 26 U.S.C. 1446(f)(6) and 1446(g).

* * * * *

Section 1.1446(f)–2 also issued under 26 U.S.C. 1446(f)(6) and 1446(g).

* * * * *

Section 1.1446(f)–3 also issued under 26 U.S.C. 1446(f)(6) and 1446(g).

* * * * *

Section 1.1446(f)–4 also issued under 26 U.S.C. 1446(f)(6) and 1446(g).

* * * * *

Section 1.1446(f)–5 also issued under 26 U.S.C. 1446(f)(6) and 1446(g).

* * * * *

Section 1.6050K–1 also issued under 26 U.S.C. 6050K(a).

* * * * *

■ **Par. 2.** Section 1.864(c)(8)–2 is added to read as follows:

§ 1.864(c)(8)–2 Notification and reporting requirements.

(a) *Notification by foreign transferor*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, a notifying transferor that transfers an interest in a specified partnership must notify the partnership of the transfer in writing within 30 days of the transfer. The notification must include—

(i) The names and addresses of the notifying transferor and the transferee or transferees;

(ii) The U.S. taxpayer identification number (TIN) of the notifying transferor and, if known, of the transferee or transferees; and

(iii) The date of the transfer.

(2) *Exceptions*—(i) *Certain interests in publicly traded partnerships.* Paragraph (a)(1) of this section does not apply to a notifying transferor that transfers an interest in a publicly traded partnership if the interest is publicly traded on an established securities market or is readily tradable on a secondary market (or the substantial equivalent thereof).

(ii) *Certain distributions.* Paragraph (a)(1) of this section does not apply to a notifying transferor that is treated as transferring an interest in a specified partnership because it received a distribution from that specified partnership.

(3) *Section 6050K.* The notification described in paragraph (a)(1) of this section may be combined with or provided at the same time as the notification described in § 1.6050K–1(d), provided that it satisfies the requirements of both sections.

(4) *Other guidance.* The notification described in paragraph (a)(1) of this section must also include any information required in forms, instructions, or other guidance.

(b) *Reporting by specified partnerships with notifying transferor*—(1) *In general.* (i) A specified partnership must provide to a notifying transferor the statement described in paragraph (b)(2) of this section if—

(A) The partnership receives the notice described in paragraph (a) of this section, or otherwise has actual knowledge that there has been a transfer of an interest in the partnership by a notifying transferor; and

(B) At the time of the transfer, the notifying transferor would have had a distributive share of deemed sale EC gain or deemed sale EC loss within the meaning of § 1.864(c)(8)–1(c).

(ii) *Distributions.* For purposes of paragraph (b)(1)(i)(B) of this section, a partnership that is a transferee because it makes a distribution is treated as having actual knowledge of that transfer.

(2) *Contents of statement.* The statement required to be furnished by the specified partnership under paragraph (b)(1) of this section must include—

(i) The items described in § 1.864(c)(8)–1(c)(3)(ii) (foreign transferor's aggregate deemed sale EC items, which includes items derived from lower-tier partnerships); and

(ii) Any other information as provided in forms, instructions, or other guidance.

(3) *Time for furnishing statement.* The specified partnership must furnish the required information on or before the due date (with extensions) for issuing

Schedule K–1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.,* or its successor, to the transferor for the year of the transfer. *See* § 1.6031(b)–1T(b).

(4) *Manner of furnishing statement.* No specific format is required for the information except as provided in any forms, instructions, or other guidance.

(5) *Partnership notifying transferor.* For purposes of this paragraph (b), a specified partnership must treat a notifying transferor that is a partnership as a nonresident alien individual.

(c) *Statement may be provided to agent.* A partnership may provide a statement required under paragraph (b)(2) of this section to a person other than the notifying transferor if the person is described in § 1.6031(b)–1T(c).

(d) *Definitions.* The following definitions apply for purposes of this section.

(1) *Notifying transferor.* The term *notifying transferor* means any foreign person, any domestic partnership that has a foreign person as a direct partner, and any domestic partnership that has actual knowledge that a foreign person indirectly holds, through one or more partnerships, an interest in the domestic partnership.

(2) *Specified partnership.* The term *specified partnership* means a partnership that is engaged in the conduct of a trade or business within the United States or that owns (directly or indirectly) an interest in a partnership that is engaged in the conduct of a trade or business within the United States, and may include a publicly traded partnership as defined in section 7704 and §§ 1.7704–1 through 1.7704–4, but does not include a publicly traded partnership treated as a corporation under that section.

(3) *Transfer.* The term *transfer* has the meaning provided in § 1.864(c)(8)–1(g)(5).

(e) *Applicability dates.* Paragraph (a) of this section applies to transfers that occur on or after the date that these regulations are published as final regulations in the **Federal Register**. Paragraphs (b) and (c) of this section apply to returns filed on or after the date that these regulations are published as final regulations in the **Federal Register**. Paragraph (d) of this section applies beginning on the date that these regulations are published as final regulations in the **Federal Register**.

■ **Par. 3.** Section 1.1445–2 is amended by adding paragraph (b)(2)(v) and a sentence to the end of paragraph (e) to read as follows:

§ 1.1445–2 Situations in which withholding is not required under section 1445(a).

* * * * *

(b) * * *

(2) * * *

(v) *Form W–9.* For purposes of paragraph (b)(2)(i) of this section, a certification of non-foreign status includes a valid Form W–9, *Request for Taxpayer Identification Number and Certification,* or its successor, submitted to the transferee by the transferor.

* * * * *

(e) *Applicability dates.* * * * Paragraph (b)(2)(v) of this section applies to certifications provided on or after May 7, 2019, except that a taxpayer may apply it with respect to certifications provided before that date.

■ **Par. 4.** Section 1.1445–5 is amended by adding paragraph (b)(3)(iv) and a sentence to the end of paragraph (h) to read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(b) * * *

(3) * * *

(iv) *Form W–9.* For purposes of paragraph (b)(3)(i) of this section, a certification of non-foreign status includes a valid Form W–9, *Request for Taxpayer Identification Number and Certification,* or its successor, submitted to the transferee by the transferor.

* * * * *

(h) *Applicability dates.* * * * Paragraph (b)(3)(iv) of this section applies to certifications provided on or after May 7, 2019, except that a taxpayer may apply it with respect to certifications provided before that date.

■ **Par. 5.** Section 1.1445–8 is amended by revising paragraph (f) to read as follows:

§ 1.1445–8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITs).

* * * * *

(f) *Qualified notice*—(1) *In general.* A qualified notice for purposes of paragraph (b)(3)(iv) of this section is a notice provided in the manner described in § 1.1446–4(b)(4) by a partnership, trust, or REIT regarding a distribution that is attributable to the disposition of a United States real property interest. In the case of a REIT, a qualified notice is only a notice of a distribution, all or any portion of which the REIT actually designates, or characterizes in accordance with paragraph (c)(2)(ii)(C) of this section, as a capital gain dividend in the manner described in § 1.1446–4(b)(4), with respect to each share or certificate of beneficial interest. A deemed designation under paragraph (c)(2)(ii)(A) of this section may not be the subject of a qualified notice under this paragraph (f). A person described in paragraph (b)(3) of this section is treated as receiving a qualified notice when the notice is provided in accordance with § 1.1446–4(b)(4).

(2) *Applicability dates.* Paragraph (f)(1) of this section applies to distributions made on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

■ **Par. 6.** Section 1.1446–3 is amended:

■ 1. In the first sentence of paragraph (a)(2)(i), by removing ''section 11(b)(1)'' and adding in its place ''section 11(b)''.

■ 2. By adding paragraph (c)(4).

The addition reads as follows:

§ 1.1446–3 Time and manner of calculating and paying the 1446 tax.

* * * * *

(c) * * *

(4) *Coordination with section 1446(f).* A partnership that is directly or indirectly subject to withholding under section 1446(f)(1) during its taxable year may credit the amount withheld under section 1446(f)(1) against its section 1446 tax liability for that taxable year only to the extent the amount is allocable to foreign partners.

* * * * *

■ **Par. 7.** Section 1.1446–4 is amended by:

■ 1. By revising paragraphs (b)(3) and (4).

■ 2. By removing the second sentence of paragraph (c).

■ 3. By revising paragraphs (d) and (f)(3).

The revisions and additions read as follows:

§ 1.1446–4 Publicly traded partnerships.

* * * * *

(b) * * *

(3) *Nominee.* For purposes of this section, the term nominee means a person that holds an interest in a publicly traded partnership on behalf of a foreign person and that is either a U.S. person, a qualified intermediary (as defined in § 1.1441–1(e)(5)(ii)) that assumes primary withholding responsibility for a payment, or a U.S. branch of a foreign person that agrees to be treated as a U.S. person (as described in § 1.1441–1(b)(2)(iv)) with respect to a payment.

(4) *Qualified notice.* For purposes of this section, a qualified notice is a notice posted by a publicly traded partnership that states the amount of a

distribution that is attributable to each type of income described in paragraphs (f)(3)(i) through (v) of this section. A qualified notice may also include the information described in § 1.1446(f)–4(b)(3), relating to an exception from withholding under section 1446(f)(1) for transfers of certain partnership interests. The notice must be posted in a readily accessible format in an area of the primary public website of the publicly traded partnership that is dedicated to this purpose. A qualified notice must be posted by the date required for providing notice with respect to dividends described in 17 CFR 240.10b–17(b)(1) or (3) (or any successor regulation) issued pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a) and contain the information described therein as it would relate to the distribution. The publicly traded partnership must keep the notice accessible to the public for ten years on its primary public website or the primary public website of any successor organization. No specific format is required unless provided in forms, instructions, or other guidance. See paragraph (d) of this section regarding when a nominee is considered to have received a qualified notice.

* * * * *

(d) *Rules for designation of nominees to withhold tax under section 1446.* A nominee that receives a distribution from a publicly traded partnership subject to withholding under this section, and which is to be paid to (or for the account of) any foreign person, may be treated as a withholding agent under this section. A nominee is treated as receiving a qualified notice on the date that the notice is posted in accordance with paragraph (b)(4) of this section. When a nominee is treated as a withholding agent with respect to a foreign partner of the partnership, the obligation to withhold on distributions to the foreign partner in accordance with the rules of this section is imposed solely on the nominee. A nominee responsible for withholding under the rules of this section is subject to liability under sections 1461 and 6655, as well as all applicable penalties and interest, as if the nominee were a partnership responsible for withholding under this section. A nominee may rely on a qualified notice that meets the requirements in paragraph (b)(4) of this section to determine the amounts on which it must withhold. If a notice a publicly traded partnership issues relating to its distribution does not meet the requirements in paragraph (b)(4) of this section, the nominee must withhold on the distribution with respect to—

(1) Foreign partners that are corporations, at the greater of the highest rate of tax specified in section 11(b) or section 881; and

(2) Foreign partners that are not corporations, at the greater of the highest rate of tax specified in section 1 or section 871.

* * * * *

(f) * * *

(3) *Ordering rule relating to distributions.* Distributions from publicly traded partnerships are deemed to be paid out of the following types of income in the order indicated—

(i) Amounts attributable to income described in section 1441 or 1442 that are not effectively connected with the conduct of a trade or business in the United States but are subject to withholding, before taking into account any treaty exemptions;

(ii) Amounts attributable to income described in section 1441 or 1442 that are not effectively connected with the conduct of a trade or business in the United States and are not subject to withholding because of an exemption under a provision of the Code;

(iii) Amounts attributable to income effectively connected with the conduct of a trade or business in the United States that are not subject to withholding under §§ 1.1446–1 through 1.1446–6 (for example, amounts exempt by treaty);

(iv) Amounts subject to withholding under §§ 1.1446–1 through 1.1446–6; and

(v) Amounts not listed in paragraphs (f)(3)(i) through (iv) of this section.

* * * * *

■ **Par. 8.** Section 1.1446–7 is amended by revising the section heading and adding two sentences at the end of the section to read as follows:

§ 1.1446–7 Applicability dates.

* * * The addition of § 1.1446–3(c)(4) applies to partnership taxable years that include transfers that occur on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**. The revisions to § 1.1446–4(b)(3) and (4), the removal of the second sentence of § 1.1446–4(c), and the revisions to § 1.1446–4(d) and (f)(3) apply to distributions made on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

■ **Par. 9.** Sections 1.1446(f)–1 through 1.1446(f)–5 are added to read as follows:

Sec.

* * * * *

1.1446(f)–1 General rules.

1.1446(f)–2 Withholding on the transfer of a non-publicly traded partnership interest.

1.1446(f)–3 Partnership's requirement to withhold under section 1446(f)(4) on distributions to transferee.

1.1446(f)–4 Withholding on the transfer of a publicly traded partnership interest.

1.1446(f)–5 Liability for failure to withhold.

* * * * *

§ 1.1446(f)–1 General rules.

(a) *Overview.* These regulations provide rules for withholding, reporting, and paying tax under section 1446(f) upon the sale, exchange, or other disposition of certain interests in partnerships. This section provides definitions and general rules of applicability that apply for purposes of section 1446(f). Section 1.1446(f)–2 provides withholding rules for the transfer of a non-publicly traded partnership interest under section 1446(f)(1). Section 1.1446(f)–3 provides rules that apply when a partnership is required to withhold under section 1446(f)(4) on distributions made to the transferee in an amount equal to the amount that the transferee failed to withhold plus interest. Section 1.1446(f)–4 provides special rules for the sale, exchange, or disposition of publicly traded partnership interests, for which the withholding obligation under section 1446(f)(1) is generally imposed on certain brokers that act on behalf of the transferor. Section 1.1446(f)–5 provides rules that address the liability for failure to withhold under section 1446(f) and rules regarding the liability of a transferor's or transferee's agent.

(b) *Definitions.* This paragraph (b) provides definitions that apply for purposes of §§ 1.1446(f)–1 through 1.1446(f)–5.

(1) The term *broker* means any person, foreign or domestic, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales made by others, and that, in connection with a transfer of a PTP interest, receives all or a portion of the amount realized on behalf of the transferor. The term broker also includes any clearing organization (as defined in § 1.1471–1(b)(21)) that effects the transfer of a PTP interest on behalf of the transferor. The term broker does not include an escrow agent that effects no sales other than such transactions that are incidental to the purpose of escrow (such as sales to collect on collateral).

(2) The term *controlling partner* means a partner that, together with any person that bears a relationship described in sections 267(b) or 707(b)(1) to the partner, owns directly or indirectly a 50 percent or greater

interest in the capital, profits, deductions, or losses of the partnership in the 12 months before the determination date.

(3) The term *effect* has the meaning provided in § 1.6045–1(a)(10).

(4) The term *foreign person* means a person that is not a United States person.

(5) The term *PTP interest* means an interest in a publicly traded partnership if the interest is publicly traded on an established securities market or is readily tradable on a secondary market (or the substantial equivalent thereof).

(6) The term *publicly traded partnership* has the same meaning as in section 7704 and §§ 1.7704–1 through 1.7704–4 but does not include a publicly traded partnership treated as a corporation under that section.

(8) The term *TIN* means the tax identifying number assigned to a person under section 6109.

(9) The term *transfer* means a sale, exchange, or other disposition, and includes a distribution from a partnership to a partner.

(10) The term *transferee* means any person, foreign or domestic, that acquires a partnership interest through a transfer, and includes a partnership that makes a distribution.

(11) Except as otherwise provided in this paragraph, the term *transferor* means any person, foreign or domestic, that transfers a partnership interest. In the case of a trust, to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679 (such trust, a grantor trust), the term transferor means the grantor or other person.

(12) The term *transferor's agent* or *transferee's agent* means any person who represents the transferor or transferee (respectively) in any negotiation with another person relating to the transaction or in settling the transaction. A person will not be treated as a transferor's agent or a transferee's agent solely because it performs one or more of the activities described in § 1.1445–4(f)(3) (relating to activities of settlement officers and clerical personnel).

(13) The term *United States person* or *U.S. person* means a person described in section 7701(a)(30).

(c) *General rules of applicability*—(1) *In general.* This paragraph (c) provides general rules that apply for purposes of §§ 1.1446(f)–1 through 1.1446(f)–5.

(2) *Certifications*—(i) *In general.* This paragraph (c)(2) provides rules that are applicable to certifications described in §§ 1.1446(f)–1 through 1.1446(f)–5, except as otherwise provided therein, or in forms, instructions, or other guidance. A certification must provide the name and address of the person providing it. A certification must also be signed under penalties of perjury and, if the certification is provided by the transferor, must include a TIN if the transferor has, or is required to have, a TIN. A transferee (or other person required to withhold) may not rely on a certification if it knows that a transferor has, or is required to have, a TIN, and that TIN has not been provided with the certification. A certification includes any documents associated with the certification, such as statements from the partnership, IRS forms, withholding certificates, withholding statements, certifications, or other documentation. Documents associated with the certification form an integral part of the certification, and the penalties of perjury statement provided on the certification also applies to the documents. A certification (other than the certification described in § 1.1446(f)–2(d)(2)) may not be relied upon if it is obtained earlier than 30 days before the transfer or any time after the transfer.

(ii) *Penalties of perjury.* A certification signed under penalties of perjury must provide the following: ''Under penalties of perjury, I declare that I have examined the information on this document, and to the best of my knowledge and belief, it is true, correct, and complete.''

(iii) *Authority to sign certifications on behalf of a business entity.* A certification provided by a business entity must be signed by an individual who is an officer, director, general partner, or managing member of the entity, or, if the general partner or managing member is itself a business entity, an individual who is an officer, director, or managing member of the entity that is the general partner or managing member.

(iv) *Electronic submission.* A certification may be sent electronically, including as text in an email, an image embedded in an email, or a Portable Document Format (.pdf) attached to an email. An electronic certification, however, may not be relied upon if the person receiving the submission knows that the certification was transmitted by a person not authorized to do so by the person required to execute the certification.

(v) *Retention period.* Any person that relies on a certification pursuant to §§ 1.1446(f)–1 through 1.1446(f)–5 must retain the certification (including any documentation) for the longer of five calendar years following the close of the last calendar year in which it relied on the certification or for as long as it may be relevant to the determination of its withholding obligation under section 1446(f) or its withholding tax liability under section 1461.

(vi) *Submission to IRS.* Except as provided in § 1.1446(f)–2(b)(7) and 1.1446(f)–2(c)(4)(vi) (involving certifications relating to an income tax treaty), or in any forms, instructions, or other guidance, the recipient of a certification is not required to mail a copy to the IRS.

(vii) *Grantor trusts.* A certification provided by a transferor that is a grantor or other owner of a grantor trust must identify the portion of the amount realized that is attributable to the grantor or other owner.

(3) *Books and records.* A partnership that relies on its books and records pursuant to §§ 1.1446(f)–1 through 1.1446(f)–5 (including for purposes of providing a certification or other statement) must identify in its books and records the date on which the transfer occurred, the information on which the partnership relied, and the provisions of §§ 1.1446(f)–1 through 1.1446(f)–5 supporting an exception from, or adjustment to, the partnership's obligation to withhold. The identification required by this paragraph (c)(3) must be made no later than 30 days after the date of the transfer. The partnership must retain the identified information in its books and records for the longer of five calendar years following the close of the last calendar year in which it relied on the information or for as long as it may be relevant to the determination of its withholding obligation under section 1446(f) or its withholding tax liability under section 1461.

(4) *Determination date*—(i) *In general.* This paragraph (c)(4) provides rules for the determination date. The same determination date must be used for all purposes with respect to a transfer. Any statement, certification, or books and records with regard to a transfer must state the determination date. The determination date of a transfer must be one of the following—

(A) The date of the transfer;

(B) Any date that is no more than 60 days before the date of the transfer; or

(C) The date that is the later of—

(*1*) The first day of the partnership's taxable year in which the transfer occurs, as determined under section 706; or

(*2*) The date, before the date of the transfer, of the most recent event described in § 1.704–1(b)(2)(iv)(*f*)(*5*) or § 1.704–1(b)(2)(iv)(*s*)(*1*) (revaluation event), irrespective of whether the capital accounts of the partners are

adjusted in accordance with § 1.704–1(b)(2)(iv)(*f*).

(ii) *Controlling partner.* The determination date for a transferor that is a controlling partner is determined without regard to paragraph (c)(4)(i)(C) of this section.

(5) *IRS forms and instructions.* Any reference to an IRS form includes its successor form. Any form must be filed in the manner provided in the instructions to the forms or in other guidance.

(d) *Coordination with section 1445.* A transferee that is otherwise required to withhold under section 1445(e)(5) or § 1.1445–11T(d)(1) with respect to the amount realized, as well as under section 1446(f)(1), will be subject to the payment and reporting requirements of section 1445 only, and not section 1446(f)(1), with respect to that amount. However, if the transferor has applied for a withholding certificate under the last sentence of § 1.1445–11T(d)(1), the transferee must withhold the greater of the amounts required under section 1445(e)(5) or section 1446(f)(1). A transferee that has complied with the withholding requirements under either section 1445(e)(5) or section 1446(f)(1), as applicable under this paragraph (d), will be deemed to satisfy the other withholding requirement.

(e) *Applicability date.* This section applies to transfers that occur on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

§ 1.1446(f)–2 Withholding on the transfer of a non-publicly traded partnership interest.

(a) *Transferee's obligation to withhold.* Except as otherwise provided in this section, a transferee is required to withhold under section 1446(f)(1) a tax equal to 10 percent of the amount realized on any transfer of a partnership interest. This section does not apply to a transfer of a PTP interest that is effected through one or more brokers, including a distribution made with respect to a PTP interest held in an account with a broker. For rules regarding those transfers, see § 1.1446(f)–4.

(b) *Exceptions to withholding*—(1) *In general.* A transferee is not required to withhold under this section if it properly relies on a certification or its books and records as described in this paragraph (b). A transferee may not rely on a certification if it has actual knowledge that the certification is incorrect or unreliable. A partnership that is a transferee because it makes a distribution may not rely on its books and records if it knows, or has reason to know, that the information is incorrect or unreliable.

(2) *Certification of non-foreign status by transferor.* A transferee may rely on a certification of non-foreign status from the transferor that states that the transferor is not a foreign person, states the transferor's name, TIN, and address, and is signed under penalties of perjury. For this purpose, a certification of non-foreign status includes a valid Form W–9, *Request for Taxpayer Identification Number and Certification.* For purposes of this paragraph (b)(2), a transferee may rely on a valid Form W–9 from the transferor that it already possesses if the form meets these requirements.

(3) *No realized gain by transferor*—(i) *In general.* A transferee (other than a partnership that is a transferee because it makes a distribution) may rely on a certification from the transferor that states that the transfer of the partnership interest would not result in any realized gain (including ordinary income arising from application of section 751 § 1.751–1) to the transferor as of the determination date. See paragraph (b)(6) of this section for rules that apply when the transferor realizes gain but is not required to recognize the gain under a provision of the Internal Revenue Code.

(ii) *Partnership distributions.* A partnership that is a transferee because it makes a distribution may rely on its books and records, or on a certification from the transferor, to determine that the distribution would not result in any realized gain to the transferor as of the determination date.

(4) *Less than 10 percent effectively connected gain*—(i) *In general.* A transferee (other than a partnership that is a transferee because it makes a distribution) may rely on a certification from the partnership that states that if the partnership sold all of its assets at fair market value as of the determination date in the manner described in § 1.864(c)(8)–1(c), either—

(A) The amount of net gain that would have been effectively connected with the conduct of a trade or business within the United States would be less than 10 percent of the total net gain; or

(B) No gain would have been effectively connected with the conduct of a trade or business within the United States.

(ii) *Partnership distributions.* A partnership that is a transferee because it makes a distribution may rely on its books and records to determine that as of the determination date either paragraph (b)(4)(i)(A) or (B) of this section is satisfied.

(5) *Less than 10 percent effectively connected taxable income*—(i) *In general.* A transferee (other than a partnership making a distribution) may rely on a certification from the transferor that states that—

(A) For the transferor's immediately prior taxable year and the two preceding taxable years, the transferor was at all times a partner in the partnership;

(B) The transferor's allocable share of effectively connected taxable income determined under § 1.1446–2 (as provided on Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*) (ECTI), including any ECTI allocable to a partner that bears a relationship to the transferor described in sections 267(b) or 707(b)(1), was less than $1 million in each of the taxable years described in paragraph (b)(5)(i)(A) of this section;

(C) The transferor's allocable share of ECTI in each of the taxable years described in paragraph (b)(5)(i)(A) of this section was less than 10 percent of the transferor's total distributive share of net income from the partnership for that year as determined under subchapter K of the Internal Revenue Code (as provided on Schedule K–1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*); and

(D) The transferor's distributive share of income or gain that is effectively connected with the conduct of a trade or business within the United States or deductions or losses properly allocated and apportioned to that income in each of the taxable years described in paragraph (b)(5)(i)(A) of this section has been reported on a Federal income tax return (either filed by the transferor or, in the case of transferor that is a partnership, filed by its direct or indirect nonresident alien individual or foreign corporate partners) on or before the due date (including extensions), and all amounts due with respect to the reported amounts has been timely paid to the IRS, provided that the return was required to be filed when the transferor furnishes the certification (taking into account any extensions of time to file).

(ii) *Immediately prior taxable year*—(A) *In general.* The transferor's immediately prior taxable year is the transferor's most recent taxable year—

(*1*) With or within which a taxable year of the partnership ended; and

(*2*) For which a Schedule K–1 (Form 1065) was due (including extensions) or furnished (if earlier) before the transfer.

(B) *Limitation.* A transferee may not rely on a certification that is provided before the transferor's receipt of the Schedule K–1 (Form 1065) described in paragraph (b)(5)(ii)(A) of this section.

(iii) *No Form 8805*—(A) *In general.* Except as provided in paragraph (b)(5)(iii)(B) of this section, a transferor that does not receive Form 8805 because

it had no ECTI for which the partnership paid section 1446 tax (within the meaning in § 1.1446–2(a)) in any of the years described in paragraph (b)(5)(i)(A) of this section may not make the certification provided in this paragraph (b)(5).

(B) *Exception.* If, in any of the years described in paragraph (b)(5)(i)(A) of this section, a transferor has an allocable share of loss that is effectively connected with the conduct of a trade or business within the United States, or has deductions properly allocated and apportioned to income that is effectively connected with the conduct of a trade or business within the United States from the partnership, paragraph (b)(5)(iii)(A) of this section does not apply by reason of a lack of Form 8805 with respect to that year, and the transferor is treated as having an allocable share of ECTI of zero in that year for purposes of paragraph (b)(5)(i)(C) of this section.

(iv) *No net distributive share of income.* A transferor that did not have a net distributive share of income in any year described in paragraph (b)(5)(i)(A) of this section cannot provide the certification described in this paragraph (b)(5).

(v) *Partnership distributions.* A partnership that is a transferee by reason of making a distribution may rely on its books and records to determine that the requirements in paragraphs (b)(5)(i)(A) through (C) of this section have been satisfied (subject to the rules in paragraphs (b)(5)(ii) through (iv) of this section). The partnership must also obtain a representation from the transferor stating that the requirement in paragraph (b)(5)(i)(D) of this section has been satisfied.

(vi) *No certification when reporting is incorrect.* A transferor may not make the certification described in this paragraph (b)(5) if it has actual knowledge that the information relevant to the certification that is reported by the partnership on any Form 8805 or Schedule K–1 (Form 1065) is incorrect.

(6) *Certification of nonrecognition by transferor*—(i) *In general.* A transferee may rely on a certification from the transferor that states that by reason of the operation of a nonrecognition provision of the Internal Revenue Code the transferor is not required to recognize any gain or loss with respect to the transfer. The certification must briefly describe the transfer and provide the relevant law and facts relating to the certification.

(ii) *Partial nonrecognition.* Paragraph (b)(6)(i) of this section does not apply if only a portion of the gain realized on the transfer is subject to a nonrecognition provision. However, see paragraph (c)(4)(v) of this section for rules applicable to a transferor's claim for partial nonrecognition.

(7) *Income tax treaties*—(i) *In general.* A transferee may rely on a certification from the transferor that states that the transferor is not subject to tax on any gain from the transfer pursuant to an income tax treaty in effect between the United States and a foreign country if the requirements of this paragraph (b)(7) are met. The transferor must include with the certification a withholding certificate (on a Form W–8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals),* or Form W–8BEN–E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*) that meets the requirements for validity under § 1.1446–1(c)(2)(iv) (or an applicable substitute form that meets the requirements under § 1.1446–1(c)(5)) and that contains the information necessary to support the claim for treaty benefits. A transferee may rely on a certification of treaty benefits only if, within 30 days after the date of the transfer, the transferee mails a copy of the certification to the Internal Revenue Service, at the address provided in § 1.1445–1(g)(10), together with a cover letter providing the name, TIN, and address of the transferee and the partnership in which an interest was transferred.

(ii) *Treaty claim for less than all of the gain.* Paragraph (b)(7)(i) of this section does not apply if treaty benefits apply to only a portion of the gain from the transfer. However, see paragraph (c)(4)(vi) of this section for rules applicable to situations in which treaty benefits apply to only a portion of the gain.

(iii) *Exclusive means to claim an exception from withholding based on treaty benefits.* A transferor claiming treaty benefits with respect to all of the gain from the transfer must use the exception in this paragraph (b)(6) and not any other exception or determination procedure in paragraphs (b) and (c) of this section to claim an exception to withholding by reason of a claim of treaty benefits.

(c) *Determining the amount to withhold*—(1) *In general.* A transferee that is required to withhold under this section must withhold 10 percent of the amount realized on the transfer of the partnership interest, except as otherwise provided in this paragraph (c). Any procedures in this paragraph (c) apply solely for purposes of determining the amount to withhold under section 1446(f)(1) and this section. A transferee may not rely on a certification if it has actual knowledge that the certification is incorrect or unreliable. A partnership that is a transferee because it makes a distribution may not rely on its books and records if it knows, or has reason to know, that the information is incorrect or unreliable.

(2) *Amount realized*—(i) *In general.* The amount realized on the transfer of the partnership interest is determined under section 1001 (including §§ 1.1001–1 through 1.1001–5) and section 752 (including § 1.752–1 through 1.752–7). Thus, the amount realized includes the amount of cash paid (or to be paid), the fair market value of other property transferred (or to be transferred), the amount of any liabilities assumed by the transferee or to which the partnership interest is subject, and the reduction in the transferor's share of partnership liabilities. In the case of a distribution, the amount realized is the sum of the amount of cash distributed (or to be distributed), the fair market value of property distributed (or to be distributed), and the reduction in the transferor's share of partnership liabilities.

(ii) *Alternative procedures for transferee to determine share of partnership liabilities*—(A) *In general.* A transferee (other than a partnership that is a transferee because it makes a distribution), as an alternative to determining the share of partnership liabilities under paragraph (c)(2)(i) of this section, may use the procedures of this paragraph (c)(2)(ii) to determine the extent to which a reduction in partnership liabilities is included in the amount realized.

(B) *Certification of liabilities by transferor.* Except as otherwise provided in this section, a transferee may rely on a certification from a transferor, other than a controlling partner, that provides the amount of the transferor's share of partnership liabilities reported on the most recent Schedule K–1 (Form 1065) issued by the partnership. If the transferor's actual share of liabilities at the time of the transfer differs from the amount reported on that Schedule K–1 (Form 1065), the certification will not be treated as incorrect or unreliable if the transferor also certifies that it does not have actual knowledge of any events occurring after receiving the Schedule K–1 (Form 1065) that would cause the amount of the transferor's share of partnership liabilities at the time of the transfer to differ by more than 25 percent from the amount shown on the Schedule K–1 (Form 1065). A transferee may not rely on a certification if the last

day of the partnership taxable year for which the Schedule K–1 (Form 1065) was provided was more than 22 months before the date of the transfer.

(C) *Certification of liabilities by partnership.* A transferee may rely on a certification from a partnership that provides the amount of the transferor's share of partnership liabilities on the determination date. If the transferor's actual share of liabilities at the time of the transfer differs from the amount on the certification, the certification will not be treated as incorrect or unreliable if the partnership also certifies that it does not have actual knowledge of any events occurring after the determination date that would cause the amount of the transferor's share of partnership liabilities at the time of the transfer to differ by more than 25 percent from the amount shown on the certification by the partnership for the determination date.

(iii) *Partnership's determination of partnership liabilities for distributions.* A partnership that is a transferee because it makes a distribution may rely on its books and records to determine the extent to which the transferor's share of partnership liabilities on the determination date are included in the amount realized. The information in the books and records will not be treated as incorrect or unreliable unless the partnership has actual knowledge, on or before the date of the distribution, of any events occurring after the determination date that would cause the amount of the transferor's share of partnership liabilities at the time of the transfer to differ by more than 25 percent from the amount determined by the partnership as of the determination date.

(iv) *Certification by a foreign partnership of non-foreign status of its partners*—(A) *In general.* When a transferor is a foreign partnership, a transferee may use the procedures of this paragraph (c)(2)(iv) to determine the amount realized. For this purpose, the transferee may rely on a certification from the transferor providing the modified amount realized, and may treat the modified amount realized as the amount realized.

(B) *Determining modified amount realized.* The modified amount realized is determined by multiplying the amount realized (as determined under this paragraph (c)(2), without regard to this paragraph (c)(2)(iv)) by the aggregate percentage computed as of the determination date. The aggregate percentage is the percentage of the gain (if any) arising from the transfer that would be allocated to presumed foreign persons. For this purpose, a presumed foreign person is any direct or indirect partner of the transferor that has not provided a certification of non-foreign status that meets the requirements of paragraph (b)(2) of this section. For purposes of this paragraph (c)(2)(iv), an indirect partner is a person that owns an interest in the transferor indirectly through one or more foreign partnerships.

(C) *Certification.* The certification is made by providing a withholding certificate (on Form W–8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*) and a withholding statement that provides the percentage of gain allocable to each direct or indirect partner and that provides whether each such person is a United States person or presumed foreign person. The certification must also include a certification of non-foreign status that meets the requirements of paragraph (b)(2) of this section from each of the United States persons that are direct or indirect partners of the transferor that are identified as a United States person on the withholding statement.

(3) *Lack of money or property or lack of knowledge regarding liabilities.* The amount to withhold equals the amount realized determined without regard to any decrease in the transferor's share of partnership liabilities if—

(i) The amount otherwise required to be withheld under this paragraph (c) would exceed the amount realized determined without regard to the decrease in the transferor's share of partnership liabilities; or

(ii) The transferee is unable to determine the amount realized because it does not have actual knowledge of the transferor's share of partnership liabilities (and has not received or cannot rely on a certification described in paragraph (c)(2)(ii)(B) or (C) of this section).

(4) *Certification of maximum tax liability*—(i) *In general.* A transferee may use the procedures of this paragraph (c)(4) for determining the amount to withhold for purposes of section 1446(f)(1) and paragraph (a) of this section. A transferee (other than a partnership that is a transferee because it makes a distribution) may rely on a certification from a transferor that is a foreign corporation, a nonresident alien individual or a foreign partnership regarding the transferor's maximum tax liability as described in paragraph (c)(4)(ii) of this section. A partnership that is a transferee because it makes a distribution may instead rely on its books and records to determine the transferor's maximum tax liability if the books and records includes the information required by paragraphs (c)(4)(iii) and (c)(4)(iv) of this section. A transferor that is a foreign partnership is treated as a nonresident alien individual for purposes of determining the transferor's maximum tax liability.

(ii) *Maximum tax liability.* For purposes of this paragraph (c)(4), the term *maximum tax liability* means the amount of the transferor's effectively connected gain (as determined under paragraph (c)(4)(iii)(E) of this section) multiplied by the applicable percentage, as defined in § 1.1446–3(a)(2).

(iii) *Required information.* The certification must include—

(A) A statement that the transferor is either a nonresident alien individual, a foreign corporation, or a foreign partnership;

(B) The transferor's adjusted basis in the transferred interest on the determination date;

(C) The transferor's amount realized (determined in accordance with paragraph (c)(2) of this section) on the determination date;

(D) Whether the transferor remains a partner immediately after the transfer;

(E) The amount of outside ordinary gain and outside capital gain that would be recognized and treated as effectively connected gain under § 1.864(c)(8)–1(b) on the determination date (effectively connected gain);

(F) The transferor's maximum tax liability on the determination date;

(G) A representation from the transferor that the transferor determined the amounts described in paragraph (c)(4)(iii)(E) of this section based on the statement described in paragraph (c)(4)(iv) of this section; and

(H) A representation from the transferor that it has provided the transferee with a copy of the statement described in paragraph (c)(4)(iv) of this section.

(iv) *Partnership statement.* A transferor may make the representation in paragraph (c)(4)(iii)(G) of this section only if the partnership provides to the transferor a statement (that meets the requirements for a certification under the general rules for applicability in § 1.1446(f)–1(c)) that includes—

(A) The partnership's name, address, and TIN; and

(B) The transferor's aggregate deemed sale EC ordinary gain, within the meaning of § 1.864(c)(8)–1(c)(3)(ii)(A) (if any) and the transferor's aggregate deemed sale EC capital gain, within the meaning of § 1.864(c)(8)–1(c)(3)(ii)(B) (if any), in each case, on the determination date.

(v) *Partial nonrecognition.* If a nonrecognition provision applies to only a portion of the gain realized on the transfer, a certification described in this paragraph (c)(4) may be relied upon only if the certification also includes the information required in paragraph (b)(6) of this section.

(vi) *Income tax treaties.* If only a portion of the gain on the transfer is not subject to tax pursuant to an income tax treaty in effect between the United States and a foreign country, a certification described in paragraph (c)(4)(i) of this section may be relied upon only if the certification also complies with the requirements of paragraph (b)(7) of this section, including the requirement that the determination that gain from the transfer is not subject to tax pursuant to an income tax treaty be made with respect to the transferor, and that the transferee mail a copy of the relevant certification described in this paragraph (c)(4) to the IRS.

(d) *Reporting and paying withheld amounts*—(1) *In general.* A transferee required to withhold under this section must report and pay any tax withheld by the 20th day after the date of the transfer using Forms 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests,* and 8288–A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests,* in accordance with the instructions to those forms. The IRS will stamp Form 8288–A to show receipt and mail a stamped copy to the transferor (at the address reported on the form). *See* paragraph (e)(2) of this section for the procedures for the transferor to claim a credit for amounts withheld. Forms 8288 and 8288–A must include the TINs of both the transferor and the transferee. If any required TIN is not provided, the transferee must still report and pay any tax withheld on Form 8288.

(2) *Certification of withholding to partnership for purposes of section 1446(f)(4).* A transferee (other than a partnership that is a transferee because it makes a distribution) must certify to the partnership the extent to which it has satisfied its obligation to withhold under this section no later than 10 days after the transfer. The certification must either include a copy of Form 8288–A that the transferee files with respect to the transfer, or state the amount realized and the amount withheld on the transfer of the partnership interest. The certification must also include any certifications that the transferee relied on to apply an exception to withholding under paragraph (b) of this section or to determine the amount to withhold under paragraph (c) of this section. See § 1.1446(f)–3 for rules regarding a partnership's obligation to withhold on distributions to a transferee when this certification establishes only partial satisfaction of the required amount, is not provided, or cannot be relied upon.

(e) *Effect of withholding on transferor*—(1) *In general.* The withholding of tax by a transferee under this section does not relieve a foreign person from filing a U.S. tax return with respect to the transfer. See §§ 1.6012–1(b)(1), 1.6012–2(g)(1), and 1.6031(a)–1. Further, the withholding of tax by a transferee does not relieve a nonresident alien individual or foreign corporation subject to tax under section 864(c)(8) from paying any tax due with the return that has not been fully satisfied through withholding.

(2) *Manner of obtaining credit*—(i) *Individuals and corporations.* Except as provided in paragraph (e)(3) of this section, an individual or corporation may claim a credit under section 33 for the amount withheld under this section by attaching to its applicable return the stamped copy of Form 8288–A provided to it under paragraph (d)(1) of this section. *See also* § 1.1462–1.

(ii) *Partnerships.* For a rule allowing a foreign partnership that is a transferor to claim a credit for the amount withheld under this section against its tax liability under section 1446(a), see § 1.1446–3(c)(4).

(3) *Failure to receive Form 8288–A.* If a stamped copy of Form 8288–A has not been provided to the transferor by the IRS, the transferor may establish the amount of tax withheld by the transferee by attaching to its return substantial evidence of the amount. The transferor must attach to its return a statement that includes all of the information otherwise required to be provided on Form 8288–A.

(f) *Applicability date.* This section applies to transfers that occur on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

§ 1.1446(f)–3 Partnership's requirement to withhold under section 1446(f)(4) on distributions to transferee.

(a) *Partnership's obligation to withhold amounts not withheld by the transferee*—(1) *In general.* If a transferee fails to withhold any amount required to be withheld under § 1.1446(f)–2, the partnership in which the interest was transferred must withhold from any distributions made to the transferee pursuant to this section. To determine its withholding obligation under this paragraph (a)(1), a partnership may rely on a certification received from the transferee described in § 1.1446(f)–2(d)(2) unless it knows, or has reason to know, that the certification is incorrect or unreliable.

(2) *Notification by IRS.* A partnership that receives notification from the IRS that a transferee has provided incorrect information regarding the amount realized or amount withheld on the certification described in § 1.1446(f)–2(d)(2), or has failed to pay the IRS the amount reported as withheld on the certification, must withhold the amount prescribed in the notification on distributions to the transferee made on or after the date that is 15 days after it receives the notification. For this purpose, the amount realized is not treated as incorrect if the transferee properly relied on a certification to compute the amount realized pursuant to § 1.1446(f)–2(c)(2).

(b) *Exceptions to withholding*—(1) *Withholding has been satisfied by transferee.* A partnership is not required to withhold under paragraph (a)(1) of this section if it relies on a certification described in § 1.1446(f)–2(d)(2) received from the transferee (within the time prescribed in that section) that states that an exception to withholding described in § 1.1446(f)–2(b) applies or that the transferee withheld the full amount required to be withheld (taking into account any adjustments under § 1.1446(f)–2(c)) under § 1.1446(f)–2.

(2) *PTP interests*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, a partnership is not required to withhold under this section on distributions made with respect to a PTP interest.

(ii) *Exception for a false qualified notice.* If a publicly traded partnership determines (including by reason of notification from the IRS) that it has published a qualified notice that falsely states that either the exception described in § 1.1446(f)–4(b)(3) (the 10-percent exception) or the exception described in § 1.1446(f)–4(b)(4) (the qualified current income exception) applies, the publicly traded partnership must withhold under this section on distributions to the transferee in an amount equal to the amount that a broker failed to withhold under § 1.1446(f)–4 due to reliance on the qualified notice, plus interest.

(3) *Distributing partnerships.* A partnership that is a transferee because it makes a distribution is not required to withhold under this section.

(c) *Withholding rules*—(1) *Timing of withholding*—(i) *In general.* A partnership required to withhold under paragraph (a)(1) of this section must withhold on distributions made to the transferee beginning on the later of—

(A) The date that is 30 days after the date of transfer; or

(B) The date that is 15 days after the date on which the partnership acquires actual knowledge that the transfer has occurred.

(ii) *Satisfaction of withholding obligation.* A partnership is treated as satisfying its withholding obligation under paragraph (a)(1) of this section and may stop withholding on distributions to the transferee on the earlier of—

(A) The date on which the partnership completes withholding and paying the amount required to be withheld under paragraph (c)(2) of this section;

(B) The date on which the partnership receives and may rely on a certification from the transferee described in § 1.1446(f)–2(d)(2) (without regard to whether the certification is received by the time prescribed in that section) that claims an exception to withholding under § 1.1446(f)–2(b); or

(C) If a partnership interest is not a PTP interest, the date on which the transferee no longer owns an interest in the partnership, unless the partnership has actual knowledge that any successor to the transferee is a person that bears a relationship described in section 267(b) or 707(b)(1) with respect to the transferee or the transferor from which the transferee acquired the interest.

(2) *Amount to withhold*—(i) *In general.* A partnership required to withhold under paragraph (a)(1) of this section must withhold the full amount of each distribution made to the transferee until it has withheld—

(A) A tax of 10 percent of the amount realized (determined solely under § 1.1446(f)–2(c)(2)(i) or, in the case of a publicly traded partnership, solely under § 1.1446(f)–4(c)(2)(i)) on the transfer, reduced by any amount withheld by the transferee, plus

(B) Any interest computed under paragraph (c)(2)(ii) of this section.

(ii) *Computation of interest.* The amount of interest required to be withheld under paragraph (a)(1) of this section is the amount of interest that would be required to be paid under section 6601 and § 301.6601–1 if the amount that should have been withheld by the transferee was considered an underpayment of tax. For this purpose, interest is payable between the date that is 20 days after the date of the transfer and the date on which the tax due under paragraph (a)(1) of this section is paid to the IRS.

(iii) *Certifications required.* For purposes of paragraph (c)(2)(i)(A) of this section, a partnership must determine the amount realized on the transfer and any amount withheld by the transferee based on a certification from the transferee described in § 1.1446(f)–2(d)(2), without regard to whether the certification is received by the time prescribed in that section. A partnership that does not receive or cannot rely on a certification from the transferee described in § 1.1446(f)–2(d)(2) must withhold tax equal to the full amount of each distribution made to the transferee until it receives a certification that it can rely on.

(3) *Coordination with other withholding provisions.* Any amount required to be withheld on a distribution under any other provision of the Internal Revenue Code is not also required to be withheld under section 1446(f)(4) or this section.

(d) *Reporting and paying withheld amounts.* The partnership must report and pay the tax withheld using Forms 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests,* and 8288–C, *Statement of Withholding Under Section 1446(f)(4) for Withholding on Dispositions by Foreign Persons of Partnership Interests,* as provided in forms, instructions, or other guidance.

(e) *Effect of withholding on transferor and transferee*—(1) *Transferor.* The withholding of tax by a partnership under this section does not relieve a foreign person from filing a U.S. income tax return with respect to the transfer. See §§ 1.6012–1(b)(1), 1.6012–2(g)(1), and 1.6031(a)–1. Further, the withholding of tax by a partnership does not relieve a nonresident alien individual or foreign corporation subject to tax under section 864(c)(8) from paying any tax due with the return that has not been fully satisfied through withholding. An individual or corporation is not allowed a credit under section 33 for amounts withheld on distributions to the transferee under this section. See, however, §§ 1.1446(f)–5(a) and 1.1463–1(a), which generally provide that tax will not be recollected if paid by another person.

(2) *Transferee.* A transferee is treated as satisfying its withholding tax liability under § 1.1446(f)–2 to the extent that a partnership withholds tax (which does not include interest) from the transferee under this section. Interest computed under paragraph (c)(2)(ii) of this section that is withheld by the partnership from the transferee is treated as interest paid by the transferee with respect to its withholding tax liability under § 1.1446(f)–2. A transferee may not obtain a refund when the amount of tax withheld under this section exceeds the transferee's withholding tax liability under § 1.1446(f)–2. Instead, only the partnership may claim a refund on behalf of the transferee for the excess amount under this section.

(f) *Applicability date.* This section applies to transfers that occur on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

§ 1.1446(f)–4 Withholding on the transfer of a publicly traded partnership interest.

(a) *Broker's obligation to withhold on a transfer of a PTP interest*—(1) *In general.* If a transfer of a PTP interest is effected through one or more brokers, the transferee is not required to withhold under section 1446(f)(1) and § 1.1446(f)–2. Rather, any broker required to withhold under paragraph (a)(2) of this section must withhold a tax equal to 10 percent of the amount realized (as defined in paragraph (c)(2) of this section) on the transfer of a PTP interest, except as otherwise provided in this section. For rules regarding the application of section 1446(f)(4) and § 1.1446(f)–3 to a publicly traded partnership, see § 1.1446(f)–3(b)(2).

(2) *Broker's requirement to withhold*—(i) *Payments to foreign brokers.* A broker that pays the amount realized from the transfer of a PTP interest to another broker that is a foreign person must withhold under this section unless the foreign person is—

(A) A qualified intermediary (as defined in § 1.1441–1(e)(5)(ii)) that provides a valid qualified intermediary withholding certificate (as described in § 1.1441–1(e)(3)(ii)) that states that it assumes primary withholding responsibility under chapter 3; or

(B) A U.S. branch of a foreign person (as described in § 1.1441–1(b)(2)(iv)) that provides a valid U.S. branch withholding certificate (as described in § 1.1441–1(e)(3)(v)) that states that it agrees to be treated as a U.S. person with respect to any payment associated with the certificate.

(ii) *Brokers with customer relationship with transferor.* A broker that effects the transfer for the transferor as its customer (as defined in § 1.6045–1(a)(2)) is required to withhold under this section.

(iii) *Exception.* A broker is not required to withhold under this section if it knows that the withholding obligation has already been satisfied.

(iv) *Determination of foreign broker's status.* For purposes of paragraph (a)(2)(i) of this section, a broker must treat another broker as a foreign person unless it obtains documentation (including a certification of non-foreign status) establishing that the other broker is a U.S. person.

(b) *Exceptions to withholding*—(1) *In general.* A broker is not required to

withhold under this section if it properly relies on a certification described in paragraph (b)(2) or (b)(6) of this section, a qualified notice described in paragraph (b)(3) or (b)(4) of this section, or if the exception described in paragraph (b)(5) of this section applies. A broker may not rely on a certification described in this paragraph (b) if it has actual knowledge that the certification is incorrect or unreliable.

(2) *Certification of non-foreign status.* A broker may rely on a certification of non-foreign status that it obtains from the transferor. A certification of non-foreign status under this section means a Form W–9, *Request for Taxpayer Identification Number and Certification,* or valid substitute form, that meets the requirements of § 1.1441–1(d)(2). For this purpose, a broker may rely on a valid form that it already possesses from the transferor. A broker may instead rely on certification from a second broker (as defined in § 1.6045–1(a)(1)) that acts as an agent for the transferor when the second broker does not receive the amount realized from the transfer of the PTP interest. This certification must state that the second broker has collected a valid certification of non-foreign status (within the meaning of this paragraph (b)(2)) from the transferor, and it must include the transferor's TIN and status as a foreign or U.S. person.

(3) *Less than 10 percent effectively connected gain by partnership*—(i) *In general.* A broker may rely on a qualified notice described in paragraph (b)(3)(iii) of this section that states that the 10-percent exception applies, as determined under paragraph (b)(3)(ii) of this section.

(ii) *10-percent exception*—(A) *In general.* The 10-percent exception applies to a transfer if, on the PTP designated date described in paragraph (b)(3)(ii)(B) of this section, had the publicly traded partnership sold all of its assets at fair market value in the manner described in § 1.864(c)(8)–1(c), either—

(*1*) The amount of gain that would have been effectively connected with the conduct of a trade or business within the United States would be less than 10 percent of the total gain; or

(*2*) No gain would have been effectively connected with the conduct of a trade or business within the United States.

(B) *PTP designated date.* The PTP designated date for a transfer is any date for a deemed sale determination that is designated by the publicly traded partnership in a qualified notice described in paragraph (b)(3)(iii) of this section, provided that the PTP designated date occurs on or after the date that is 92 days before the date on which the publicly traded partnership posted the qualified notice naming the PTP designated date.

(iii) *Qualified notice*—(A) *In general.* Except as provided in paragraph (b)(3)(iii)(B) and (C) of this section, a qualified notice described in this paragraph (b)(3)(iii) is the most recent qualified notice (within the meaning of § 1.1446–4(b)(4)) posted by the publicly traded partnership.

(B) *Qualified notice posting date requirement.* A qualified notice is described in this paragraph (b)(3)(iii) only if the publicly traded partnership has posted it within the 92-day period ending on the date of the transfer.

(C) *Recent posting of qualified notice.* If the most recent qualified notice posted by the publicly traded partnership was posted during the 10-day period ending on the date of the transfer, a broker may instead rely on the immediately preceding qualified notice (within the meaning of § 1.1446–4(b)(4)) posted by the publicly traded partnership, provided that it satisfies the condition described in paragraph (b)(3)(iii)(B) of this section.

(4) *Distribution made from current income*—(i) *In general.* A broker is not required to withhold under this section on a distribution by a publicly traded partnership if the entire amount of a distribution is designated, on a qualified notice (within the meaning of § 1.1446–4(b)(4)) posted with respect to that distribution, as a qualified current income distribution (within the meaning of paragraph (b)(4)(ii) of this section).

(ii) *Qualified current income distribution.* A qualified current income distribution is a distribution that does not exceed the net income of the publicly traded partnership since the record date (within the meaning of 17 CFR 240.14a–1(h) or its successor provision) of the immediately preceding distribution made by the publicly traded partnership.

(5) *Amount subject to withholding under section 3406.* A broker is not required to withhold under this section if the amount realized from the transfer of the PTP interest is subject to withholding under § 31.3406(b)(3)–2 of this chapter.

(6) *Income tax treaties.* A broker may rely on a certification from the transferor that states that the transferor is not subject to tax on any gain from the transfer pursuant to an income tax treaty in effect between the United States and a foreign country if the requirements of this paragraph (b)(6) are met. The transferor must include with the certification a withholding certificate (on a Form W–8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals),* or Form W–8BEN–E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*) that meets the requirements for validity under § 1.1446–1(c)(2)(iv) (or an applicable substitute form that meets the requirements under § 1.1446–1(c)(5)) and that contains the information necessary to support the claim for treaty benefits. For purposes of this paragraph (b)(6), a broker may rely on a withholding certificate that it already possesses from the transferor unless it has actual knowledge that the information is incorrect or unreliable. This exception does not apply if treaty benefits apply to only a portion of the gain from the transfer.

(c) *Determining the amount to withhold*—(1) *In general.* A broker that is required to withhold under this section must withhold 10 percent of the amount realized on the transfer of the PTP interest, except as provided in this paragraph (c). Any procedures in this paragraph (c) apply solely for purposes of determining the amount to withhold under section 1446(f)(1) and this section. A broker may not rely on a certification described in this paragraph (c) if it has actual knowledge that the certification is incorrect or unreliable.

(2) *Amount realized*—(i) *In general.* Solely for purposes of this section, the amount realized is the amount of gross proceeds (as defined in § 1.6045–1(d)(5)) paid or credited upon the transfer to the customer or other broker (as applicable), or, in the case of a distribution, the amount of cash distributed (or to be distributed) and the fair market value of property distributed (or to be distributed).

(ii) *Certification by a foreign partnership of non-foreign status of its partners*—(A) *In general.* When a transferor is a foreign partnership, a broker may use the procedures of this paragraph (c)(2)(ii) to determine the amount realized. For this purpose, the broker may rely on a certification from the transferor providing the modified amount realized, and may treat the modified amount realized as the amount realized.

(B) *Determining modified amount realized.* The modified amount realized is determined by multiplying the amount realized (as determined under this paragraph (c)(2), without regard to this paragraph (c)(2)(ii)) by the aggregate percentage computed as of the determination date. The aggregate percentage is the percentage of the gain

(if any) arising from the transfer that would be allocated to presumed foreign persons. For this purpose, a presumed foreign person is any direct or indirect partner of the transferor that has not provided a certification of non-foreign status that meets the requirements of paragraph (b)(2) of this section. For purposes of this paragraph (c)(2)(ii), an indirect partner is a person that owns an interest in the transferor indirectly through one or more foreign partnerships.

(C) *Certification.* The certification is made by providing a withholding certificate (on Form W–8IMY, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting*) and a withholding statement that provides the percentage of gain allocable to each direct or indirect partner and that provides whether each such person is a United States person or presumed foreign person. The certification must also include a certification of non-foreign status that meets the requirements of paragraph (b)(2) of this section from each of the United States persons that are direct or indirect partners of the transferor that are identified as a United States person on the withholding statement. For purposes of this paragraph (c)(2)(ii), a broker may rely on a withholding certificate and withholding statement that it already possesses from the partnership unless it has actual knowledge that the information is incorrect or unreliable.

(d) *Reporting and paying withheld amounts.* A broker that is required to withhold under this section must pay the withheld tax pursuant to the deposit rules in § 1.6302–2. For rules regarding reporting on Forms 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons,* and 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding,* that apply to a broker that withholds under this section, see § 1.1461–1(b) and (c). For rules regarding when an amount realized on the transfer of a PTP interest is an amount subject to reporting, see § 1.1461–1(c)(2)(i)(Q). A broker that pays the amount realized to a foreign partnership must issue a Form 1042–S directly to the partnership rather than issuing a form to each of the partners of the partnership. *See* § 1.1461–1(c)(1)(ii)(A)(*8*) (treating the foreign partnership as a recipient for reporting purposes). A broker making a payment to a U.S. branch treated as a U.S. person must not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to that U.S. branch must be reported on Form 1042–S. *See* § 1.1461–1(c). A Form 1042–S issued directly to the transferor must include the TIN of the transferor unless the broker does not know the TIN at the time of issuance.

(e) *Effect of withholding on transferor*—(1) *In general.* The withholding of tax under this section does not relieve a foreign person from filing a U.S. tax return with respect to the transfer. *See* §§ 1.6012–1(b)(1), 1.6012–2(g)(1), and 1.6031(a)–1. Further, the withholding of tax by a broker does not relieve a nonresident alien individual or foreign corporation subject to tax under section 864(c)(8) from paying any tax due with the return that has not been fully satisfied through withholding.

(2) *Manner of obtaining credit*—(i) *Individuals and corporations.* An individual or corporation may claim a credit under section 33 for the amount withheld under this section by attaching to its applicable return a copy of a Form 1042–S that includes its TIN.

(ii) *Partnerships.* For a rule allowing a foreign partnership that is a transferor to claim a credit for the amount withheld under this section against its obligation to withhold under section 1446(a), see § 1.1446–3(c)(4).

(f) *Applicability date.* This section applies to transfers that occur on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

§ 1.1446(f)–5 Liability for failure to withhold.

(a) *Liability for failure to withhold.* Every person required to withhold and pay tax under section 1446(f), but that fails to do so, is liable for the tax under section 1461. Under section 1463, if the tax required to be withheld is paid by another person required to withhold under section 1446(f) or by the nonresident alien individual or foreign corporation subject to tax under section 864(c)(8), the tax will not be recollected. However, any person that failed to withhold under section 1446(f) is in no case relieved from liability for any interest, penalties, or additions to tax that would otherwise apply. A partnership that failed to withhold and pay tax under § 1.1446(f)–3 is only liable for the amount of tax that it failed to collect (but not any interest computed on that amount under § 1.1446(f)–3(c)(2)(ii)), plus any interest, penalties, or additions to tax with regard to the partnership's failure to withhold.

(b) *Liability of agents*—(1) *Duty to provide notice of false certification.* A transferee's or transferor's agent (other than a broker required to withhold under § 1.1446(f)–4) must provide notice to a transferee (or other person required to withhold) if that person is furnished with a certification described in §§ 1.1446(f)–1 through 1.1446(f)–4 and the agent knows that the certification is false. A person required to withhold may not rely on a certification if it receives the notice described in this paragraph (b)(1).

(2) *Procedural requirements.* Any agent who is required to provide notice under paragraph (b)(1) of this section must do so in writing (including by electronic submission) as soon as possible after learning of the false certification. If the agent first learns of the false certification before the date of transfer, notice must be given by the third day following that discovery but no later than the date of transfer (before the transferee's payment of consideration). If an agent first learns of a false certification after the date of transfer, notice must be given by the third day following that discovery. The notice must also explain the possible consequences to the recipient of a failure to withhold. The notice need not disclose the information on which the agent's statement is based. The agent must also furnish a copy of the notice to the IRS by the date on which the notice is required to be given to the recipient. The copy of the notice must be delivered to the address provided in § 1.1445–1(g)(10) and must be accompanied by a cover letter stating that the copy is being filed pursuant to the requirements of § 1.1446(f)–5(b)(2).

(3) *Failure to provide notice.* Any agent who is required to provide notice under paragraph (b)(1) of this section, but fails to do so in the manner required in paragraph (b)(2) of this section, is liable for the tax that the person who should have been provided notice in accordance with paragraph (b)(2) of this section was required to withhold under section 1446(f) if the notice had been given.

(4) *Limitation on liability.* An agent's liability under paragraph (b)(3) of this section is limited to the amount of compensation that the agent derives from the transaction. In addition, an agent that assists in the preparation of, or fails to disclose knowledge of, a false certification may be liable for civil and criminal penalties.

(c) *Applicability date.* This section applies to transfers that occur on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

■ **Par. 10.** Section 1.1461–1 is amended:

■ 1. As proposed to be amended December 18, 2018, at 83 FR 64757:

■ i. Paragraph (a)(1) is further amended by revising the sixth, seventh, and eighth sentences.
■ ii. Paragraph (c)(1)(i)(A) is further amended by revising the second and third sentences.
■ 2. By revising paragraph (c)(1)(ii)(A)(*8*).
■ 3. By adding paragraph (c)(1)(ii)(B)(*5*).
■ 4. In paragraph (c)(2)(i) introductory text, by revising the first and second sentences.
■ 5. In paragraph (c)(2)(i)(N), by removing the word ''and'' that follows the semi-colon.
■ 6. In paragraph (c)(2)(i)(O), by removing the period at the end of the paragraph and adding ''; and'' in its place.
■ 7. By adding paragraphs (c)(2)(i)(P) and (Q).
■ 8. By adding a sentence at the end of paragraph (c)(4)(ii)(A).
■ 9. Revising paragraph (i).

The revisions and additions read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) * * *

(1) *Deposits of tax.* * * * With respect to withholding under section 1446, this section shall apply only to publicly traded partnerships and nominees that withhold under § 1.1446–4 and brokers that withhold under § 1.1446(f)–4 on transfers of publicly traded partnership interests. See § 1.1461–3 for penalties that apply for failure to withhold under section 1446(a) on effectively connected taxable income allocable to foreign partners or under section 1446(f) on transfers of partnership interests by foreign partners. The references in the previous two sentences to § 1.1446(f)–4 and section 1446(f) shall apply to transfers of partnership interests that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) *In general.* * * * Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, § 1.1446–4(a) (applicable to publicly traded partnerships required to pay tax under section 1446(a) on distributions), or § 1.1446(f)–4(a) (applicable to brokers required to withhold on transfers of publicly traded partnership interests) must file a Form 1042–S for the payment withheld upon whether or not that person is engaged in the conduct of a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to § 1.1446(f)–4(a) shall apply with respect to returns for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(ii) * * *

(A) * * *

(*8*) A partner (including a foreign partnership) receiving a distribution from a publicly traded partnership subject to withholding under section 1446(a) and § 1.1446–4 on distributions of effectively connected income, and a partner (including a foreign partnership) receiving an amount realized from a transfer of a publicly traded partnership interest subject to withholding under section 1446(f)(1) and § 1.1446(f)–4. The references in this paragraph (c)(1)(ii)(A)(*8*) to section 1446(f)(1) and § 1.1446(f)–4 shall apply with respect to returns for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(B) * * *

(*5*) A foreign broker withheld upon under § 1.1446(f)–4(a)(2)(i) by another broker paying an amount realized from the transfer of a PTP interest.

* * * * *

(2) * * *

(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, amounts subject to reporting on Form 1042–S are amounts paid to a foreign payee or partner (including persons presumed to be foreign) that are amounts subject to withholding as defined in § 1.1441–2(a), § 1.1446–4(a) (addressing publicly traded partnerships required to pay withholding tax under section 1446(a) on distributions of effectively connected income), or § 1.1446(f)–4(a) (addressing brokers required to withhold and pay tax on the amount realized on the transfer of an interest in a publicly traded partnership). The reference in the previous sentence to withholding under § 1.1446–4(f) shall apply with respect to returns for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**. * * *

* * * * *

(P) The amount of any distribution made by a publicly traded partnership that is an amount subject to withholding under § 1.1446–4, or that is paid to a qualified intermediary that assumes primary withholding responsibility for the payment or a U.S. branch of a foreign person that agrees to be treated as a U.S. person described in § 1.1446–4(b)(2); and

(Q) An amount realized on the transfer of a publicly traded partnership interest subject to § 1.1446(f)–4 (unless an exception to withholding applies under § 1.1446(f)–4(b)(2) through (5)).

* * * * *

(4) * * *

(ii) * * *

(A) *Amounts paid to a nonqualified intermediary, a flow-through entity, and certain U.S. branches.* * * * For a payment to a foreign partnership on the transfer of a publicly traded partnership interest subject to § 1.1446(f)–4(a), see paragraph (c)(1)(ii)(A)(*8*) of this section (treating the foreign partnership as a recipient).

* * * * *

(i) *Applicability date*—(1) *In general.* Except as provided in paragraph (i)(2) of this section, this section applies to returns required for payments made on or after January 6, 2017. For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.

(2) *Exceptions.* Paragraphs (a)(1), (c)(1)(i)(A), (c)(1)(ii)(A)(*8*), (c)(2)(i), and (c)(2)(iii) of this section apply as provided in those paragraphs. Paragraphs (c)(1)(ii)(A)(*11*), (c)(1)(ii)(B)(*5*), (c)(2)(i)(P) and (Q), and (c)(4)(ii)(A) apply with respect to returns for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

■ **Par. 11.** Section 1.1461–2 is amended:
■ 1. By revising paragraph (a)(1).
■ 2. As proposed to be amended April 13, 2016, at 81 FR 21795, by revising the first and last sentences of paragraph (b).

The revisions and addition read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) * * *

(1) *In general.* Except as otherwise provided in this paragraph (a)(1), a withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code, and made a deposit of the tax as provided in § 1.6302–2(a), may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure

described in paragraph (a)(3) of this section. These rules do not apply to partnerships or nominees required to withhold under section 1446(a), other than on a distribution by a publicly traded partnership subject to withholding under § 1.1446–4(a) and a payment of an amount realized on the transfer of an interest in a publicly traded partnership subject to § 1.1446(f)–4. The reference in the previous sentence to withholding under § 1.1446–4(f) shall apply with respect to returns for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(b) * * * A withholding agent may withhold from future payments (including distributions of effectively connected income subject to withholding under § 1.1446–4 and the amount realized from the transfer of a partnership interest subject to § 1.1446(f)–4) made to a beneficial owner the tax that should have been withheld from previous payments to that beneficial owner under chapter 3 of the Code. * * * The reference in this paragraph (b) to withholding under § 1.1446–4(f)–4 shall apply with respect to returns for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

■ **Par. 12.** Section 1.1461–3 is amended by revising the first sentence and last sentences to read as follows:

§ 1.1461–3 Withholding under section 1446.

For rules relating to the withholding tax liability of a partnership, nominee, or transferee under section 1446, see §§ 1.1446–1 through 1.1446–7 and 1.1446(f)–1 through 1.1446(f)–5. * * * The references in this section to §§ 1.1446–1 through 1.1446–7 apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7, and the references in this section to § 1.1446(f)–1 through 1.1446(f)–5 shall apply with respect to returns for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

■ **Par. 13.** Section 1.1463–1 is amended by revising the fourth and fifth sentences of paragraph (a) to read as follows:

§ 1.1463–1 Tax paid by recipient of income.

(a) * * * See §§ 1.1446–3(e), 1.1446–3(f) and 1.1446(f)–5(a) for application of the rule of this paragraph (a), and for additional rules, in which the withholding tax was required to be paid under section 1446. The references in the previous sentence to § 1.1446–3(e) and 1.1446–3(f) apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 apply by reason of an election under § 1.1446–7, and the reference in the previous sentence to § 1.1446(f)–5(a) shall apply to the tax required to be withheld under section 1446(f) for transfers that occur on or after 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

■ **Par. 14.** Section 1.1464–1 is amended by revising the last sentence of paragraph (a) and by revising paragraph (c) to read as follows:

§ 1.1464–1 Refunds or credits.

(a) *In general.* * * * With respect to section 1446 (other than section 1446(f)), this section applies only to a publicly traded partnership described in § 1.1446–4.

* * * * *

(c) *Applicability date.* The last sentence of paragraph (a) applies to publicly traded partnerships described in § 1.1446–4 for partnership taxable years beginning after April 29, 2008, and to brokers required to withhold under § 1.1446(f)–4 on transfers that occur on or after the date that is 60 days after the date that these regulations are published as final regulations in the **Federal Register**.

■ **Par. 15.** Section 1.6050K–1 is amended by:

■ 1. Redesignating the introductory text of paragraph (c) and paragraphs (c)(1) through (3) as the introductory text of paragraph (c)(1) and paragraphs (c)(1)(i) through (iii), respectively.

■ 2. Adding a subject heading to newly-redesignated paragraph (c)(1).

■ 3. Adding paragraphs (c)(2) and (3), (d)(3), and (h).

The revision and additions read as follows:

§ 1.6050K–1 Returns relating to sales or exchanges of certain partnership interests.

* * * * *

(c) *Statements to be furnished to transferor and transferee*—(1) *In general.* * * *

(2) *Information to be provided to transferors.* The statement a partnership must provide to a transferor partner pursuant to paragraph (c)(1) of this section must also include the information necessary for the transferor to make the transferor's required statement under § 1.751–1(a)(3).

(3) *Transfers of partnership interests by foreign persons.* For additional information required to be provided by the partnership if section 864(c)(8) applies to the transfer of a partnership interest by a foreign person, see § 1.864(c)(8)–2(b).

(d) * * *

(3) *Transfers of partnership interests by foreign persons.* For notifications required by foreign transferors of partnership interests, see § 1.864(c)(8)–2(a).

* * * * *

(h) *Applicability date.* Paragraphs (c)(2) and (3) of this section apply to returns filed on or after the date that these regulations are published as final regulations in the **Federal Register**. Paragraph (d)(3) of this section applies to transfers that occur on or after the date that these regulations are published as final regulations in the **Federal Register**.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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Part VI

The President

Proclamation 9880—Addressing Mass Migration Through the Southern Border of the United States

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Presidential Documents

Title 3—

The President

Proclamation 9880 of May 8, 2019

Addressing Mass Migration Through the Southern Border of the United States

By the President of the United States of America

A Proclamation

In Proclamation 9822 of November 9, 2018 (Addressing Mass Migration Through the Southern Border of the United States), I found that our immigration and asylum system is in crisis as a consequence of the mass migration of aliens across the border between the United States and Mexico (southern border). Accordingly, pursuant to sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a), respectively), I found that the unlawful entry of aliens through that border is detrimental to the interests of the United States and suspended and limited entry of such aliens. I exempted from the scope of Proclamation 9822 any alien who entered the United States at a port of entry and properly presented for inspection, as well as any lawful permanent resident of the United States. In Proclamation 9842 of February 7, 2019 (Addressing Mass Migration Through the Southern Border of the United States), I extended Proclamation 9822 for 90 days because I found that ''the problem of large numbers of aliens traveling through Mexico to enter our country unlawfully or without proper documentation has not materially improved, and indeed in several respects has worsened, since November 9, 2018.''

Section 2(d) of Proclamation 9842 directed the Secretary of State, the Attorney General, and the Secretary of Homeland Security jointly to submit to me a recommendation on whether a further extension or renewal of the suspension or limitation on entry in Proclamation 9822 is in the interests of the United States. Those officials have jointly recommended extending the suspension and limitation for an additional 90 days beyond the date when the United States obtains relief from the preliminary injunction of the interim final rule titled ''Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims'' that was promulgated by the Departments of Justice and Homeland Security on November 9, 2018.

As that recommendation reflects, the situation along the southern border has continued to deteriorate. In November 2018, a daily average of approximately 2,000 inadmissible aliens attempted entry into the United States. Today that average has risen to approximately 3,900. United States Border Patrol (USBP) apprehensions, which occur between ports of entry, have more than doubled from January to April of this year. From January through April, USBP apprehensions at the southern border are projected to reach approximately 460,000, a 4-month total that exceeds the totals from 8 of the last 10 fiscal years. The high percentage of children and families among these apprehensions places additional strain on the resources devoted to defense of the southern border. Moreover, large, organized groups of aliens continue to travel through Mexico toward the United States with the reported intention to enter the United States unlawfully or without proper documentation.

The ability of the United States to address these problems continues to be hampered by a nationwide injunction issued by a United States District Court judge in the Northern District of California. That injunction currently prevents the Attorney General and the Secretary of Homeland Security from

implementing an interim final rule that would render any alien who enters the country in contravention of a proclamation limiting or suspending entry at the southern border, including Proclamation 9822, ineligible to be granted asylum. The United States is appealing that injunction. Should the injunction be lifted, aliens who enter the United States unlawfully through the southern border in contravention of this proclamation will be ineligible to be granted asylum under that interim final rule.

As President, I must act to protect the national interest and to maintain an effectively functioning asylum system for legitimate asylum seekers who demonstrate that they have fled persecution and warrant the many special benefits associated with being granted asylum. In view of the foregoing circumstances, and the joint recommendation from the Secretary of State, the Attorney General, and the Secretary of Homeland Security, I have determined to extend the suspension and limitation, as set forth below, on entry into the United States through the southern border established by Proclamation 9822 and extended by Proclamation 9842.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the INA, hereby find that, absent the measures set forth in this proclamation, the entry into the United States of persons described in section 1 of this proclamation would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Suspension and Limitation on Entry.* The entry of any alien into the United States across the international boundary between the United States and Mexico is hereby suspended and limited, subject to section 2 of this proclamation. That suspension and limitation shall expire 90 days after the date on which the United States obtains relief from all injunctions that prevent full implementation of the interim final rule promulgated by the Departments of Justice and Homeland Security on November 9, 2018, or the date on which an agreement permits the United States to remove aliens to Mexico in compliance with the terms of section 208(a)(2)(A) of the INA (8 U.S.C. 1158(a)(2)(A)), whichever is earlier.

Sec. 2. *Scope and Implementation of Suspension and Limitation on Entry.* (a) The suspension and limitation on entry pursuant to section 1 of this proclamation shall apply only to aliens who enter the United States after the date of this proclamation.

(b) The suspension and limitation on entry pursuant to section 1 of this proclamation shall not apply to any alien who enters the United States at a port of entry and properly presents for inspection, or to any lawful permanent resident of the United States.

(c) Nothing in this proclamation shall limit an alien entering the United States from being considered for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) or protection pursuant to the regulations promulgated under the authority of the implementing legislation regarding the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or limit the statutory processes afforded to unaccompanied alien children upon entering the United States under section 279 of title 6, United States Code, and section 1232 of title 8, United States Code.

(d) No later than 75 days after the date when the United States obtains relief from all injunctions that prevent full implementation of the interim final rule promulgated by the Departments of Justice and Homeland Security on November 9, 2018, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall jointly submit to the President, through the Assistant to the President for National Security Affairs, a recommendation on whether the suspension or limitation on entry in section 1 of this proclamation continues to be in the interests of the United States. If, at the time that all injunctions are lifted, the Secretary of State, the

Attorney General, and the Secretary of Homeland Security are of the view that circumstances no longer warrant the suspension or limitation on entry, they shall so advise me.

Sec. 3. *Interdiction.* The Secretary of State and the Secretary of Homeland Security shall continue to consult with the Government of Mexico regarding appropriate steps—consistent with applicable law and the foreign policy, national security, and public-safety interests of the United States—to address the approach of large groups of aliens traveling through Mexico with the intent of entering the United States unlawfully, including efforts to deter, dissuade, and return such aliens before they physically enter United States territory through the southern border.

Sec. 4. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the failure to follow certain procedures, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 5. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

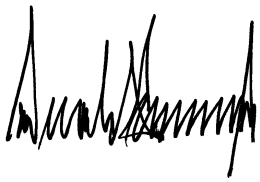
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, 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. 2019–09992
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Federal Register

Vol. 84, No. 92

Monday, May 13, 2019

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FEDERAL REGISTER PAGES AND DATE, MAY

18383–18694 1
18695–18970 2
18971–19682 3
19683–19852 6
19853–20004 7
20005–20238 8
20239–20536 9
20537–20764 10
20765–21232 13

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1800 20239

3 CFR

Executive Orders:
13870 20523
13871 20761
Proclamations:
9822 (See Proc. 9880) 21229
9842 (See Proc. 9880) 21229
9865 18695
9866 18969
9867 19683
9868 19685
9869 19687
9870 19689
9871 19691
9872 19693
9873 19695
9874 19697
9875 19851
9876 20529
9877 20531
9878 20533
9879 20535
9880 21229
Administrative Orders:
Memorandums:
Memorandum of Apr. 22, 2019 19853
Notices:
Notice of May 8, 2019 20537
Notice of May 8, 2019 20539

6 CFR

5 20240

7 CFR

610 19699
622 19699
625 19699
652 19699
985 19703
1220 20765
1260 20765
1455 19699
Proposed Rules:
51 19743
930 20043

8 CFR

214 20005

10 CFR

Proposed Rules:
430 .....18414, 20048
431 .....18414, 20048, 20704

11 CFR

100 18697
101 18697
102 18697
104 18697
105 18697
108 18697
110 18697
114 18697

12 CFR

204 20541
Proposed Rules:
231 18741
1003 .....20049, 20972

14 CFR

25 .....18701, 20021
39 .....18704, 18707, 19709, 20242, 20246, 20248, 20252, 20542, 20772
71 .....20256, 20257, 20258, 20774
97 .....18971, 18973
Proposed Rules:
25 .....18997, 20053
39 .....19745, 19879, 19881, 19885, 19888, 19891, 20054, 20057, 20300, 20303, 20822, 20823
71 20306

16 CFR

18 20776
433 18711
460 20777
Proposed Rules:
Ch. I 18746

17 CFR

Proposed Rules:
23 21044
43 21044
45 21044
49 21044

20 CFR

655 20005

21 CFR

1308 20023
Proposed Rule:
73 20060
1308 18423

22 CFR

40 19712

24 CFR

Proposed Rules:
5 20589
204 19748

26 CFR

1 20790
300 20801
Proposed Rules:
1 ....18652, 18999, 21198

29 CFR

1602 ....18383, 18974
4041A 18715
4245 18715
4281 18715

30 CFR

916 20259
934 20264
Proposed Rules:
913 18428
917 ....18430, 20595
925 ....18433, 20597
935 20599
938 18435

31 CFR

Proposed Rules:
33 19000

32 CFR

151 18383
Proposed Rules:
199 18437
200 18437

33 CFR

100 ....18727, 18974, 19715, 20027, 20028, 20270
165 ....18387, 18389, 18975, 20028, 20029, 20034, 20035, 20544, 20546, 20547
326 18979
Proposed Rules:
100 ....20060, 20307, 20602
165 ....18452, 19003, 20307, 20318, 20825
175 20827

37 CFR

201 20273

39 CFR

111 18731
233 20804
3020 18982
3050 20806

40 CFR

52 ....18392, 18736, 18738, 18989, 18991, 19680, 19681, 20274, 20808
158 18993
180 ....18398, 20037
271 20549
300 20550
Proposed Rules:
1 20062
52 ....19005, 19007, 19750, 19893, 20070, 20071, 20318, 20604, 20838
63 ....18926, 20208
81 ....19007, 19893
131 18454
174 20320
180 ....20320, 20843
300 20073

41 CFR

Proposed Rules:
App. C Ch. 301 19895
304–2 19895
304–3 19895
304–5 19895
304–6 19895

42 CFR

403 20732
405 19855
423 19855
447 19718
484 20810
1001 20810
Proposed Rules:
410 18748
412 19158
413 19158
414 18748
424 18748
488 18748
493 18748
495 19158

44 CFR

64 18403

45 CFR

Proposed Rules:
155 19000

46 CFR

401 20551
404 20551
Proposed Rules:
25 20827
355 18468
356 18469

47 CFR

2 20810
25 20810
30 ....18405, 20810
52 19874
54 19874
64 19874
76 18406
Proposed Rules:
1 ....18757, 20077
2 20088
30 20077
73 19897
95 20088

48 CFR

Ch.1 ....19834, 19847
1 19839
2 ....19835, 19839
3 19839
4 ....19837, 19839
5 19839
6 19839
7 19839
8 ....19837, 19839
9 19839
10 19835
11 19839
12 19835
13 19835
16 ....19837, 20292
17 ....19837, 19839
18 19835
19 19839
22 19839
26 ....19835, 19839
30 19839
31 19839
35 19837
45 19839
50 19839
52 19839
53 19839
Proposed Rules:
2 20607

49 CFR

1002 20292
1312 20292
Proposed Rules:
240 20472

50 CFR

17 19877
300 18409
622 19728
635 20296
648 20820
660 ....19729, 20578
Proposed Rules:
17 19013
218 21126
648 ....18471, 20609

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List April 24, 2019

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