AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 84 Friday,

No. 101 May 24, 2019

Pages 23991–24362

OFFICE OF THE FEDERAL REGISTER

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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 84 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

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

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

Printed on recycled paper.

Contents

Federal Register

Vol. 84, No. 101

Friday, May 24, 2019

Agency for Toxic Substances and Disease Registry
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24143–24144

Agriculture Department
See Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24075

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24144–24153
Charter Renewal:
World Trade Center Health Program Scientific/Technical Advisory Committee, 24152
Meetings:
Board of Scientific Counselors, Office of Public Health Preparedness and Response, 24151–24152
Solicitation of Nominations:
World Trade Center Health Program Scientific/Technical Advisory Committee, 24148–24149

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24153–24156

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Assets For Independence Performance Progress Report, 24156–24157
Announcement of an Unsolicited Single-Source Grant Award to the Woodson Center in Washington, DC, 24156

Civil Rights Commission
NOTICES
Meetings:
California Advisory Committee, 24083

Coast Guard
RULES
Safety Zone:
Prom Fireworks Display, San Francisco Bay, San Francisco, CA, 24030–24032
Safety Zones:
Annual Events in the Captain of the Port Buffalo Zone, 24029–24030
Special Local Regulations:
Marine Events Within the Captain of the Port Zone Columbia River, 24028–24029
PROPOSED RULES
Safety Zone:
Cape Fear River, Wilmington, NC, 24061–24063
Columbia River, Fireworks Kennewick, WA, 24059–24061

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 24105–24106

Commodity Futures Trading Commission
NOTICES
Meetings:
Market Risk Advisory Committee, 24106–24107

Comptroller of the Currency
RULES
Covered Savings Association, 23991–24007
PROPOSED RULES
Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries, 24296–24358
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Consumer Protections for Depository Institution Sales of Insurance, 24199–24201
Interagency Statement on Complex Structured Finance Transactions, 24198–24199
Meetings:
Minority Depository Institutions Advisory Committee, 24199

Consumer Product Safety Commission
RULES
Virginia Graeme Baker Pool and Spa Safety Act:
Incorporation by Reference of Successor Standard, 24021–24027

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Foreign Graduate Medical School Consumer Information Reporting Form, 24117–24118
Loan Cancellation in the Federal Perkins Loan Program, 24107–24108
Student Aid Internet Gateway Enrollment Document, 24107
Applications for New Awards:
Personnel Development To Improve Services and Results for Children With Disabilities—Interdisciplinary Preparation in Special Education, Early Intervention, and Related Services for Personnel Serving Children With Disabilities Who Have High-Intensity Needs, 24108–24117
Free Application for Federal Student Aid Information To Be Verified for the 2020–2021 Award Year, 24118–24122

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Electricity Advisory Committee, 24124
Environmental Management Site-Specific Advisory Board, Hanford, 24123
Environmental Management Site-Specific Advisory Board, Oak Ridge, 24123–24124
Environmental Management Site-Specific Advisory Board, Portsmouth, 24122–24123

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Montana; Missoula PM10 Nonattainment Area Limited Maintenance Plan and Redesignation Request, 24037–24041
Ohio; Revisions to Particulate Matter Rules, 24034–24036
Oxathiapiprolin; Pesticide Tolerances; CFR Correction, 24041
Pesticide Tolerances:
Fluensulfone, 24042–24048
PROPOSED RULES
Federal Implementation Plan To Establish a Bank for Ozone Precursor Emission Reduction Credits From Existing Sources on Indian Country Lands Within the Uinta Basin Ozone Nonattainment Area, 24064–24069
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Omaha Lead Superfund Site, 24069–24074
Submission to the Secretary of Agriculture; Protection of Human Research Subjects, 24063–24064
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994, 24134
New Source Performance Standards for Grain Elevators, 24133
New Source Performance Standards for Small Municipal Waste Combustors (Renewal), 24135–24136
Environmental Impact Statements; Availability, etc.:
Weekly Receipts, 24134–24135
Final Approval for an Alternative Means of Emission Limitation at Shell Oil Products U.S. Martinez Refinery, 24136–24137
Meetings:
Mobile Sources Technical Review Subcommittee, 24136
Registration Review Proposed Interim Decisions for Several Pesticides, 24137–24139
Settlements:
Ward Transformer Superfund Site, Raleigh, NC, 24135

Federal Aviation Administration
RULES
Airworthiness Directives:
Textron Aviation, Inc. Airplanes, 24007–24010
Instrument Flight Rules Altitudes, 24010–24018
PROPOSED RULES
Airworthiness Directives:
Rolls-Royce plc Turbofan Engines, 24049

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24139–24141
Privacy Act; Matching Programs, 24141–24142

Federal Deposit Insurance Corporation
PROPOSED RULES
Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries, 24296–24358
NOTICES
Termination of Receivership, 24142

Federal Energy Regulatory Commission
PROPOSED RULES
Standards for Business Practices and Communication Protocols for Public Utilities, 24050–24059
NOTICES
Combined Filings, 24127–24133
Environmental Assessments; Availability, etc.:
Columbia Gas Transmission, LLC; Buckeye XPress Project, 24124–24125
Tennessee Gas Pipeline Co., LLC; 261 Upgrade Project, 24131–24132
Institution of Section 206 Proceeding:
Manitowoc Public Utilities, 24130
License Applications:
New England Hydropower Co., LLC, 24126–24127

Federal Reserve System
PROPOSED RULES
Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries, 24296–24358

Federal Retirement Thrift Investment Board
NOTICES
Meetings:
Joint Federal Retirement Thrift Investment and Board Member and Employee Thrift Advisory Council, 24142

Federal Trade Commission
PROPOSED RULES
Standards for Safeguarding Customer Information, 24049–24050

Federal Transit Administration
NOTICES
Protecting Public Transportation Operators From the Risk of Assault, 24196

Food and Drug Administration
RULES
Guidance:
Section 503A Bulks List Final Rule Questions and Answers; Small Entity Compliance Guide; Availability, 24027–24028

NOTICES
Determination of Regulatory Review Period for Purposes of Patent Extension:
EDWARDS INTUITY ELITE AORTIC VALVE, 24158–24159
Electronic Nicotine Delivery System Device and E-Liquid Manufacturer Site Tours Program, 24157–24158
Meetings:
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee, 24157

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Findings of Research Misconduct, 24165–24166
Public Hearing:
ReImagine HHS Accelerate Clinical Innovation Initiative, 24162–24165

Health Resources and Services Administration
NOTICES
National Vaccine Injury Compensation Program:
List of Petitions Received, 24160–24162

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Comprehensive Transactional Forms Supporting FHA's Section 242 Mortgage Insurance Program for Hospitals, 24167–24169
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Revitalization Area Designation and Management, 24171
Privacy Act; Matching Program, 24169–24171

Indian Affairs Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Campo Wind Energy Project, San Diego, CA, 24171–24173

Industry and Security Bureau
RULES
Addition of Certain Entities to the Entity List, Revision of an Entry on the Entity List, and Removal of an Entity From the Entity List, 24021
Revisions to Country Group Designations for Venezuela and Conforming Changes for License Requirements, 24018–24021

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
NOTICES
National Environmental Policy Act Implementing Procedures for the Bureau of Reclamation, 24173–24177

Internal Revenue Service
NOTICES
Requests for Nominations:
Internal Revenue Service Advisory Council, 24201

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Cold Rolled Steel Flat Products From the Republic of Korea, 24083–24085
Certain Cold-Rolled Steel Flat Products From the Republic of Korea, 24087–24089
Certain Oil Country Tubular Goods From the Republic of Korea, 24085–24087
Certain Steel Wheels From the People's Republic of China, 24098–24100
Vertical Metal File Cabinets From the People's Republic of China, 24089–24093
Initiation of Less-Than-Fair-Value Investigation:
Vertical Metal File Cabinets From the People's Republic of China, 24093–24098

International Trade Commission
NOTICES
Complaints:
Certain Light-Emitting Diode Products, Systems, and Components Thereof, 24180–24181
Investigations; Determinations, Modifications, and Rulings, etc.:
Carburetors and Products Containing Such Carburetors, 24181–24182
Certain Toner Cartridges and Components Thereof, 24182–24183

Justice Department
NOTICES
Proposed Consent Decree:
CERCLA, 24183

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Draft Four Rivers Field Office Resource Management Plan, 24177–24178
Meetings:
Utah Resource Advisory Council, 24178–24179

National Archives and Records Administration
See Office of Government Information Services

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 24166–24167
National Institute on Minority Health and Health Disparities, 24167

National Oceanic and Atmospheric Administration
NOTICES
Draft Cook Inlet and Kodiak Marine Mammal Disaster Response Guidelines, 24102–24103
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Dolphin and Wahoo Fishery Off the Atlantic States, and Coral and Coral Reefs Fishery in the South Atlantic; Exempted Fishing Permit, 24103–24104

Meetings:
Evaluation of Elkhorn Slough National Estuarine Research Reserve, 24101–24102
Evaluation of State Coastal Management Programs, 24104–24105
New England Fishery Management Council, 24101
Pacific Fishery Management Council, 24100–24101
Permit Application:
Endangered Species; File No. 20610, 24103

National Park Service
NOTICES
Tribal Consultation; National Register of Historic Places, 24179–24180

Nuclear Regulatory Commission
NOTICES
Application:
Tennessee Valley Authority; Clinch River Nuclear Site, 24185–24186
Meetings:
Advisory Committee on Reactor Safeguards, 24186–24187
Advisory Committee on Reactor Safeguards Subcommittee on NuScale, 24184
Advisory Committee on Reactor Safeguards Subcommittee on Plant License Renewal, 24184–24185

Office of Government Information Services
NOTICES
Meetings:
Freedom of Information Act Advisory Committee, 24183–24184

Pension Benefit Guaranty Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Administrative Appeals, 24187

Personnel Management Office
NOTICES
Civil Service Retirement System; Present Value Factors, 24187–24188
Federal Employees' Retirement System:
Present Value Factors, 24188

Presidential Documents
PROCLAMATIONS
Special Observances:
National Maritime Day (Proc. 9895), 24359–24362

Rural Housing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24075–24076
Solicitation of Applications:
Section 533 Housing Preservation Grants for Fiscal Year 2019, 24076–24083

Securities and Exchange Commission
PROPOSED RULES
Cross-Border Application of Certain Security-Based Swap Requirements, 24206–24294
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24193–24196
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 24188–24191
The Nasdaq Stock Market LLC, 24191–24193

Small Business Administration
NOTICES
Conflict of Interest Exemption:
Patriot Capital IV (A), LP, 24195
Surrender of License of Small Business Investment Company, 24195–24196
Surrender of License of Small Business Investment Company:
Deerpath Funding, LP, 24195

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 24196–24197
Meetings:
Traffic Safety and the 5.9 GHz Spectrum Conference, 24197–24198

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

Veterans Affairs Department
RULES
Removing Net Worth Requirement From Health Care Enrollment, 24032–24034
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Loan Analysis, 24202
Reimbursement of Adoption Expenses for Certain Veterans, 24201–24202
Request for Certificate of Veteran Status, 24203–24204
Verification of VA Benefits, 24203

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 24206–24294

Part III
Federal Deposit Insurance Corporation, 24296–24358
Federal Reserve System, 24296–24358
Treasury Department, Comptroller of the Currency, 24296–24358

Part IV
Presidential Documents, 24359–24362

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

13 CFR

Proclamations:

9895 24361

12 CFR

101 23991

Proposed Rules:

3 24296
50 24296
217 24296
249 24296
324 24296
329 24296

14 CFR

39 24007
95 24010

Proposed Rules:

39 24049

15 CFR

738 24018
740 24018
744 24021

16 CFR

1450 24021

Proposed Rules:

314 24049

17 CFR

Proposed Rules:

201 24206
240 24206

18 CFR

Proposed Rules:

38 24050

21 CFR

216 24027

33 CFR

100 24028
165 (2 documents) 24029, 24030

Proposed Rules:

165 (2 documents) 24059, 24061

38 CFR

17 24032

40 CFR

52 (2 documents) 24034, 24037
81 24037
180 (2 documents) 24041, 24042

Proposed Rules:

26 24063
49 24064
300 24069

Rules and Regulations

Federal Register
Vol. 84, No. 101
Friday, May 24, 2019

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

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 101

[Docket ID OCC–2018–0020]

RIN 1557–AE45

Covered Savings Associations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule.

SUMMARY: The OCC is issuing a final rule to implement a new section of the Home Owners' Loan Act (HOLA). The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amended HOLA to add a new section that allows a Federal savings association with total consolidated assets equal to or less than $20 billion, as reported by the association to the Comptroller as of December 31, 2017, to elect to operate as a covered savings association. A covered savings association has the same rights and privileges as a national bank and is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as a national bank. A covered savings association retains its Federal savings association charter and existing governance framework. The new section of HOLA requires the OCC to issue rules that, among other things, establish streamlined standards and procedures for elections to operate as covered savings associations and clarify requirements for the treatment of covered savings associations.

DATES: The final rule takes effect on July 1, 2019.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Charlotte Bahin, Senior Advisor for Thrift Supervision, 202–649–6281, Lazaro Barreiro, Director for Governance and Operational Risk Policy, 202–649–6550, Alison MacDonald, Special Counsel, 202–649–5490, Demetria H. Springs, Special Counsel, 202–649–5500, Chief Counsel's Office, for persons who are deaf or hearing impaired, TTY, 202–649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

On September 18, 2018, the OCC published a proposed rule [1] to implement section 206 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), Public Law 115–174, 132 Stat. 1310. Section 206 of EGRRCPA amended the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*) to add a new section 5A (12 U.S.C. 1464a). Section 5A allows a Federal savings association with total consolidated assets equal to or less than $20 billion, as reported by the association to the Comptroller as of December 31, 2017, to elect to operate as a covered savings association. A covered savings association has the same rights and privileges as a national bank that has its main office situated in the same location as the home office of the covered savings association. A covered savings association is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to such a national bank. However, a covered savings association retains its Federal savings association charter and continues to be treated as a Federal savings association for purposes of governance, including procedures and requirements for incorporation, charters and bylaws (*e.g.,* form, amendments), boards of directors (*e.g.,* elections, term of service), shareholders (*e.g.,* meetings, voting requirements, requirements for stakeholders such as mutual members), and distribution of dividends (*e.g.,* payment, prior approval, and other restrictions). A covered savings association also is treated as a Federal savings association for purposes of consolidation, merger, dissolution, conversion (including conversion to a stock bank or another charter), conservatorship, and receivership, as well as for other purposes determined by OCC regulation. A covered savings association may continue to operate any branch or agency that the covered savings association operates on the date an election to operate as a covered savings association takes effect. A covered savings association will continue to be treated as a covered savings association even if its total consolidated assets exceed $20 billion after it makes an election.

II. Summary of General Comments

The OCC received 16 comments in response to the notice of proposed rulemaking. The commenters included Federal savings associations, industry trade associations, an unincorporated association, a U.S. Senator, a law firm (on behalf of a client), and a grandfathered unitary savings and loan holding company.

The comments generally supported the proposed rule implementing section 5A of HOLA. One commenter urged the OCC to focus on the underlying purpose of section 5A, which the commenter believes is to provide flexibility for Federal savings associations without imposing undue impediments. As explained in the preamble to the proposed rule, the OCC views section 5A of HOLA as a way to provide Federal savings associations with additional flexibility to adapt to new economic conditions and business environments without the cost and time involved in a change of charter.[2] The OCC has considered various factors in implementing section 5A, including the importance of providing an effective regulatory framework for Federal savings associations seeking to make an election and ensuring that the institutions that make an election can continue to operate safely and soundly. The final rule balances these considerations. To that end, consistent with section 5A, the final rule provides a regulatory framework that ensures that covered savings associations that make an election are treated in the same manner as similarly located national banks except where differences are necessary or appropriate to permit covered savings associations to retain their existing charter and governance framework.

Four commenters requested that the OCC work closely with other federal regulators to ensure consistency in the interpretation of section 5A. Several commenters specifically raised

[1] Covered Savings Associations, 83 FR 47101 (September 18, 2018) (Proposed Rule).

[2] Proposed Rule at 47102.

questions regarding the treatment of savings and loan holding companies, including grandfathered unitary savings and loan holding companies. In addition, a number of commenters recommended that the OCC clarify that covered savings associations would not be required to be members of the Federal Reserve System, with some adding that membership should be voluntary. The Board of Governors of the Federal Reserve System (FRB) has primary responsibility for supervising savings and loan holding companies and administering Federal Reserve membership. The OCC will continue to consult with the FRB on interpretive issues regarding the application of section 5A to savings and loan holding companies and regarding issues related to membership. The OCC recommends that individuals or institutions with specific questions about membership or the treatment of holding companies of Federal savings associations that elect to operate as covered savings associations contact the FRB.

Several other commenters were concerned about how covered savings associations would be treated within the Federal Home Loan Bank (FHLBank) system. Two commenters asserted that the FHLBanks rate institutions that meet the qualified thrift lender (QTL) test under HOLA higher than institutions that do not meet the QTL test. Another commenter requested that the OCC work with the FHLBanks to ensure that an election does not negatively impact membership privileges. The OCC understands that the Gramm-Leach-Bliley Act amended the Federal Home Loan Bank Act to eliminate certain provisions applicable only to non-QTL compliant members.[3] The OCC recommends that individuals or institutions with specific questions about the activities and authorities of the FHLBanks contact either the Federal Housing Finance Agency, which has primary responsibility for supervising the FHLBank system, or the appropriate FHLBank.

As discussed more fully in subsequent sections of this preamble, the OCC has revised the final rule in response to issues raised by commenters. These revisions and explanations that address other comments received are described in the section-by-section description of the final rule.

III. Section-by-Section Description

101.1 Authority and purposes. Section 101.1(a) of the proposed rule provided that the rule would be issued pursuant to sections 3, 4, 5, and 5A of HOLA (12 U.S.C. 1462a, 1463, 1464, and 1464a), section 5239A of the Revised Statutes (12 U.S.C. 93a), and section 312(b)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412(b)(2)(B)).

Section 101.1(b) of the proposed rule described the purposes of the proposed rule. Those purposes were to establish standards and procedures for a Federal savings association's election to operate as a covered savings association, to clarify the requirements that apply to covered savings associations, and to establish standards and procedures for terminations of elections and for reelections.

The OCC did not receive comment on this section of the proposed rule. The OCC adopts this section of the proposed rule without change.

101.2 Definitions and computation of time. Section 101.2(a) of the proposed rule set out definitions for the final rule. Section 101.2(b) of the proposed rule provided that, for purposes of the rule, the OCC would compute time in the same manner as set forth in 12 CFR 5.12. Section 5.12 provides that, in computing a period of days, the OCC does not include the day of the act (in this case, the date the OCC receives a Federal savings association's notice of election or termination) from which the period begins to run. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. The OCC did not receive comment on the definitions included in this section or the manner of computation of time. The OCC adopts this section as proposed, with one change. As discussed in more detail later in this preamble, because the final rule refers consistently to ''the OCC'' throughout, the final rule does not include a definition of the term ''appropriate OCC supervisory office.''

101.3 Procedures. Section 101.3 of the proposed rule set out streamlined procedures and standards of review for a Federal savings association's election to operate as a covered savings association.

Section 101.3(a)(1) of the proposed rule would have allowed a Federal savings association that had total consolidated assets of $20 billion or less as of December 31, 2017, to make an election to operate as a covered savings association by submitting a notice to the appropriate OCC supervisory office. The OCC proposed to use the Consolidated Reports of Condition and Income (Call Reports) submitted for the quarter ending December 31, 2017, to determine if a Federal savings association met this threshold.

The proposal provided that institutions that were not Federal savings associations as of December 31, 2017, would not be eligible to make an election to operate as covered savings associations. Therefore, under the proposed approach, an institution that was a credit union, state savings association, or state bank on December 31, 2017, but that later converted to a Federal savings association charter, would not be eligible to make an election to operate as a covered savings association. Similarly, a de novo Federal savings association chartered after December 31, 2017, would not be eligible to make an election. The proposal noted that a Federal savings association in stock form could convert directly to a national bank charter, but for institutions in mutual form, a national bank charter is not available without first converting to stock form. The OCC invited comment on whether the option to elect to operate as a covered savings association should be limited to institutions that were Federal savings associations on December 31, 2017.

One commenter supported the proposed approach, but four commenters expressed concern. Three were concerned about limiting the ability of state-chartered institutions and credit unions to make elections following a conversion to a Federal savings association charter. Two urged the OCC to allow state savings associations, savings banks, or cooperative banks that were in existence prior to December 31, 2017, to make an election following a conversion, and the third urged the OCC to support legislative efforts to eliminate the eligibility date. Another commenter argued that Congress did not intend to exclude de novo savings associations from eligibility.

The OCC is adopting § 101.3(a)(1) as proposed, with one technical change to ensure that the final rule consistently refers to ''the OCC'' rather than to ''the appropriate OCC supervisory office.'' Section 5A of HOLA provides that ''a Federal savings association'' with total consolidated assets of $20 billion or less ''as reported by the association to the Comptroller as of December 31, 2017,'' may make an election to operate as a covered savings association. Based on this statutory language, the OCC believes that section 5A precludes institutions that were not Federal savings associations as of December 31, 2017, from making an election. Although commenters identified

[3] Section 604 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338.

potentially undesirable policy implications of this approach, no commenter offered a legal argument that would allow the OCC to disregard the limits imposed by the statute.

The OCC notes that de novo institutions, state savings associations, and state savings banks that are not in mutual form may apply for a national bank charter if they are seeking a Federal charter and want to exercise the powers of a national bank. This option would not be available to state savings associations or state savings banks that are in mutual form unless they first convert to stock form.

The OCC also received comments on other aspects of § 101.3(a)(1). One commenter asked the OCC to clarify whether institutions that are not eligible to make an election can become eligible by merging into an eligible Federal savings association. Under section 5A of HOLA and the final rule, an institution that was a Federal savings association with total consolidated assets of $20 billion or less as of December 31, 2017, is eligible to make an election, regardless of whether that institution later grows in asset size as a result of a merger with another institution or otherwise. If an institution that is not otherwise eligible to make an election merges into a Federal savings association that is eligible to make an election, and the eligible Federal savings association is the surviving charter, then that Federal savings association would not lose its eligibility to operate as a covered savings association because of the acquisition.

Another commenter requested the OCC to clarify that a Federal savings association that meets the asset threshold as of December 31, 2017, remains eligible to make an election or reelection even if it subsequently grows beyond the threshold. Neither section 5A of HOLA nor the final rule imposes an expiration date on a Federal savings association's eligibility to make an election, nor do they require that a Federal savings association maintain assets equal to or less than $20 billion to retain its eligibility. This means that a Federal savings association that was in existence and met the asset threshold as of December 31, 2017, may make an election at any time after implementation of the final rule. The Federal savings association does not lose its eligibility even if it has grown beyond the $20 billion asset threshold at the time of its election. The OCC does not believe that it is necessary to include language to this effect in the rule. Instead, the OCC has added a paragraph (c) to § 101.4 of the final rule to highlight the express language of section 5A(g) of HOLA. Section 5A(g) provides that a covered savings association may continue to operate as a covered savings association if, after the date of the election, the covered savings association has total consolidated assets greater than $20 billion.

Section 101.3(a)(2) of the proposed rule would have required that a Federal savings association's notice of an election: Be signed by a duly authorized officer of the Federal savings association; identify each branch or agency that the Federal savings association will operate on the effective date of the election that has not been the subject of an application or notice under 12 CFR part 5; and identify and describe each nonconforming subsidiary, asset, or activity that the Federal savings association operates, holds, or conducts at the time it submits the notice, each of which must be divested, conformed, or discontinued pursuant to § 101.5. The OCC received several comments regarding the contents of the notice.

Four commenters requested that the OCC make clear that no shareholder or member vote would be required to make an election, with several commenters noting that boards of directors are responsible for business plans. As explained in the preamble of the proposed rule, the statute does not require that a Federal savings association obtain shareholder or member approval to make an election to operate as a covered savings association. For this reason, the OCC did not include any requirements for a shareholder or member vote in the proposed rule and will not include any such requirement in the final rule. Nevertheless, the election to operate as a covered savings association could have implications not only for the electing association but also for its savings and loan holding company, shareholders, or members. Therefore, each Federal savings association that makes an election should review its respective charter and bylaws, as well as any other applicable law, to determine whether an election to operate as a covered savings association will require shareholder or member approval or additional changes to the association's charter and bylaws.

Two commenters asserted that the requirement to provide information relating to existing branches and agencies under § 101.3(a)(2)(ii) is unduly burdensome. One commenter argued that the proposed regulatory text could be read to require Federal savings associations to submit information on a significant number of branches and agencies, not just newly established ones. The commenter noted that many branch applications or notices were submitted prior to the integration of 12 CFR part 5. This commenter also noted that applications or notices are generally not required for a Federal savings association to establish an agency. The commenter believes such a requirement would be unnecessary, would require time and cost that do not serve a compelling supervisory or regulatory purpose, and would require a covered savings association to disclose more information than a Federal savings association or national bank would be required to disclose. This commenter recommended that the OCC either eliminate this requirement or further clarify its scope. Another commenter stated that the requirement to provide information on existing branches and agencies is unnecessary and burdensome, noting that it may be difficult to provide information on branches that have been operational for a number of years. This commenter suggested that all branches that are open or operational or that have received regulatory approval or non-objection should be presumed to be compliant and documentation should not be required. Neither commenter believes that the OCC has clearly indicated why it needs this information.

The final rule does not require Federal savings associations to identify branches or agencies in a notice of an election. The OCC believes that it can obtain sufficient information about the branches and agencies of a prospective covered savings association by reviewing information the association submits on its nonconforming subsidiaries, assets, or activities.[4] This information will allow the OCC to monitor covered savings associations for compliance with the final rule without imposing any additional burden that could be associated with submitting information identifying branches and agencies. After an election, a covered savings association seeking to establish new branches will be subject to the terms and conditions for the establishment of branches applicable to a similarly located national bank.[5] A covered savings association seeking to establish new non-branch offices (*e.g.,* loan or deposit production offices) will also be subject to any terms and conditions (including limitations) on the operation of non-branch offices

[4] This would include information identifying activities conducted in an agency that would cause the agency to be defined as a branch under national bank law, as discussed later in this preamble.

[5] See, *e.g.,* 12 U.S.C. 36 and 12 CFR 5.30.

applicable to a similarly located national bank.[6]

Section 101.3(a)(2)(iii) of the proposed rule would have required Federal savings associations to identify nonconforming subsidiaries, assets, and activities because these are the subsidiaries, assets, and activities the Federal savings association would need to divest, conform, or discontinue pursuant to section 5A(f)(3) of HOLA and § 101.5 of the rule after an election takes effect. The OCC solicited feedback on whether the final rule should specify metrics for determining the size or scope of a subsidiary, asset, or activity. The OCC did not receive any comments responding to this solicitation and is adopting this provision (which is designated as § 101.3(a)(2)(ii) in the final rule) as proposed. The OCC did receive comments on the proposed treatment of nonconforming subsidiaries, assets, and activities. These comments are addressed in the discussion of § 101.5 later in this preamble.

Section 101.3(b) of the proposed rule provided that a Federal savings association's election to operate as a covered savings association would automatically take effect 60 days after the OCC receives a notice from the Federal savings association, unless the OCC notifies the Federal savings association that it is not eligible in accordance with paragraph (c). The proposal also provided that the OCC could notify a Federal savings association that it is eligible to operate as a covered savings association before 60 days have elapsed. The OCC did not receive any comments on this provision of the proposal. The OCC is adopting § 101.3(b) with one conforming change to reflect the elimination of § 101.3(c) as discussed later in this preamble.

Section 101.3(c) of the proposed rule would have permitted the OCC to notify a Federal savings association in writing that it is not eligible to make an election to operate as a covered savings association if the Federal savings association is not an ''eligible savings association'' as that term is defined in 12 CFR 5.3(g). Under the definition in 12 CFR 5.3(g), an eligible savings association is a Federal savings association that (1) is well capitalized as defined in 12 CFR 6.4; (2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS); (3) has a Community Reinvestment Act (CRA) rating of ''outstanding'' or ''satisfactory,'' if applicable; (4) has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System; and (5) is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the savings association may be treated as an ''eligible savings association'' for purposes of 12 CFR part 5. Because the purposes of 12 CFR part 5 and the purposes of the proposed rule were different, the proposed rule specified that a Federal savings association that is subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive would not be eligible to elect to operate as a covered savings association unless the OCC informed it in writing that it is eligible for purposes of part 101 (that is, for purposes of the proposed rule).

The preamble to the proposed rule noted that the concept of an ''eligible savings association'' as described in 12 CFR 5.3(g) is well understood and relatively straightforward to apply. In the licensing context, an ''eligible savings association'' may receive expedited review of filings because it is generally the type of savings association that can operate safely and soundly. The preamble to the proposed rule explained that a Federal savings association that meets the definition of ''eligible savings association'' typically would not raise the types of concerns that would suggest it should not operate as a covered savings association.

The OCC invited comment on whether there are standards other than those in the definition of ''eligible savings association'' in 12 CFR 5.3(g) that would allow the OCC to determine, without imposing undue burden, whether a Federal savings association is eligible to operate as covered savings association. The OCC also invited comment on whether there are situations in which, or Federal savings associations for which, it would not be appropriate to use the definition of ''eligible savings association'' to make determinations about the eligibility of a Federal savings association to operate as a covered savings association. Additionally, the OCC invited comment on whether the rule should identify other factors for consideration when determining a Federal savings association's eligibility to operate as a covered savings association.

Although one commenter supported the OCC's proposed approach, four commenters disagreed with the use of the ''eligible savings association'' criteria as the basis for eligibility, noting that the criteria are not expressly required by the statute. Some commenters also contended that these criteria would be inconsistent with the purpose of section 5A because they would add hurdles to making an election. The commenters also suggested that the OCC has the expertise to supervise a covered savings association following an election.

The OCC agrees with the commenters who expressed concern with the proposed approach and is eliminating the ''eligible savings association'' criteria in the final rule. The OCC believes that elimination of these criteria is consistent with section 5A, which directs the OCC to establish ''streamlined standards and procedures . . . for an election.'' Removal of these criteria will increase the number of institutions that can elect to operate as covered savings associations. The OCC believes that it can use its existing supervisory and enforcement mechanisms, as appropriate, to address any concerns that may arise when an institution elects to operate as a covered savings association, regardless of the condition of the institution at the time of an election. In light of this change, the OCC is also changing the heading of § 101.3 from ''Procedures and Standards of Review'' to ''Procedures.''

The OCC also received several comments asking about the impact of a failure to meet the ''eligible savings association'' criteria on an ongoing basis after an election. Because the final rule eliminates these criteria, this is no longer an issue.

Although the final rule, like the proposed rule, does not require the OCC to send written notice to a Federal savings association that becomes a covered savings association by operation of law 60 days after an election, the OCC would expect to send such notice as a matter of course. The notice would include a reminder that covered savings associations are subject to the same laws, regulations, and safety and soundness expectations as a similarly located national bank, including any appropriate enforcement action for failure to comply with applicable laws and regulations.

101.4 Treatment of covered savings associations. Section 5A(c) of HOLA provides that a covered savings association has the same rights and privileges as a similarly located national bank and is subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to such a national bank. Section 5A(d) further provides that a covered savings association will be treated as a

[6] See, *e.g.,* 12 CFR 7.1003, 7.1004, 7.1005, 7.4004 and 7.4005.

Federal savings association for purposes of the governance of the savings association, as well as for purposes of consolidation, mergers, dissolution, conversion, conservatorship, and receivership. A covered savings association also will be treated as a Federal savings association for any other purposes the Comptroller identifies by regulation.

Section 101.4(a)(1) of the proposed rule offered two alternative ways of explaining what it means for a covered savings association to have the rights and privileges of a similarly located national bank while being subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as a similarly located national bank. The first alternative (option A) would have required a covered savings association to comply with the same provisions of law that would apply to a similarly located national bank and would not have required the covered savings association to comply with the provisions of law that apply to Federal savings associations, except in specific areas. The second alternative (option B) focused on the activities that would be permissible for a covered savings association. It was modeled on the language used in the OCC's regulations on national bank and Federal savings association operating subsidiaries set out in 12 CFR 5.34(e) and 5.38(e). This alternative would have provided that a covered savings association may engage in any activity that is permissible for a national bank to engage in as part of, or incidental to, the business of banking, or explicitly authorized by statute for a national bank, subject to the same authorization, terms, and conditions that would apply to a similarly located national bank, as determined by the OCC. Both options would have been subject to specific categories of Federal savings association law that would apply to covered savings associations.

The OCC invited comment on which of these alternatives would best clarify the requirements for the treatment of covered savings associations, including the provisions of law that would apply to covered savings associations. Five commenters supported option A, which they considered to be a broader and less definitive approach that would permit timely creativity and innovation by covered savings associations. They also noted that updating a list of applicable laws by regulatory action can take time and that guidance is of limited reliability.

Two commenters supported option B, while two others appeared to support option B but were less definitive. One commenter believed option B would provide greater flexibility for the OCC, which the commenter argued would be preferable even if it would be less certain and would require more consultation with the OCC. Two commenters that supported option B would also support option A if it included a reservation of authority to allow the OCC to determine that a provision of national bank law does not apply to covered savings associations.

The OCC is adopting option B to clarify the requirements for the treatment of covered savings associations. This option provides general guidance about the types of activities in which a covered savings association would be permitted to engage. Covered savings associations would be able to refer to OCC publications to find activities that are permissible for national banks and understand the authorization, terms, and conditions that apply to those activities.[7] Option B is more narrowly tailored than option A, and it preserves the OCC's authority to determine that a particular provision of national bank law does not apply to covered savings associations.

Section 101.4(a)(2) of the proposed rule set out specified areas in which a covered savings association would have continued to be treated as a Federal savings association. These included the categories specifically identified in the statute (governance of the covered savings association (including incorporation, bylaws, boards of directors, shareholders, and distribution of dividends), consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another charter), conservatorship, and receivership). The proposed rule also identified three additional areas in which it would be appropriate to treat covered savings associations as Federal savings associations. These areas were: (1) Provisions that allow Federal mutual savings associations to conduct business as mutual institutions; (2) provisions that set out procedural and operational requirements for Federal savings associations but that do not result in substantively different outcomes for Federal savings associations and national banks; and (3) areas where there is a specific Federal savings association rule with no corresponding specific national bank rule, but the Federal savings association rule sets out requirements that are consistent with supervisory expectations for national banks or is substantially similar to an interagency rule. In the preamble to the proposed rule, the OCC provided several charts to illustrate the types of provisions that the OCC would expect to identify in guidance as provisions of law that apply to Federal savings associations.

The OCC invited comment on whether particular provisions should be considered provisions of law that relate to governance (including incorporation, bylaws, boards of directors, shareholders, and distribution of dividends), consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another charter), conservatorship, and receivership and whether there are other provisions of law that the OCC should identify. The OCC also invited comment on whether these provisions should be specifically identified in the rule rather than in guidance. The OCC received a number of comments on this section of the proposed rule.

Five commenters requested clarification that covered savings associations would not be required to change their name to include the word ''National.'' National banks are required by statute to include the word ''National'' in their name.[8] Although section 5A of HOLA provides flexibility for certain Federal savings associations to engage in activities permissible for national banks, these covered savings associations are not national banks and, as such, retain their Federal savings association charter. Because covered savings associations retain their Federal savings association charters, covered savings associations will not be required to change their names to include the word ''National.''

One commenter requested that the OCC clarify that the rules governing directors remain the same for Federal savings associations that elect to operate as covered savings associations, noting in particular that electing directors is a governance requirement. As discussed in the preamble to the proposed rule, section 5A of HOLA sets out specific categories of Federal savings association laws that will continue to apply to covered savings associations, including those governance provisions relating to boards of directors (*e.g.,* elections, term of service). Accordingly, covered savings associations will continue to be required to comply with Federal savings association laws with respect to boards of directors and will not be subject to national bank laws with respect to

[7] Many of these documents and resources are available on *OCC.gov.* These documents do not constitute an exhaustive list of all activities permissible for national banks. Further, institutions are responsible for determining whether any changes to applicable laws or regulations impact the permissibility of an activity.

[8] 12 U.S.C. 22; 12 U.S.C. 30.

boards of directors. For example, covered savings associations will not be subject to the statutory citizenship and residence requirements that apply to directors of national banks.[9]

Another commenter agreed that provisions of Federal savings association law that relate to members of a Federal mutual savings association should continue to apply to mutual covered savings associations. However, the commenter was concerned that the preamble's justification for this treatment could suggest that the rights of members of a Federal mutual savings association are the same as the rights of shareholders of a Federal stock savings association. The OCC does not intend to use this rule to change the rights of members of a Federal mutual savings association or equate those rights to the rights of shareholders of a Federal stock savings association. Rather, the OCC believes that the term ''shareholder,'' as it is used in the specific context of section 5A(d)(1) of HOLA and this rule, indicates that provisions of Federal savings association law that relate to governance by the Federal savings association's stakeholders—including shareholders and members—should continue to apply to stock and mutual covered savings associations, respectively. This includes provisions of Federal savings association law that describe the rights of members of Federal mutual savings associations. This interpretation of the term ''shareholder'' is specific to section 5A of HOLA and is not intended to be applied outside that context. To clarify this interpretation, the OCC is adding ''members'' to the list of types of Federal savings association governance provisions that apply to covered savings associations in § 101.4(a)(2)(i).

One commenter supported two of the categories of Federal savings association law that the OCC proposed to apply to covered savings associations: (1) Operational and procedural requirements that do not create substantively different outcomes; and (2) certain requirements for which there is no corresponding national bank requirement. Another commenter supported the proposal's application of laws with particular relevance for Federal mutual savings associations, such as those regarding mutual capital certificates. These provisions of the proposed rule remain unchanged in the final rule. The OCC has updated § 101.4(a)(2)(xiii) of the final rule to expressly include the accounting and disclosure standards in 12 CFR part 162.

Another commenter suggested that the OCC should preserve the differences between national banks and Federal savings associations unless section 5A expressly provides otherwise. The OCC does not believe this approach is consistent with the language of section 5A of HOLA, which provides that covered savings associations have the same rights and privileges and are subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations as national banks except where section 5A or the OCC's rules specifically provide otherwise.

Three commenters requested that the OCC clarify that the preemption standards for national banks and Federal savings associations are the same and would not change following an election. Another commenter requested that the OCC permit covered savings associations to rely on whichever law most supports the OCC's preemptive authority, expressing concern that covered savings associations would not benefit from any preemption determinations applicable only to Federal savings associations. The commenter also argued that Federal savings associations benefit from more expansive preemption of state law through established case law and authority reserved to the OCC, even following the changes to preemption made in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

The OCC agrees with commenters who stated that the preemption standards applicable to national banks and Federal savings associations are the same. Section 1046 of the Dodd-Frank Act added a new section 6 to HOLA (12 U.S.C. 1465), which provides that Federal savings associations are subject to the same laws and legal standards as national banks regarding the preemption of state law. This amendment is codified in the OCC's regulations at 12 CFR 7.4010 and 34.6.

Two commenters recommended that the OCC include a mechanism that would allow the agency to identify additional provisions of Federal savings association law applicable to covered savings associations. One of these commenters believes that this approach would provide the OCC with flexibility to tailor the applicable regulations and that publishing interpretive letters or updating relevant publications, with accompanying public notice, would provide sufficient clarity. Although the OCC agrees that this approach would provide additional flexibility, section 5A(d) of HOLA requires that the additional purposes for which a covered savings association is treated as a Federal savings association be ''determined by regulation of the Comptroller.'' If the OCC identifies additional categories of Federal savings association law that should be applicable to covered savings associations, the OCC will initiate a rulemaking to amend part 101.

Several commenters requested that the OCC clarify that covered savings associations will not be subject to Federal savings association regulations on interest rate risk management procedures and asset classification, with two commenters asserting that these regulations do not fall within the governance category. In the preamble to the proposed rule, the OCC characterized the interest rate risk management provisions in 12 CFR 163.176 as governance provisions that apply to boards of directors because the provisions set out board responsibilities with respect to interest rate risk management. On further consideration, the OCC agrees that 12 CFR 163.176 should not be classified as a governance provision for purposes of section 5A of HOLA.[10] Although 12 CFR 163.176 sets out requirements for the board of directors and management, it is more appropriately viewed as a duty that applies to a Federal savings association's activities. The interest rate risk management provisions reflect the unique risk profile of Federal savings associations, which historically often held balance sheet concentrations in longer-term assets. Because of these concentrations, Federal savings associations had to more closely monitor sensitivity to market risk. A covered savings association may be able to diversify its portfolio and therefore its interest rate risk exposure. The risk-based examination approach taken by the OCC includes supervision for interest rate risk. Further, all insured OCC-supervised institutions, including covered savings associations, other Federal savings associations, and national banks, continue to be subject to the operational and managerial standards under 12 CFR part 30, Appendix A, which specifically include standards for managing interest rate risk exposure. This approach will give the OCC the flexibility to tailor its supervision of a covered savings

[9] 12 U.S.C. 72. The same principle would apply to other requirements specific to the directors of national banks. See, *e.g.,* 12 U.S.C. 71 (election of directors); 12 U.S.C. 76 (president as member of the board).

[10] This determination relates to the OCC's interpretation of the language of section 5A of HOLA and is not intended to change the meaning of the term ''governance'' for other purposes. For example, OCC examiners will continue to supervise Federal savings associations as set out in Comptroller's Handbook: Corporate and Risk Governance, Version 1.0, July 2016 at 77.

association to risks associated with the business model of that covered savings association.

The proposed rule did not specifically address asset classification regulations. The final rule does not subject covered savings associations to the asset classification regulations applicable solely to Federal savings associations, such as 12 CFR 160.160, as these regulations do not fall within the categories of Federal savings association laws that the final rule makes applicable to covered savings associations (*e.g.,* it is not a governance provision or a merger provision, nor is it specifically designated in the final rule as a provision of Federal savings association law that applies to covered savings associations). In addition, covered savings associations and OCC examiners can use the standards under 12 CFR part 30, appendix A, and the real estate lending standards under 12 CFR part 34 applicable to national banks to identify, classify, and otherwise address problem assets as needed, consistent with safety and soundness.

One commenter recommended that a November 1, 2000, Office of Thrift Supervision memorandum with supervisory and examiner guidance be supplemented and not superseded by national bank examination guidance. The OCC rescinded CEO Memo 153, ''Examinations of Mutual Savings Associations'' in 2012.[11]

Six commenters requested clarification on how covered savings associations would be treated for purposes of the QTL requirements in HOLA and requested that the OCC's final rule expressly state that covered savings associations are not required to comply with QTL. One commenter added that compliance with QTL should not be required absent a safety and soundness concern.

As discussed in the preamble to the proposed rule, unlike national banks, Federal savings associations [12] are required to comply with the QTL test set forth in section 10(m) of HOLA, which requires a Federal savings association to qualify as a domestic building and loan association as defined in 26 U.S.C. 7701(a)(19) or to maintain a certain percentage of qualified thrift investments in the Federal savings association's portfolio.[13] The preamble described the QTL test as a key difference between the rights and privileges of a savings association and a national bank. The OCC continues to believe that a covered savings association will not be able to exercise the rights and privileges conferred on it under section 5A while simultaneously being subject to the limitations of the QTL test.[14]

Section 101.4(a) of the final rule provides that a covered savings association may engage in any activity that is permissible for a similarly located national bank to engage in, subject to the same authorization, terms, and conditions that would apply to a similarly located national bank. Lending and investment are activities that national banks are permitted to engage in as part of the business of banking.[15] When making loans and investments, covered savings associations are subject to the same authorization, terms, and conditions that would apply to similarly located national banks. There are no authorizations, terms, or conditions that require national banks to maintain status as qualified thrift lenders. Furthermore, unlike governance, conservatorship, and receivership, lending and investment are not purposes for which section 5A(d) of HOLA or the final rule require that a covered savings association be treated as a Federal savings association. Accordingly, a covered savings association operating under section 5A is not subject to, among other things, the penalties in 12 U.S.C. 1467a(m)(3) for failing to meet the QTL test. The OCC believes this is consistent with both the language of § 101.4(a) of the final rule and the statutory mandate that covered savings associations exercise the rights and privileges of similarly located national banks. Requiring compliance with the QTL test would be inconsistent with and frustrate the purpose of allowing Federal savings associations to make an election. The OCC does not believe it is necessary to state explicitly in the final rule that the QTL test does not apply to a covered savings association.

The OCC applies a similar analysis to section 5(c) of HOLA. Section 5(c) sets out lending and investment restrictions that apply to Federal savings associations. These authorizations, terms, and conditions do not apply to the activities of national banks. Consequently, they do not apply to covered savings associations.

The OCC also applies a similar analysis to public welfare and community development investments. One commenter argued that covered savings associations should be treated as Federal savings associations for purposes of public welfare and community development investments. Four commenters also suggested that the OCC consider grandfathering public welfare or community development projects existing at the time of an election. National banks are permitted to make public welfare investments, subject to specific authorization, terms, and conditions (namely, limits on the total amount of such investments). Covered savings associations also will be permitted to make public welfare investments, subject to the same authorization, terms, and conditions (including the limits on the total amount of such investments) as a national bank. Any public welfare or community development projects existing at the time of an election that would not comply with the authorizations, terms, and conditions applicable to a national bank will be subject to § 101.5 of this final rule, which the OCC believes provides adequate time and flexibility for divestiture or conformance.

In the preamble to the proposed rule, the OCC applied a similar analysis to the affiliate transaction restrictions in section 11(a) of HOLA. While two commenters agreed that covered savings associations should not be subject to the affiliate transaction rules specific to Federal savings associations, they requested that the OCC clarify this in the final rule. Affiliate transaction restrictions for savings associations are set out in section 11(a) of HOLA and 12 CFR 223.72. These provisions present potential complications that the QTL restrictions, community development restrictions, and lending and investment restrictions do not. The OCC will continue to consult with the FRB on interpretive issues regarding the application of these provisions to covered savings associations. The OCC recommends that individuals or institutions with specific questions about the application of these

[11] See OCC Bulletin 2012–15, OTS Integration: Rescission of OTS Documents, Attachment A, available at *https://www.occ.gov/news-issuances/bulletins/2012/2012-15a.pdf.* See also OCC Bulletin 2014–35, Mutual Federal Savings Associations: Characteristics and Supervisory Considerations, July 22, 2014, available at *https://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-35.html.*

[12] The OCC acknowledges that some provisions of section 10(m) of HOLA apply to savings associations and other provisions apply to savings and loan holding companies. The discussion in this preamble focuses on the provisions of section 10(m) that apply to savings associations.

[13] 12 U.S.C. 1467a(m).

[14] As discussed later in this preamble, a similar analysis applies to the lending limitations imposed on Federal savings associations by section 5(c) of HOLA. Section 5(c) permits Federal savings associations to make residential real property and other housing related loans without limit, but consumer and commercial loans are subject to specific limitations established in the statute.

[15] 12 U.S.C. 24 (Seventh); see also 12 U.S.C. 371.

provisions to covered savings associations contact the FRB.

Several commenters requested that the OCC clarify in the final rule which merger provisions would apply when a covered savings association merges with another entity. One commenter asserted that the proposed rule could limit a covered savings association's ability to engage in certain interstate merger transactions if covered savings associations are treated as national banks for purposes of interstate merger laws. The commenter asked the OCC to confirm that covered savings associations are subject only to the merger provisions that apply to Federal savings associations and not to interstate or other provisions applicable to national banks. Several commenters noted that the proposal does not clarify how applicable branching laws and merger requirements will work together.

National banks and Federal savings associations are subject to different laws regarding business combinations.[16] For instance, national banks are subject to a specific statutory framework that sets out the authorization, terms, and conditions for merger and consolidation activities.[17] There are fewer statutory requirements for the merger and consolidation activities of Federal savings associations.[18] The OCC has detailed regulations to address the authority of national banks and Federal savings associations to engage in mergers and consolidations, including procedural requirements. Where consistent with underlying statutory authorities, the OCC has harmonized the regulations for business combination activities of national banks and Federal savings associations, respectively, although some differences remain.[19] The regulations for business combination activities involving national banks and Federal savings associations are set forth in 12 CFR 5.33.

Section 5A of HOLA provides that a covered savings association shall be treated as a Federal savings association for purposes of consolidation and merger.[20] In the preamble to the proposed rule, the OCC explained that where the business combination provisions in 12 CFR 5.33 set out different requirements for Federal savings associations and national banks, the Federal savings association requirements would apply to a covered savings association.

However, the OCC understands that merger provisions and branching provisions can intersect in certain situations, such as the interstate branch acquisition provisions covered by 12 U.S.C. 1831u. This can lead to additional complications because, under the final rule, covered savings associations may engage in any activity that is permissible for a similarly located national bank to engage in as part of, or incidental to, the business of banking, or explicitly authorized by statute for a national bank, subject to the same authorization, terms, and conditions that would apply to a similarly located national bank.[21] Branching is such an activity. As a result, under the final rule, a covered savings association will be permitted to establish or retain new branches, or to close branches, subject to the authorization, terms, and conditions that apply to a similarly located national bank. This is true whether or not the branch is retained or closed as part of a merger. The OCC has concluded that, for purposes of section 5A of HOLA and the final rule, the provisions of law relating to retention of branches in mergers and those that establish interstate branching restrictions in the merger context should be considered branching requirements rather than merger requirements. For a covered savings association, this means that while the authority to engage in a proposed merger or consolidation transaction will be governed under the laws applicable to Federal savings associations, the ability to establish or retain branches will be subject to the same authorization, terms, and conditions that would apply to a similarly located national bank (including conditions on the establishment of interstate branches). Any other interpretation could permit covered savings associations to acquire, through a merger, new branches under terms or conditions that would not be permissible for a similarly located national bank to acquire. Allowing covered savings associations to engage in branching activities under terms or conditions that are not available for similarly located national banks would be counter to the language of section 5A of HOLA.

Several commenters requested that the OCC clarify in the final rule that trust-only covered savings associations would not be required to maintain deposit insurance where similarly located trust-only national banks would not be subject to this requirement. The proposed rule did not explicitly address whether a trust-only covered savings association must have deposit insurance, although it did provide that a covered savings association would be required to comply with 12 CFR 5.20, which requires deposit insurance as a condition of obtaining a Federal savings association charter. The commenters argued that the requirement to have deposit insurance is a ''condition,'' ''limitation,'' and ''restriction'' on a ''right'' or ''privilege'' and, therefore, should not apply to trust-only covered savings associations. One commenter noted that this disparity in the treatment of non-depository Federal savings associations and national banks should be eliminated absent a safety and soundness concern. One commenter argued that deposit insurance is a restriction, condition, and limitation similar to the QTL requirements, which the proposal makes inapplicable. The commenter believes that providing parity on deposit insurance requirements would advance the goal of uniform treatment. The commenter also believes that the OCC's authority to determine the laws applicable to covered savings associations is limited by the requirement that trust-only covered savings associations be treated the same as comparable national banks.

Two commenters noted that the proposal lists 12 CFR 5.20 as a governance provision but argued that 12 CFR 5.20(e)(3), which addresses deposit insurance, is not properly viewed as a governance provision. These commenters requested that the OCC clarify that 12 CFR 5.20(e)(3) is not a governance provision and does not apply to trust-only covered savings associations. One commenter made several arguments in support of this view: (1) Governance provisions are the standards that govern incorporation and the relationship between a Federal savings association and its shareholders,

[16] The term ''business combination'' includes mergers and consolidations. See 12 CFR 5.33(d)(2).

[17] See, *e.g.,* 12 U.S.C. 214a, 214b, 215, 215a, 215a–1, 215a–3, 215b, 215c, 1828(c), and 1831u. Some of these provisions also apply to savings associations (*e.g.,* 12 U.S.C. 1828(c)).

[18] See, *e.g.,* 12 U.S.C. 1467a(s).

[19] Integration of National Banks and Federal Savings Association Regulations: Licensing Rules, 80 FR 28346, 28368 (May 18, 2015).

[20] 12 U.S.C. 1464a(d)(2). Furthermore, by including a specific provision allowing branches in operation on the date an election is approved to continue to operate after an election, section 5A(e) suggests that, after an election, national bank branching requirements should apply.

[21] Section 5A(c)(2) provides that covered savings associations are subject to the duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to a similarly located national bank, except as provided in section 5A(d). Section 5A(d) does not include branching as a purpose for which a covered savings association will be treated as Federal savings association. Furthermore, by including a specific provision allowing branches in operation on the date an election is approved to continue to operate after an election, section 5A(e) suggests that, after an election, national bank branching requirements should apply. If covered savings associations were permitted to operate branches that national banks are not, section 5A(e) would be surplusage.

members, and management, not the laws implicating substantive areas of banking or savings association powers, authorities, and activities; (2) unlike deposit insurance, the other governance provisions identified in the proposal are analogous to state corporate governance laws; (3) unlike other identified governance provisions, deposit insurance is not included in the OCC's model charter or bylaws; (4) deposit insurance is not analogous to the other examples of governance provisions identified in the statute or the proposal; and (5) it would be simpler for a trust-only covered savings association to drop its deposit insurance than to comply with new governance requirements.

One commenter articulated the burdens associated with being required to maintain deposit insurance as a trust-only entity, including (1) the requirement to have a minimum of $500,000 in insured deposits to retain deposit insurance; (2) the requirement to have 99% of deposits be trust funds to qualify for the trust-only savings and loan holding company exclusion; [22] (3) and the costs associated with seeking trust-only carve outs from laws that apply to ''insured depository institutions.'' [23] One commenter addressed the OCC's enforcement, receivership, and conservatorship authority over an uninsured trust-only covered savings association, arguing that section 5A provides the OCC with the full array of such authority. The commenter argued that the OCC's enforcement authorities in section 8 of the Federal Deposit Insurance Act (FDIA) are clearly ''restrictions, penalties, liabilities, conditions, and limitations'' and, therefore, should apply to uninsured covered savings associations in the same way as they apply to uninsured national banks. The commenter also recommended that the OCC rely on its authority to issue rules that clarify the provisions of law applicable to covered savings associations and in the interest of safety and soundness to provide that uninsured covered savings associations would be subject to section 8. The commenter argued that the OCC's authority to issue rules ''in the interest of safety and soundness'' provide the agency with sufficient authority to issue regulations for appointing conservators and receivers of uninsured covered savings associations. The commenter cited the OCC's rule for receiverships of uninsured national banks as a model.

For the reasons that follow, the OCC concludes that HOLA requires all savings associations, whether they elect to operate as covered savings associations or not, to have deposit insurance. The OCC bases this determination on the language of HOLA rather than a determination that 12 CFR 5.20(e)(3) is a governance provision. Under the HOLA definition of ''savings association,'' all Federal savings associations, including those that engage only in trust activities and those that elect to operate as covered savings associations, are required to have deposit insurance.[24] Under section 5A of HOLA and §§ 101.2(a)(2) and 101.3(a)(1) of the final rule, only Federal savings associations are eligible to elect to operate as covered savings associations. An election to operate as a covered savings association does not change a Federal savings association's charter, its status as a savings association, or its stock or mutual form. Because only Federal savings associations can elect to operate as covered savings associations, and because all Federal savings associations are required to have deposit insurance, a Federal savings association must have deposit insurance in order to elect to operate as a covered savings association. The OCC does not believe that the ''rights and privileges'' or ''duties, restrictions, penalties, liabilities, conditions, and limitations'' language in section 5A is sufficient to overcome the requirement that a covered savings association be a Federal savings association. Therefore, because a trust-only covered savings association still retains its Federal savings association form and charter, HOLA's definitional deposit insurance requirement continues to apply after an election and a trust-only covered savings association must continue to maintain deposit insurance.

The language of section 5A of HOLA supports the conclusion that covered savings associations must continue to maintain deposit insurance after making an election. Section 5A states that a covered savings association shall be treated as a Federal savings association for purposes of ''conservatorship'' and ''receivership.'' [25] The existing conservatorship and receivership framework for Federal savings associations (including trust-only institutions) only covers *insured* Federal savings associations, and HOLA contemplates ''only the Federal Deposit Insurance Corporation as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association.'' [26] Moreover, the plain language of section 5A prevents the OCC from applying the national bank conservatorship and receivership rules (including those that cover uninsured trust-only national banks) to covered savings associations. For these reasons, the final rule does not include a new receivership and conservatorship framework for trust-only covered savings associations.

Six commenters requested that the OCC allow covered savings associations to continue to engage in any activities and retain any investments grandfathered under section 5(i)(4) of HOLA. That provision of HOLA (1) allows any Federal savings bank chartered as such prior to October 15, 1982, to continue to make any investment or engage in any activity not otherwise authorized under section 5 of HOLA, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and (2) allows any Federal savings bank in existence on August 9, 1989, and formerly organized as a mutual savings bank under State law to continue to make any investment or engage in any activity not otherwise authorized under section 5 of HOLA, to the degree it was authorized to do so as a mutual savings bank under State law. Four commenters stated that eliminating this authority would disproportionately impact institutions with grandfathered equity powers, with three adding that forcing divestiture may have unintended consequences. One commenter requested that the OCC consider a more flexible approach by reviewing long-term investment portfolios on a case-by-case basis. The commenter noted that these activities were reaffirmed as safe and sound in 1991 in section 24 of the FDIA and that many associations use the authority for long-term investing, not active trading. One commenter asserted that there is no indication that Congress intended to repeal section 5(i)(4) and that OCC

[22] The commenter noted that the FRB permitted the company to exclude the $500,000 deposit from its 99% calculation in the course of approving the commenter's application to deregister as a savings and loan holding company.

[23] The commenter believes that this phrase is often used as a proxy to indicate that an institution is engaged in all commercial banking activities.

[24] Section 2(2) of HOLA (12 U.S.C. 1462(2)) defines a ''savings association'' as ''a savings association, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], the deposits of which are insured by the Corporation.'' Furthermore, section 5(d) of HOLA, which gives the OCC enforcement authority over Federal savings associations, defines ''savings association'' for purposes of that subsection as ''any savings association or former savings association that retains deposits insured by the Corporation, notwithstanding termination of its status as an institution insured by the Corporation.'' Because Federal savings associations are a type of savings association, these requirements also apply to Federal savings associations.

[25] 12 U.S.C. 1464a(d)(2).

[26] 12 U.S.C. 1464(d)(2)(E)(ii).

should not interpret section 5A to eliminate this authority.

The OCC agrees that a Federal savings association engaged in activities or retaining investments grandfathered under section 5(i)(4) of HOLA should continue to be permitted to engage in those activities and retain those investments if the association elects to be treated as a covered savings association. The volume of these activities and the amount of these investments are capped by the language of section 5(i)(4) of HOLA, and those limits would continue to apply after an election. The OCC has, on at least one prior occasion, permitted a state bank with activities and investments permitted by the state to continue to engage in those activities and retain those investments after converting to a national bank. Section 101.4(a)(2) of the final rule provides that covered savings associations can continue to engage in the specific, limited types of grandfathered nonconforming activities and investments permitted under section 5(i)(4) of HOLA.

Several commenters argued that covered savings associations should not be precluded from operating or investing in service corporations that engage only in activities permissible for national banks. One commenter argued that allowing covered savings associations to operate new and existing service corporations that engage only in national bank permissible activities is critical to achieving the full exercise of the election. Another commenter argued that if a service corporation's activities are permissible for both FSAs and national banks, CSAs should not be required to re-characterize the investment to rely on national bank authority or to change documentation to reflect that authority. The commenter believes that this would be inconsistent with a streamlined process and would result in material burden. A third commenter recommends that the OCC not require a change in legal form for any subsidiary, asset, or activity that is permissible for a national bank, unless the OCC can demonstrate that a material adverse financial effect would be imminent following the election.

Other commenters asked whether a service corporation would automatically become an operating subsidiary or whether this would be an unnecessary governance change. One commenter believes that service corporations should be allowed to continue their operations following an election.

Under the final rule, covered savings associations are not permitted to retain nonconforming subsidiaries, assets, or activities. A nonconforming subsidiary, asset, or activity includes an investment in a subsidiary or other entity that is not permissible for a covered savings association. Federal savings associations have authority to invest in service corporations under section 5 of HOLA.[27] National banks do not have express statutory authority to invest in service corporations. Consequently, a covered savings association may not retain an existing service corporation or establish and invest in a new service corporation.

A Federal savings association that elects to operate as a covered savings association would be required to comply with § 101.5 of the final rule by divesting or conforming any investment in a service corporation within the timeframe set out in § 101.5. The covered savings association could do so simply by divesting any investment in a service corporation. The covered savings association could also choose to conform the investment by redesignating the service corporation as an operating subsidiary, because national banks are permitted to have operating subsidiaries.

An operating subsidiary of a covered savings association is only permitted to engage in the activities permissible for the covered savings association to engage in directly (*i.e.,* those permissible for a national bank). A covered savings association that chooses to redesignate a service corporation as an operating subsidiary must ensure that the operating subsidiary is only engaged in such permissible activities—in other words, it must discontinue any nonconforming activities.

The OCC did not receive comment on § 101.4(b) of the proposed rule, which would have implemented section 5A(e) of HOLA by providing that a covered savings association may continue to operate any branch or agency that the covered savings association operated on the effective date of the election. The OCC adopts this provision of the proposed rule without change.

As discussed in the preamble to the proposed rule, a covered savings association seeking to establish a de novo branch or to relocate or close an existing branch would be subject to the authorization, terms, and conditions that govern the establishment or closing of a national bank branch. Furthermore, if a branch of a covered savings association engages in activities that are included in the definition of a branch under the national bank branching regulation, 12 CFR 5.30, that branch may continue to operate subject to the same authorization, terms, and conditions as a similarly located branch of a similarly located national bank. If an agency of a covered savings association engages in activities that would qualify the agency as a branch under the national bank branching regulation, 12 CFR 5.30, those activities would be considered nonconforming activities, and the covered savings association would be required to discontinue or conform the activities or submit an application and obtain OCC approval under 12 CFR 5.30 to establish the agency as a branch.[28] If a covered savings association wishes to establish a new branch, it would be required to do so under the rules for national bank branches in 12 CFR 5.30. The OCC believes this approach best allows covered savings associations to continue to operate the branches and agencies they operated on the date on which an election was approved but subject to the same authorization, terms, and conditions that would apply to a similarly located national bank.

As noted earlier in this preamble, the final rule adds a new § 101.4(c) to reflect the language of section 5A(g) of HOLA.

The proposed rule provided that the Federal savings associations regulations applicable to the issuance of subordinated debt and mandatorily redeemable preferred stock for inclusion in tier 2 capital would apply to covered savings associations. Title 12 CFR 5.56(a) provides that Federal savings associations must comply with the requirements of 12 CFR 163.80 (Borrowing limitations) when issuing subordinated debt or mandatorily redeemable preferred stock that is not included in tier 2 capital. The OCC has revised the final rule to clarify that § 163.80 applies to covered savings associations when the covered savings association's issuance of subordinated debt or mandatorily redeemable preferred stock is not included in tier 2 capital.

For the convenience of readers, the following chart summarizes the provisions of law discussed in this preamble and the preamble to the proposed rule and their applicability to covered savings associations. It includes provisions in the categories specifically listed in the statute (governance (including incorporation, bylaws, boards of directors, shareholders and members, and distribution of dividends), consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another

[27] 12 U.S.C. 1464(c)(4)(B).

[28] There is overlap between the activities that a Federal savings association may undertake in an agency and the activities that a national bank may undertake in an entity that is not a branch. See 12 CFR 5.30, 5.31, and part 7.

charter), conservatorship, and receivership). It also includes: (1) Provisions that allow Federal mutual savings associations to conduct business as mutual institutions; (2) provisions that set out procedural and operational requirements for Federal savings associations but that do not result in substantively different outcomes for Federal savings associations and national banks; and (3) areas where there is a specific Federal savings association rule with no corresponding specific national bank rule, but the Federal savings association rule sets out requirements that are consistent with supervisory expectations for national banks or is substantially similar to an interagency rule. This chart is not an exhaustive list of the statutes and regulations that apply to covered savings associations. In addition, the provisions of law included in the chart may change, whether as a result of amendments to a statute or future OCC rulemaking. For example, if the OCC later issues a rule integrating the national bank and Federal savings association rules for adjudicative procedures, the references in this chart to parts 19, 108, and 109 may no longer be accurate.

Provision of law	Applicability to covered savings associations
Selected Statutory Provisions Applicable to National Banks	
12 U.S.C. 24 (Eleventh) and 12 CFR part 24. These sections permit national banks to make public welfare investments, subject to certain limitations.	Applies.
12 U.S.C. 22 and 30. These sections require national banks to have the word ''National'' in their names	Does not apply.
12 U.S.C. 71. This section sets out standards for the election of directors of national banks	Does not apply.
12 U.S.C. 72. This section sets out citizenship and residency requirements for directors of national banks	Does not apply.
12 U.S.C. 76. This section requires the president of a national bank to be a member of the board of directors of the national bank.	Does not apply.
Selected Statutory Provisions Applicable to Federal Savings Associations	
12 U.S.C. 1462(2). This paragraph defines a ''savings association.'' The OCC interprets this definition to require deposit insurance.	Applies.
12 U.S.C. 1464(c). This subsection establishes limitations on the lending and investment authority of Federal savings associations, including the authority to make community development investments.	Does not apply.
12 U.S.C. 1464(d) and 1821(c). These statutes set forth the authorities for the appointment of a conservator or receiver for Federal savings associations.	Applies.
12 U.S.C. 1464(i)(4) and 12 CFR part 143. These provide: (1) That Federal savings banks chartered prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under section 5 of HOLA to the degree they were permitted to do so as a Federal savings bank prior to October 15, 1982; and (2) that any Federal savings bank in existence on August 9, 1989, and formerly organized as a mutual savings bank under State law to continue to make any investment or engage in any activity not otherwise authorized under section 5 of HOLA, to the degree it was authorized to do so as a mutual savings bank under State law.	Applies.
12 U.S.C. 1467a(m). This subsection sets out the qualified thrift lender test	Does not apply.
Selected Governance Regulations Applicable to Federal Savings Associations	
12 CFR 5.21. This section sets out the requirements for Federal mutual savings associations when adopting or amending the charters or bylaws.	Applies.
12 CFR 5.22. This section sets out the requirements for Federal stock savings associations when adopting or amending the charters or bylaws.	Applies.
12 CFR 145.121. This section requires Federal savings associations to indemnify directors, officers, and employees	Applies.
12 CFR 160.130. This section prohibits directors and officers from receiving loan procurement fees	Applies.
12 CFR 163.33. This section sets out requirements for the composition of the board of directors of a Federal savings association.	Applies.
12 CFR 163.47. This section sets out requirements for employee pension plans of Federal savings associations, which may be amended or terminated by the board of directors.	Applies.
12 CFR 163.172(c), (d), and (e). These provisions establish requirements for directors and management of Federal savings associations to oversee and keep records pertaining to derivatives transactions.	Applies.
12 CFR 163.200. This section sets expectations for the directors, officers, and employees of Federal savings associations, particularly as it relates to conflicts of interest.	Applies.
12 CFR 163.201. This section sets expectations for the directors and officers of Federal savings associations, particularly as it relates to corporate opportunity.	Applies.
Selected Merger, Consolidation, Conversation, Reorganization, and Subsidiary Regulations Applicable to Federal Savings Associations	
12 CFR 5.25. This section sets out requirements for conversion from a national bank or Federal savings association to a state bank or state savings association. Although many aspects of this section are identical for national banks and Federal savings associations, where there are differences, the Federal savings association requirements would apply to a covered savings association.	Applies.
12 CFR 5.33. This section sets out requirements for business combinations involving a national bank or Federal savings association, including mergers. Although many aspects of this section are identical for national banks and Federal savings associations, where there are differences, the Federal savings association requirements would apply to a covered savings association.	Applies.
12 CFR 5.34, 5.35, and 5.39. These sections set out requirements for the formation of operating subsidiaries, bank service companies, and financial subsidiaries, respectively, by national banks.	Applies.
12 CFR 5.36. This section addresses other equity investments by national banks	Applies.

Provision of law	Applicability to covered savings associations
12 CFR 5.48. This section sets out requirements for voluntary liquidation of a national bank or Federal savings association. Although many aspects of this section are identical for national banks and Federal savings associations, where there are differences, the Federal savings association requirements would apply to a covered savings association.	Applies.
12 CFR 5.59. This section addresses Federal savings association service corporations	Does not apply.
12 CFR part 192. This part sets out requirements for savings associations converting from mutual to stock form	Applies.
Selected Capital Distributions and Subordinated Debt Regulations	
12 CFR 5.45. This section establishes requirements for increases in permanent capital for Federal stock savings associations.	Applies.
12 CFR 5.46. This section establishes requirements for changes in permanent capital of national banks	Does not apply.
12 CFR 5.47. This section establishes requirements for subordinated debt issued by national banks	Does not apply.
12 CFR 5.55. This section sets out requirements for capital distributions by Federal savings associations, including distributions of dividends. The entire section would apply to a covered savings association.	Applies.
12 CFR 5.56. This section establishes requirements for inclusion of subordinated debt securities and mandatorily redeemable preferred stock of Federal savings associations as supplementary capital [29].	Applies.
12 CFR 163.76. This section addresses offers and sales of securities at an office of a Federal savings association	Applies.
Selected Regulations Applicable to the Operations of National Banks and Federal Savings Associations	
12 CFR part 12. This part establishes requirements relating to recordkeeping and confirmation for securities transactions by national banks.	Does not apply.
12 CFR part 19. This part establishes requirements for adjudicative and investigative proceedings that involve national banks.	Does not apply.
12 CFR part 21, subpart A. This subpart establishes security procedures for national banks	Does not apply.
12 CFR parts 108 and 109. These parts establish requirements for adjudicative proceedings that involve Federal savings associations.	Applies.
12 CFR part 112. This part establishes requirements for investigative proceedings involving Federal savings associations.	Applies.
12 CFR part 128. This part sets out nondiscrimination requirements for Federal savings associations	Applies.
12 CFR part 151. This part establishes recordkeeping and confirmation requirements for securities transactions involving Federal savings associations.	Applies.
12 CFR 160.30. This section implements the statutory lending and investment limits applicable to the operations of a Federal savings association, including community development investments.	Does not apply.
12 CFR 160.36. This section permits de minimis community development investments for Federal savings associations	Does not apply.
12 CFR 160.160. This section sets out asset classification requirements applicable to Federal savings associations	Does not apply.
12 CFR part 162. This part implements a provision of HOLA that requires Federal savings associations to use generally accepted accounting principles.	Applies.
12 CFR 163.27. This section prohibits inaccurate or misrepresentative advertising	Applies.
12 CFR 163.76. This section addresses offers and sales of securities at an office of a Federal savings association	Applies.
12 CFR 163.170(c). This provision sets out expectations for maintenance of records	Applies.
12 CFR part 168. This part establishes security procedures for Federal savings associations	Applies.
12 CFR 163.176. This section establishes requirements for Federal savings associations related to interest rate risk management.	Does not apply.
Selected Regulations Applicable to Federal Mutual Savings Associations	
12 CFR 5.21. This section sets out the requirements for Federal mutual savings associations when adopting or amending the charters or bylaws.	Applies.
12 CFR part 144. This part sets out rules for communications between members of Federal mutual savings associations. The national bank laws relating to shareholder communications do not adequately address the unique needs and rights of Federal mutual savings association members.	Applies.
12 CFR 163.74. This section establishes requirements for mutual capital certificates	Applies.
12 CFR part 169. This part sets out rules for proxies in the mutual context. The national bank laws relating to proxies do not adequately address the unique needs and rights of Federal mutual savings association members.	Applies.

101.5 Nonconforming subsidiaries, assets, and activities. Section 101.5 of the proposed rule established a transition process for bringing nonconforming subsidiaries, assets, and activities into conformance with the requirements for national banks.

Section 101.5(a) of the proposed rule would have required a covered savings association to divest, conform, or discontinue nonconforming subsidiaries, assets, and activities at the earliest time that prudent judgment dictates but not later than two years after the effective date of an election. Paragraph (a) also would have provided that the OCC may require a covered savings association to submit a plan to divest, conform, or discontinue a nonconforming subsidiary, asset, or activity, to assist OCC supervisory staff in assessing compliance with the proposed rule. Section 101.5(b) of the proposed rule would have allowed the OCC to grant a covered savings association extensions of not more than two years each up to a maximum of eight years if the OCC determined that: (1) The covered savings association has

[29] 12 CFR 5.56(a) provides that Federal savings associations must comply with the requirements of 12 CFR 163.80 (Borrowing limitations) when issuing subordinated debt or mandatorily redeemable preferred stock that is not included in tier 2 capital. Section 163.80 applies to covered savings associations for purposes of § 5.56 (*i.e.,* when the covered savings association's issuance of subordinated debt or mandatorily redeemable preferred stock is not included in tier 2 capital).

made a good faith effort to divest, conform, or discontinue the nonconforming subsidiaries, assets, or activities; (2) divestiture, conformance, or discontinuance would have a material adverse financial effect on the covered savings association; and (3) retention or continuation of the nonconforming subsidiaries, assets, or activities is consistent with the safe and sound operation of the covered savings association. This paragraph was intended to provide the OCC with flexibility when a covered savings association, despite its best efforts, is unable to divest or conform assets or subsidiaries or discontinue activities within the two-year period.

Several commenters generally addressed the timeframes for divestiture, conformance, and discontinuance. One commenter believed that the initial two-year period is reasonable and the ability to seek extensions provides sufficient flexibility for complex investments or depressed market conditions. Another commenter recommended a ''reasonable time'' standard for divesture to account for extraordinary circumstances. This commenter noted that service corporation investments in real estate may require longer divestiture periods and that these are not always comparable to other real estate owned (OREO). A third commenter suggested that a timeframe committed to supervisory discretion would be preferable to a specific regulatory deadline.

One commenter asserted that there may be situations where a covered savings association should be allowed to continue a long-standing nonconforming activity. One commenter believes that the statute requires the OCC to establish conditions under which a covered savings association can retain nonconforming subsidiaries, assets, and activities in perpetuity. The commenter believes that retention should be subject to review at election and periodically thereafter but that retention should be presumed permissible.

The OCC adopts the proposed § 101.5(a) and (b) without change. The OCC believes that the standard in the final rule provides sufficient flexibility to address extraordinary circumstances while emphasizing the OCC's expectation that, in the normal course of events, nonconforming subsidiaries, assets, or activities will be divested, conformed, or discontinued as soon as prudent judgment dictates. The OCC is not persuaded that a responsibly managed service corporation investment in real estate is materially different from real estate held by a national bank, a Federal savings association, or an operating subsidiary, such that more than 10 years would be required to fully divest. Commenters did not clarify what standard the OCC should use to determine when a service corporation investment in real estate would need to be divested. Furthermore, for the reasons explained earlier in this preamble, the final rule requires that covered savings associations either divest their service corporations or conform their service corporations by redesignating them as operating subsidiaries. Any real estate activities in the operating subsidiaries would need to be activities permissible for a covered savings association operating subsidiary. Without additional detail about the specific types of situations in which additional time might be needed, the OCC declines to extend the 10-year limitation in the final rule.

The OCC does not agree that section 5A of HOLA creates a presumption that nonconforming subsidiaries, assets, and activities are permissible. On the contrary, the statute requires covered savings associations to bring nonconforming assets and subsidiaries into conformance with the requirements for national banks and provides only a mechanism for covered savings associations to apply to the OCC to hold nonconforming assets or subsidiaries after an election. The statute does not require the OCC to grant permission to hold or continue nonconforming assets or subsidiaries indefinitely. Consequently, the final rule permits covered savings associations to request permission to hold or continue nonconforming subsidiaries, assets, and activities for additional two-year periods, up to a total of 8 years, if they are unable to divest, conform, or discontinue within two years as otherwise required.

The timeframes in the rule should, in most cases, provide a covered savings association with sufficient lead-time to minimize potential undue financial harm from divesting, conforming, or discontinuing nonconforming subsidiaries, assets, and activities. This period also is short enough to ensure that covered savings associations are not allowed to gain an advantage by holding or operating assets or subsidiaries or conducting activities that would not be permissible for a national bank. Additionally, the timeframe is generally consistent with the timeframe that the OCC provides for Federal savings associations to divest nonconforming subsidiaries and assets and discontinue nonconforming activities when they convert to national banks.

Proposed § 101.5(c) provided that Federal savings association law would continue to apply to nonconforming subsidiaries, assets, and activities during the period before the covered savings association divests, conforms, or discontinues the subsidiary, asset, or activity. The OCC did not receive any comments on this provision and adopts it with one clarifying change. The final rule specifies that the provisions of Federal savings association law that continue to apply before divesting, conforming, or discontinuing a subsidiary, asset, or activity include any amendments to those provisions of law. This change is intended to ensure that covered savings associations are not subject to outdated Federal savings association requirements if Federal savings association laws change between the time the covered savings association makes an election and the time it divests, conforms, or discontinues a nonconforming subsidiary, asset, or activity.

101.6 Termination. This section of the proposed rule would have established standards and procedures to allow a covered savings association to terminate an election after an appropriate period. The OCC would generally view an appropriate period to be relatively soon after an election takes effect (for example, 60 or 90 days). However, the OCC might determine that a longer period is appropriate where there is evidence that a covered savings association is attempting to use a termination to evade the requirements or purposes of section 5A of HOLA, such as the requirement to divest, conform, or discontinue nonconforming subsidiaries, assets, and activities.

The OCC did not receive any comments on this section and is adopting § 101.6 of the proposed rule with one technical change to ensure that the final rule refers consistently to ''the OCC'' rather than to ''the appropriate OCC supervisory office.''

101.7 Reelection. This section of the proposed rule would have allowed a covered savings association to make a subsequent election after terminating an election. Under the proposed rule, a Federal savings association that wishes to make a subsequent election after terminating a previous election would have been subject to the same requirements as a Federal savings association making an election for the first time. However, a Federal savings association that previously made and terminated an election to operate as a covered savings association would have been required to wait five years after the termination before making a subsequent election.

The OCC did not receive any comments on this section and is adopting § 101.7 of the proposed rule without change.

101.8 Evasion. This section of the proposed rule would have provided that the OCC may disapprove a notice of election, termination, or reelection if the OCC has reasonable cause to believe the notice is made for the purpose of evading § 101.5 of the proposed rule, including as that section applies to a termination. For example, the OCC might disapprove a covered savings association's notice of termination if it determined the covered savings association was attempting to terminate to take unfair advantage of an overlap between the period to divest, conform, or discontinue nonconforming subsidiaries, assets, and activities provided for an election and the period to divest, conform, or discontinue nonconforming subsidiaries, assets, and activities provided for a termination.

The final rule provides that the OCC may disapprove a notice of election, termination, or reelection if the OCC determines that notice is made for the purpose of evading § 101.5. This change clarifies that the OCC's determination that a notice is made for purposes of evasion is subject to review under the standards set out in 5 U.S.C. 706(2).

IV. Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total revenue of $38.5 million or less) or to certify that the rule would not have a significant economic impact on a substantial number of small entities. The OCC supervises approximately 886 small entities, of which 258 are Federal savings associations.[30] Because the rule does not contain any new recordkeeping, reporting, or compliance requirements, we anticipate that it will not impose costs on OCC-supervised institutions unless they elect to operate as a covered savings association.[31] Therefore, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532. Under this analysis, the OCC considers whether the Federal mandates imposed by the rule may result in an expenditure of $100 million or more by state, local, and tribal governments, or by the private sector, in any one year (adjusted annually for inflation). The rule does not impose new mandates. Therefore, the OCC concludes that the rule will not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector. Accordingly, the OCC has not prepared a written statement to accompany this rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC has submitted the information collection requirements imposed by this final rule to OMB for review, as requested by OMB in its notice of action regarding the OCC's submission at the proposed rule stage. The OCC received two comments regarding the information collection.

Two commenters stated that submitting information relating to existing branches and agencies is unduly burdensome. One commenter argued that the rule could be interpreted to require Federal savings associations to submit information on a significant number of branches and agencies, not just newly established ones. The commenter noted that many branch applications or notices were submitted prior to the integration of 12 CFR part 5. The commenter also stated that applications or notices are generally not required for a Federal savings association to establish an agency. The commenter believes the requirement would be unnecessary, would require time and cost that do not serve a compelling supervisory or regulatory purpose, and would require a covered savings association to disclose more information than a Federal savings association or national bank would be required to provide. The commenter recommended that this requirement be eliminated or that its scope be clarified. The second commenter stated that the requirement to provide information on existing branches and agencies is unnecessary and burdensome, noting that it may be difficult to provide information on branches that have been operational for a number of years. The commenter suggested that all branches that are open or operational or that have received regulatory approval or non-objection should be presumed to be compliant and documentation should not be required. Neither commenter believes that the OCC has clearly indicated why it needs this information. As noted earlier in this preamble, the final rule does not require Federal savings associations to identify branches or agencies in a notice of an election. The OCC believes that it can obtain sufficient information about the branches and agencies of a prospective covered savings association by reviewing information the association submits on its nonconforming subsidiaries, assets, or activities. This information will allow the OCC to monitor covered savings associations for compliance with the final rule without imposing any additional burden that could be associated with submitting information identifying branches and agencies. The OCC has changed the information collection so that it no longer includes a requirement to submit information identifying branches and agencies.

Under the information collection, a Federal savings association seeking to operate as a covered savings association would be required under § 101.3(a) to submit a notice making an election to the OCC that: (1) Is signed by a duly authorized officer of the Federal savings association; and (2) identifies and describes any nonconforming subsidiaries, assets, or activities that the Federal savings association operates, holds, or conducts at the time its submits its notice.

Under § 101.5(a), the OCC may require a covered savings association to submit a plan to divest, conform, or discontinue a nonconforming subsidiary, asset, or activity.

A covered savings association may submit a notice to terminate its election

[30] We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution a small entity. We use December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[31] We believe that costs associated with electing to be treated as a covered savings association will be minimal and that Federal savings associations will only choose to be treated as a covered savings associations if the benefits outweigh the costs.

to operate as a covered savings association under § 101.6 using similar procedures to those for an election. In addition, after a period of five years, a Federal savings association that has terminated its election to operate as a covered savings association may submit a notice under § 101.7 to reelect using the same procedures used for its original election.

Title: Covered Savings Association Notice.

OMB Control No.: 1557–0341.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Election, Termination, Reelection:

Estimated Number of Respondents: 295
Estimated Burden per Respondent: 1 hour
Estimated Total Annual Burden: 295 hours

Plan to Divest:

Estimated Number of Respondents: 25
Estimated Burden per Respondent: 2 hours
Estimated Total Annual Burden: 50 hours.

Total Annual Burden: 345 hours

In addition, the OCC will file a nonmaterial change to amend its Licensing Manual Collection (OMB Control No. 1557–0014) to increase the respondent count to reflect additional filings from Federal savings associations.

Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the collections of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802(a), (RCDRIA) requires that the OCC, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The OCC has considered the administrative burdens and benefits of the rule in determining the effective date and administrative compliance requirements for this rule. The final rule will be effective no earlier than the first day of the calendar quarter following 30 days from the date on which the final rule is published in the **Federal Register**.

Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 101

Administrative practice and procedure, Assets, Reporting and recordkeeping requirements, Savings associations.

■ For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), chapter I of title 12 of the Code of Federal Regulations is amended by adding part 101 to read as follows:

PART 101—COVERED SAVINGS ASSOCIATIONS

Secs.

101.1 Authority and purposes.
101.2 Definitions and computation of time.
101.3 Procedures.
101.4 Treatment of covered savings associations.
101.5 Nonconforming subsidiaries, assets, and activities.
101.6 Termination.
101.7 Reelection.
101.8 Evasion.

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464, 1464a, and 5412(b)(2)(B).

§ 101.1 Authority and purposes.

(a) *Authority.* This part is issued pursuant to sections 3, 4, 5, and 5A of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1462a, 1463, 1464, and 1464a), section 5239A of the Revised Statutes (12 U.S.C. 93a), and section 312(b)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412(b)(2)(B)).

(b) *Purposes.* This part establishes standards and procedures for a Federal savings association to elect to operate as a covered savings association pursuant to section 5A of the HOLA and clarifies the requirements for the treatment of covered savings associations. It also establishes standards and procedures to terminate an election and to reelect to operate as a covered savings association.

§ 101.2 Definitions and computation of time.

(a) *Definitions.* As used in this part:

(1) *Covered savings association* means a Federal savings association that has made an election that is in effect in accordance with § 101.3(b).

(2) *Effective date of the election* means, with respect to a Federal savings association, the date on which the Federal savings association's election to operate as a covered savings association takes effect pursuant to § 101.3(b).

(3) *Nonconforming subsidiary, asset, or activity.* (i) With respect to a covered savings association:

(A) Means any subsidiary, asset, or activity that is not permissible for a covered savings association or, if permissible, is being operated, held, or conducted in a manner that exceeds the limit applicable to a covered savings association; and

(B) Includes an investment in a subsidiary or other entity that is not permissible for a covered savings association; and

(ii) With respect to a Federal savings association that has terminated an election to operate as a covered savings association:

(A) Means any subsidiary, asset, or activity that is not permissible for a Federal savings association or, if permissible, is being operated, held, or conducted in a manner that exceeds the limit applicable to a Federal savings association; and

(B) Includes an investment in a subsidiary or other entity that is not permissible for a Federal savings association.

(4) *Similarly located national bank* means, with respect to a covered savings association, a national bank that has its main office situated in the same location as the home office of the covered savings association.

(b) *Computation of time.* The OCC will compute a period of days for purposes of this part in accordance with 12 CFR 5.12.

§ 101.3 Procedures.

(a) *Notice*—(1) *Submission.* A Federal savings association that had total consolidated assets of $20 billion or less as of December 31, 2017, as reported on the Federal savings association's Consolidated Reports of Condition and Income for December 31, 2017, may make an election to operate as a covered savings association by submitting a notice to the OCC.

(2) *Contents.* The notice shall:

(i) Be signed by a duly authorized officer of the Federal savings association; and

(ii) Identify and describe each nonconforming subsidiary, asset, or activity that the Federal savings association operates, holds, or conducts at the time it submits the notice, each of which must be divested, conformed, or discontinued pursuant to § 101.5.

(b) *Effective date of the election*—(1) *In general.* An election to operate as a covered savings association shall take effect on the date that is 60 days after the date on which the OCC receives the notice submitted under paragraph (a) of this section.

(2) *Earlier notice.* Notwithstanding paragraph (b)(1) of this section, the OCC may notify a Federal savings association in writing prior to the expiration of 60 days that it is eligible to make an election, and the election shall take effect on the date the OCC so notifies the Federal savings association.

§ 101.4 Treatment of covered savings associations.

(a) *In general*—(1) *National bank activities.* Except as provided in this section, a covered savings association may engage in any activity that is permissible for a similarly located national bank to engage in as part of, or incidental to, the business of banking, or explicitly authorized by statute for a national bank, subject to the same authorization, terms, and conditions that would apply to a similarly located national bank, as determined by the OCC for purposes of this part.

(2) *Treatment as a Federal savings association.* A covered savings association shall continue to comply with the provisions of law that apply to Federal savings associations for purposes of:

(i) Governance (including incorporation, bylaws, boards of directors, shareholders, members, and distribution of dividends);

(ii) Consolidation, merger, dissolution, conversion (including conversion to a stock bank or to another charter), conservatorship, and receivership;

(iii) Provisions of law applicable only to Federal mutual savings associations;

(iv) Offers and sales of securities at an office of a Federal savings association;

(v) Savings bank activities authorized by section 5(i)(4) of HOLA;

(vi) Issuance of subordinated debt securities and mandatorily redeemable preferred stock;

(vii) Increases in permanent capital of a Federal stock savings association;

(viii) Rules of practice and procedure in adjudicatory proceedings;

(ix) Rules for investigative proceedings and formal examination proceedings;

(x) Removals, suspensions, and prohibitions where a crime is charged or proven;

(xi) Security procedures;

(xii) Maintenance of records and recordkeeping and confirmation requirements for securities transactions;

(xiii) Accounting and disclosure standards;

(xiv) Nondiscrimination; and

(xv) Advertising.

(b) *Existing branches.* A covered savings association may continue to operate any branch or agency that the covered savings association operated on the effective date of the election.

(c) *Assets greater than $20 billion.* A covered savings association may continue to operate as a covered savings association if, after the effective date of the election, it has total consolidated assets greater than $20 billion.

§ 101.5 Nonconforming subsidiaries, assets, and activities.

(a) *Divestiture, conformance, or discontinuation.* A covered savings association shall divest, conform, or discontinue a nonconforming subsidiary, asset, or activity at the earliest time that prudent judgment dictates but not later than two years after the effective date of the election. The OCC may require a covered savings association to submit a plan to divest, conform, or discontinue a nonconforming subsidiary, asset, or activity.

(b) *Extension.* The OCC may grant a covered savings association extensions of not more than two years each up to a maximum of eight years if the OCC determines that:

(1) The covered savings association has made a good faith effort to divest, conform, or discontinue the nonconforming subsidiary, asset, or activity;

(2) Divestiture, conformance, or discontinuation would have a material adverse financial effect on the covered savings association; and

(3) Retention or continuation of the nonconforming subsidiary, asset, or activity is consistent with the safe and sound operation of the covered savings association.

(c) *Applicable law.* Until a covered savings association divests, conforms, or discontinues a nonconforming subsidiary, asset, or activity, the nonconforming subsidiary, asset, or activity shall continue to be subject to the same provisions of law that applied to the nonconforming subsidiary, asset, or activity on the day before the effective date of the election, including any amendments to those provisions of law.

§ 101.6 Termination.

(a) *Termination.* A covered savings association may terminate its election to operate as a covered savings association, after an appropriate period of time as determined by the OCC, by submitting a notice to the OCC.

(b) *Procedures.* A covered savings association wishing to terminate its election shall comply with, and shall be subject to, the provisions of §§ 101.2, 101.3, and 101.5, except that:

(1) The provisions of §§ 101.3 and 101.5 shall be applied by substituting ''covered savings association'' for ''Federal savings association'' and ''Federal savings association'' for ''covered savings association'' each place those terms appear in those sections;

(2) Section 101.3(a)(1) shall not apply; and

(3) Sections 101.3 and 101.5 shall be applied by substituting ''effective date of the termination'' for ''effective date of the election.''

(c) *Applicable law.* On and after the effective date of the termination, a Federal savings association that has terminated its election to operate as a covered savings association shall be subject to the same provisions of law as a Federal savings association that has not made an election under this part.

§ 101.7 Reelection.

(a) *Reelection.* A Federal savings association that has terminated its election to operate as a covered savings association may submit a notice to reelect to operate as a covered savings association, if at least five years have elapsed since the effective date of the termination. Upon determining that good cause exists, the OCC may permit a Federal savings association to reelect to operate as a covered savings association prior to the expiration of the five-year period.

(b) *Procedures and treatment.* A Federal savings association reelecting to operate as a covered savings association shall comply with, and shall be subject

to, the provisions of this part as if it were making an election for the first time.

§ 101.8 Evasion.

The OCC may disapprove any notice submitted pursuant to this part if the OCC determines that the notice is made for the purpose of evading § 101.5, including as that section applies to a covered savings association terminating an election.

Dated: May 20, 2019.

Joseph M. Otting,

Comptroller of the Currency.

[FR Doc. 2019–10902 Filed 5–23–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0350; Product Identifier 2019–CE–025–AD; Amendment 39–19634; AD 2019–08–13]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Textron Aviation, Inc. (type certificate previously held by Cessna Aircraft Company) Models 525, 525A, and 525B airplanes with Tamarack active load alleviation system (ATLAS) winglets installed in accordance with Supplemental Type Certificate (STC) SA03842NY. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as malfunction of the ATLAS. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective May 24, 2019.

We must receive comments on this AD by July 8, 2019.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0350; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7367; fax: (516) 794–5531; email: *steven.dzierzynski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2019–0086–E, dated April 19, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition for Textron Aviation, Inc. Models 525, 525A, and 525B airplanes with Tamarack ATLAS winglets installed in accordance with STC SA03842NY. The MCAI states:

> The active load alleviation system (ATLAS), when operational, deflects the Tamarack active control surfaces (TACS) on the outboard wings. Recently, occurrences have been reported in which ATLAS appears to have malfunctioned, causing upset events where, in some cases, the pilots had difficulty to recover the aeroplane to safe flight. Investigation continues to determine the cause(s) for the reported events.
>
> This condition, if not corrected, could lead to loss of control of the aeroplane.
>
> To address this potential unsafe condition, Cranfield Aerospace Solutions have issued the [service bulletin] SB, providing instructions to pull and collar the ATLAS circuit breaker, to make TACS immovable and to amend the applicable AFMS.
>
> For the reasons described above, this [EASA] AD requires the Tamarack ATLAS to be deactivated and the TACS to be fixed in place. This [EASA] AD also requires implementation of operational limitations and repetitive pre-flight inspections by amending the applicable AFMS. Finally, this [EASA] AD requires a modification of the ATLAS, which would provide relief for the deactivation, limitations and repetitive inspections as required by this AD.

This [EASA] AD is an interim action and further AD action may follow.

The National Transportation Safety Board (NTSB) is investigating a fatal accident involving a Model 525 airplane with the ATLAS STC installed. The NTSB investigation focuses on the role the ATLAS may have played in the accident. In addition to the accident, five incidents of aircraft uncommanded roll events with the ATLAS activated have been reported to EASA and the FAA. In each incident, the pilot was able to recover from the event and land the aircraft safely. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0350.

FAA's Determination and Requirements of the AD

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

EASA has approved a master minimum equipment list (MMEL) for the ATLAS, which allows operation of the airplane with the system disabled for up to 10 flight hours with operating limitations. However, the FAA has not approved an MMEL for the ATLAS. The EASA AD allows operation for up to 100 flight hours with the system disabled and with the same operating limitations as in the MMEL. However, this AD does not allow operation with the ATLAS disabled.

Instead, this AD prohibits all flight until a modification has been incorporated in accordance with an FAA-approved method. Until a modification method is developed and approved, this AD requires revising the operating limitations in the AFM and fabricating and installing a placard to prohibit further flight.

The FAA finds the service information from the STC holder (Cranfield Aerospace Solutions) does not contain adequate instructions to safely disable the ATLAS. Those instructions include the use of ''speed tape'' around each Tamarack active camber surface (TACS) to keep them faired in the neutral position during flight. Any modifications mandated through AD action become changes to the type design in the U.S. system. The FAA would need to ensure that the use of speed tape complies with the applicable airworthiness regulations for use on a movable surface to hold that surface in a fixed position. The speed tape does not have sufficient testing and analysis to support the type design change. This program would involve testing for environmental effects, fatigue analysis, and analysis of hazards due to potential failures of the tape. Without more analysis, the security of the speed tape method to prevent movement of the TACS cannot be assured, and loss of control of the airplane may occur with the ATLAS disabled. An operator or Cranfield may provide substantiating data to the FAA and request an alternative method of compliance using the procedures in paragraph (g) of this AD.

This AD specifies that the owner/operator (pilot) may revise the AFM and may fabricate and install a placard prohibiting flight. Revising an AFM is not considered a maintenance action and may be done by a pilot holding at least a private pilot certificate. Allowing the pilot to fabricate and install a placard is an exception to our standard maintenance regulations. These actions must be recorded in the aircraft maintenance records to show compliance with this AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the ATLAS, when operational, deflects the active control surfaces on the outboard wings. The malfunction of the ATLAS may reduce the pilot's ability to control the airplane. The service information provided by the STC holder does not contain adequate instructions to mitigate the unsafe condition. This unsafe condition could lead to loss of control of the airplane with consequent loss of life. The severity of the risk warrants compliance before further flight. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective upon publication.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0350; Product Identifier 2019–CE–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD 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 AD.

Costs of Compliance

We estimate that this AD affects 76 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to revise the Operating Limitations section of the AFM and to fabricate and install a placard. The average labor rate is $85 per work-hour. We estimate the parts cost to fabricate the placard as $5.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $13,300, or $175 per product.

This AD prohibits flight until the incorporation of an FAA-approved modification. At this time, a modification does not exist; therefore, we have no data to use for estimating the cost of the modification.

As indicated earlier in this preamble, we specifically invite the submission of comments and other data regarding the costs of 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 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–08–13 Textron Aviation, Inc. (Type certificate previously held by Cessna Aircraft Company): Amendment 39–19634; Docket No. FAA–2019–0350; Product Identifier 2019–CE–025–AD.

(a) Effective Date

This AD becomes effective May 24, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Textron Aviation, Inc. (type certificate previously held by Cessna Aircraft Company) Models 525, 525A, and 525B airplanes, certificated in any category, with Tamarack active load alleviation system (ATLAS) winglets installed in accordance with Supplemental Type Certificate (STC) SA03842NY.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as malfunction of the ATLAS, which could cause difficulty for the pilot to recover the airplane to safe flight. We are issuing this AD to prevent failure of the Tamarack ATLAS winglets, which may lead to the pilot's inability to control the airplane.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (3) of this AD.

(1) Before further flight after May 24, 2019 (the effective date of this AD):

(i) Revise the Operating Limitations section of the airplane flight manual (AFM) to prohibit further flight. You may insert a copy of this AD into the Operating Limitations section of the AFM to comply with this requirement.

(ii) Fabricate and install a placard in the cockpit of the airplane, in plain view of the pilot, with the following text: ALL FLIGHT IS PROHIBITED.

(2) In addition to the provisions of 14 CFR 43.3 and 43.7, the actions required by paragraph (f)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417. This authority is not applicable to aircraft being operated under 14 CFR part 119.

(3) You may remove the AFM revision and placard required by paragraph (f)(1) of this AD after incorporating an FAA-approved modification. To obtain FAA-approval, the modification method must be approved by the Manager, New York ACO Branch, and the approval letter must specifically refer to this AD. To contact the New York ACO Branch, you may use the contact information found in paragraph (g) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continued Operational Safety FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7300; fax: (516) 794–5531; email: *9-avs-nyaco-cos@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) Special Flight Permit

A special flight permit may be issued to allow 10 hours time-in-service for non-passenger carrying flight under the operating limitations in figure 1 to this paragraph of this AD.

Model	Operating Limitations
Cessna 525	a) Aircraft is operated at FL250 or below. b) Aircraft is operated at or below 140 KIAS c) Aircraft is not operated in known, forecast, or AFM-defined icing conditions.
Cessna 525A	a) Aircraft is operated at FL250 or below. b) Aircraft is operated at or below 161 KIAS c) Aircraft is not operated in known, forecast, or AFM-defined icing conditions.
Cessna 525B	a) Aircraft is operated at FL250 or below. b) Aircraft is operated at or below 161 KIAS c) Aircraft is not operated in known, forecast, or AFM-defined icing conditions.

Figure 1 to paragraph (h) of this AD

(i) Related Information

Refer to MCAI European Aviation Safety Agency AD No.: 2019–0086–E, dated April 19, 2019, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0350.

Issued in Kansas City, Missouri, on May 20, 2019.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2019–10993 Filed 5–22–19; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31225; Amdt. No. 546]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, June 20, 2019.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that

good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on May 17, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 20, 2019.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 546 Effective Date, June 20, 2019]

From	To	MEA	MAA
§ 95.4000 High Altitude RNAV Routes			
§ 95.4073 RNAV Route Q73 Is Amended To Read in Part			
HAKMN, NV WP	ZZYZX, NV WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ZZYZX, NV WP	LAKRR, NV WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
§ 95.4088 RNAV Route Q88 Is Amended by Adding			
CHESZ, UT WP	SINRY, CO WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
SINRY, CO WP	ZAKRY, CO WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ZAKRY, CO WP	YAMPA, CO WP	*22000	45000
*22000—GNSS MEA			
*DME/DME/IRU MEA			
YAMPA, CO WP	BICAR, NE WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
BICAR, NE WP	CHUWY, NE WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
CHUWY, NE WP	KEEFF, NE WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
KEEFF, NE WP	GUDDY, SD WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
GUDDY, SD WP	VIVID, SD FIX	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
VIVID, SD FIX	JOYCC, SD WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
JOYCC, SD WP	DKOTA, SD WP	*22000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
Is Amended To Read in Part			
HAKMN, NV WP	ZZYZX, NV WP	*18000	45000
*18000—GNSS MEA			
*DME/DME/IRU MEA			
ZZYZX, NV WP	LAKRR, NV WP	*18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 546 Effective Date, June 20, 2019]

From	To	MEA	MAA
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4090 RNAV Route Q90 Is Amended by Adding			
JASSE, AZ WP *18000—GNSS MEA *DME/DME/IRU MEA	NAVJO, AZ WP	*24000	45000
NAVJO, AZ WP *18000—GNSS MEA *DME/DME/IRU MEA	YAMHA, CO WP	*24000	45000
YAMHA, CO WP *18000—GNSS MEA *DME/DME/IRU MEA	DAAYE, CO WP	*24000	45000
DAAYE, CO WP *18000—GNSS MEA *DME/DME/IRU MEA	SKWYR, CO WP	*24000	45000
SKWYR, CO WP *18000—GNSS MEA *DME/DME/IRU MEA	HUSQA, KS WP	*24000	45000
HUSQA, KS WP *18000—GNSS MEA *DME/DME/IRU MEA	VARNE, KS WP	24000	45000
VARNE, KS WP *18000—GNSS MEA *DME/DME/IRU MEA	ATIJA, KS WP	*20000	45000
ATIJA, KS WP *18000—GNSS MEA *DME/DME/IRU MEA	LEFAM, NE WP	20000	45000
LEFAM, NE WP *18000—GNSS MEA *DME/DME/IRU MEA	BOVEY, MO WP	*20000	45000
BOVEY, MO WP *18000—GNSS MEA *DME/DME/IRU MEA	WELKY, IA WP	*20000	45000
§ 95.4092 RNAV Route Q92 Is Amended by Adding			
CHUWY, NE WP *20000—GNSS MEA *DME/DME/IRU MEA	KUTCH, NE WP	*22000	45000
KUTCH, NE WP *20000—GNSS MEA *DME/DME/IRU MEA	WYYTE, NE WP	*22000	45000
WYYTE, NE WP *20000—GNSS MEA *DME/DME/IRU MEA	MAASI, NE WP	*20000	45000
MAASI, NE WP *20000—GNSS MEA *DME/DME/IRU MEA	HANKU, IA WP	*20000	45000
HANKU, IA WP *20000—GNSS MEA *DME/DME/IRU MEA	JORDY, IA FIX	*20000	45000
§ 95.4098 RNAV Route Q98 Is Amended To Read in Part			
HAKMN, NV WP *18000—GNSS MEA *DME/DME/IRU MEA	ZZYZX, NV WP	*18000	45000
ZZYZX, NV WP *18000—GNSS MEA *DME/DME/IRU MEA	LAKRR, NV WP	*18000	45000
§ 95.4114 RNAV Route Q114 Is Amended by Adding			
BUGGG, UT WP *18000—GNSS MEA *DME/DME/IRU MEA	ZAKRY, CO WP	*24000	45000
ZAKRY, CO WP *20000—GNSS MEA *DME/DME/IRU MEA	BULDG, CO WP	*20000	45000
BULDG, CO WP	COUGH, CO WP	*20000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 546 Effective Date, June 20, 2019]

From	To	MEA	MAA
*20000—GNSS MEA *DME/DME/IRU MEA			
COUGH, CO WP	AVVVS, CO FIX	*20000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
AVVVS, CO FIX	BRAFF, CO WP	*20000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BRAFF, CO WP	GOORE, CO WP	*20000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
GOORE, CO WP	AYOLE, NE WP	*20000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
AYOLE, NE WP	PECKS, NE WP	*20000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
PECKS, NE WP	LEONG, IA WP	*20000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4126 RNAV Route Q126 Is Amended by Adding			
GAROT, UT WP	KREYK, UT WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
KREYK, UT WP	DRRSI, UT WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
DRRSI, UT WP	LBATO, UT WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
LBATO, UT WP	BASNN, CO WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BASNN, CO WP	BRAFF, CO WP	*19000	45000.
*19000—GNSS MEA *DME/DME/IRU MEA			
Is Amended To Delete			
GAROT, UT WP	MEEKER, CO VOR/DME	*18000	45000
*GNSS REQUIRED			
Is Amended To Read In Part			
INSLO, NV WP	CHUKR, NV WP	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
CHUKR, NV WP	TTOES, NV WP	26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
TTOES, NV WP	GAROT, UT WP	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4136 RNAV Route Q136 Is Amended by Adding			
VOAXA, CO FIX	COUGH, CO WP	*21000	45000
*21000—GNSS MEA *DME/DME/IRU MEA			
COUGH, CO WP	BIIKE, CO WP	*21000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BIIKE, CO WP	ZIRKL, NE WP	*21000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
ZIRKL, NE WP	KAWWA, NE WP	*21000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
KAWWA, NE WP	SYTHH, NE WP	*21000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 546 Effective Date, June 20, 2019]

From	To	MEA	MAA
*18000—GNSS MEA *DME/DME/IRU MEA			
SYTHH, NE WP	AYEGI, NE WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
AYEGI, NE WP	TURCK, NE WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
TURCK, NE WP	WRNCH, IA WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
WRNCH, IA WP	BVEEE, IA WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BVEEE, IA WP	HIBAV, IA WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
HIBAV, IA WP	BAACN, IA WP	*19000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
Is Amended To Read in Part			
COALDALE, NV VORTAC	RUMPS, NV WP	*18000	45000
*GNSS REQUIRED			
RUMPS, NV WP	KATTS, NV WP	*18000	45000
*GNSS REQUIRED			
KATTS, NV WP	CRLES, NV WP	*18000	45000
*GNSS REQUIRED			
CRLES, NV WP	GDGET, UT WP	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
GDGET, UT WP	TRALP, UT WP	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
TRALP, UT WP	MANRD, UT WP	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
MANRD, UT WP	WEEMN, UT WP	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
WEEMN, UT WP	ELLFF, CO WP	*26000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
ELLFF, CO WP	VOAXA, CO FIX	*21000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
§ 95.4150 RNAV Route Q150 Is Amended by Adding			
OPPEE, WY WP	YAMPA, CO WP	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
YAMPA, CO WP	BIIKE, CO WP	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			
BIIKE, CO WP	DUUZE, KS WP	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA SNY			
DUUZE, KS WP	EXHAS, KS WP	*24000	45000
*18000—GNSS MEA *DME/DME/IRU MEA			

From	To	MEA
§ 95.6001 Victor Routes—U.S. **§ 95.6013 VOR Federal Airway V13 Is Amended To Read in Part**		
SOLON, TX FIX	CORPUS CHRISTI, TX VORTAC	1800
*WORRY, TX FIX	PALACIOS, TX VORTAC	1700

From	To	MEA
*2100—MRA		
§ 95.6020 VOR Federal Airway V20 Is Amended To Read in Part		
SOLON, TX FIX	CORPUS CHRISTI, TX VORTAC	1800
TUXDO, SC FIX	SUGARLOAF MOUNTAIN, NC VORTAC	6200
SUGARLOAF MOUNTAIN, NC VORTAC	BARRETTS MOUNTAIN, NC VOR/DME	6200
BARRETTS MOUNTAIN, NC VOR/DME	LEAKS, NC FIX	3600
§ 95.6035 VOR Federal Airway V35 Is Amended To Read in Part		
TUXDO, SC FIX	SUGARLOAF MOUNTAIN, NC VORTAC	6200
SUGARLOAF MOUNTAIN, NC VORTAC	*BUSIC, NC FIX	8800
*9000—MCA BUSIC, NC FIX, N BND		
BUSIC, NC FIX	*ROANS, TN FIX	9000
*9000—MCA ROANS, TN FIX, S BND		
CHARLESTON, WV VOR/DME	CARLA, WV FIX	*4000
*3000—MOCA		
CARLA, WV FIX	BENZO, WV FIX	*4000
*3300—MOCA		
BENZO, WV FIX	CLARKSBURG, WV VOR/DME	3300
§ 95.6053 VOR Federal Airway V53 Is Amended To Read in Part		
CARTT, SC FIX	SUGARLOAF MOUNTAIN, NC VORTAC.	
	NW BND	6200
	SE BND	3000
SUGARLOAF MOUNTAIN, NC VORTAC	*BUSIC, NC FIX	8800
*9000—MCA BUSIC, NC FIX, N BND		
BUSIC, NC FIX	*ROANS, TN FIX	9000
*9000—MCA ROANS, TN FIX, S BND		
HAZARD, KY VOR/DME	*IRVIN, KY FIX	4000
*6000—MRA		
*IRVIN, KY FIX	LEXINGTON, KY VOR/DME	4000
*6000—MRA		
LEXINGTON, KY VOR/DME	*LOUISVILLE, KY VORTAC	2800
*7000—MCA	LOUISVILLE, KY VORTAC, NW BND.	
§ 95.6097 VOR Federal Airway V97 Is Amended To Read in Part		
LA BELLE, FL VORTAC	ROGAN, FL FIX	.....
	SE BND	*2000
	NW BND	*4000
*2000—GNSS MEA		
ROGAN, FL FIX	*BRDGE, FL FIX	**5000
*4300—MCA	BRDGE, FL FIX, SE BND.	
**1400—MOCA		
**2000—GNSS MEA		
BRDGE, FL FIX	*ST PETERSBURG, FL VORTAC	2000
*3600—MCA	ST PETERSBURG, FL VORTAC, NW BND.	
ST PETERSBURG, FL VORTAC	DARBS, FL FIX.	
	SE BND	*2100
	NW BND	*6000
*2100—GNSS MEA		
DARBS, FL FIX	PLYER, FL FIX	*8000
*1400—MOCA		
*4000—GNSS MEA		
PLYER, FL FIX	CLAMP, FL FIX	*8000
*1400—MOCA		
*4000—GNSS MEA		
CLAMP, FL FIX	HEVVN, FL FIX	.....
	NW BND	*6000
	SE BND	*8000
*1400—MOCA		
*4000—GNSS MEA		
HEVVN, FL FIX	ADDAX, FL FIX.	
	NW BND	*3000
	SE BND	*6000
*1400—MOCA		
*2000—GNSS MEA		
ADDAX, FL FIX	SEMINOLE, FL VORTAC.	
	NW BND	*2000
	SE BND	*5000

From	To	MEA
*2000—GNSS MEA		
§ 95.6121 VOR Federal Airway V121 Is Amended To Read in Part		
MOURN, OR FIX	ROSEBURG, OR VOR/DME	
	W BND	6000
	E BND	7000
ROSEBURG, OR VOR/DME	NORTH BEND, OR VOR/DME	6000
NORTH BEND, OR VOR/DME	SCOTY, OR FIX.	
	NE BND	5000
	SW BND	4400
SCOTY, OR FIX	*VAUGN, OR FIX	5000
*7000—MRA		
*VAUGN, OR FIX	**EUGENE, OR VORTAC.	
	NE BND	4100
	SW BND	5000
*7000—MRA		
**9000—MCA EUGENE, OR VORTAC, E BND		
EUGENE, OR VORTAC	DOSEE, OR FIX	
	E BND	10000
	W BND	5200
DOSEE, OR FIX	VIDAS, OR FIX	
	E BND	11600
	W BND	6000
VIDAS, OR FIX	WHIFF, OR FIX	*13000
*7500—MOCA		
*12000—GNSS MEA		
SNOKY, OR FIX	*DESCHUTES, OR VORTAC	
	E BND	8000
	W BND	13000
*10400—MCA DESCHUTES, OR	VORTAC, W BND	
§ 95.6159 VOR Federal Airway V159 Is Amended To Read in Part		
OCALA, FL VORTAC	*PERSE, FL FIX	2000
*3000—MRA		
*PERSE, FL FIX	**WILON, FL FIX	2000
*3000—MRA		
**3000—MRA		
*WILON, FL FIX	CROSS CITY, FL VORTAC	2000
*3000—MRA		
§ 95.6160 VOR Federal Airway V160 Is Amended To Read in Part		
*BLUE MESA, CO VOR/DME	MURFE, CO FIX	16400
*13100—MCA	BLUE MESA, CO VOR/DME, NE BND	
§ 95.6163 VOR Federal Airway V163 Is Amended To Read in Part		
SOLON, TX FIX	CORPUS CHRISTI, TX VORTAC	1800
CORPUS CHRISTI, TX VORTAC	SINTO, TX FIX	1800
SINTO, TX FIX	THREE RIVERS, TX VORTAC	2000
THREE RIVERS, TX VORTAC	YENNS, TX FIX	
	S BND	2000
	N BND	3000
§ 95.6198 VOR Federal Airway V198 Is Amended To Read in Part		
BROOKLEY, AL VORTAC	CRESTVIEW, FL VORTAC	3100
CRESTVIEW, FL VORTAC	DEFUN, FL FIX	
	W BND	2000
	E BND	3000
DEFUN, FL FIX	*CHEWS, FL FIX	**3000
*2500—MCA	CHEWS, FL FIX, W BND	
**1800—MOCA		
§ 95.6222 VOR Federal Airway V222 Is Amended To Read in Part		
FOOTHILLS, SC VORTAC	SUNET, SC FIX	*6100
*4800—MOCA		
SUNET, SC FIX	SUGARLOAF MOUNTAIN, NC VORTAC	7100
SUGARLOAF MOUNTAIN, NC	VORTAC BARRETTS MOUNTAIN, NC VOR/DME	6200

From	To	MEA
§ 95.6241 VOR Federal Airway V241 Is Amended To Read in Part		
SEMMES, AL VORTAC	CRESTVIEW, FL VORTAC	3100
§ 95.6295 VOR Federal Airway V295 Is Amended To Read in Part		
OCALA, FL VORTAC	*PERSE, FL FIX	2000
*3000—MRA		
*PERSE, FL FIX	**WILON, FL FIX	2000
*3000—MRA		
**3000—MRA		
*WILON, FL FIX	CROSS CITY, FL VORTAC	2000
*3000—MRA		
§ 95.6312 VOR Federal Airway V312 Is Amended To Read in Part		
*DRIFT, NJ FIX	**PREPI, OA FIX	***4800
*6000—MRA		
**8000—MRA		
***2500—GNSS MEA		
§ 95.6314 VOR Federal Airway V314 Is Amended To Read in Part		
U.S. CANADIAN BORDER	*PATTA, ME FIX	**6000
*10000—MRA		
**3900—MOCA		
*PATTA, ME FIX	MILLINOCKET, ME VOR/DME	**6000
*10000—MRA		
**3900—MOCA		
§ 95.6352 VOR Federal Airway V352 Is Amended To Read in Part		
U.S. CANADIAN BORDER	*PATTA, ME FIX	6500
*10000—MRA		
*PATTA, ME FIX	HOULTON, ME VOR/DME	6500
*10000—MRA		
§ 95.6407 VOR Federal Airway V407 Is Amended To Read in Part		
*WORRY, TX FIX	PALACIOS, TX VORTAC	1700
*2100—MRA		
§ 95.6441 VOR Federal Airway V441 Is Amended To Read in Part		
BAYPO, FL FIX	NITTS, FL FIX	*4000
*1500—MOCA		
NITTS, FL FIX	OCALA, FL VORTAC	.....
	NE BND	2000
	SW BND	4000
§ 95.6492 VOR Federal Airway V492 Is Amended To Delete		
ST PETERSBURG, FL VORTAC	LA BELLE, FL VORTAC	2000
§ 95.6499 VOR Federal Airway V499 Is Amended To Read in Part		
LANCASTER, PA VOR/DME	CHLSE, PA FIX	.....
	N BND	*8000
	S BND	*6000
*4000—MOCA		
CHLSE, PA FIX	MEGSS, PA FIX	*8000
*4300—MOCA		
MEGSS, PA FIX	BINGHAMTON, NY VOR/DME	.....
	N BND	4900
	S BND	8000
§ 95.6579 VOR Federal Airway V579 Is Amended To Read in Part		
BAYPO, FL FIX	NITTS, FL FIX	*4000
*1500—MOCA		
NITTS, FL FIX	GATORS, FL VORTAC	.....
	S BND	*4000
	N BND	*3000

From	To	MEA
*2100—MOCA		
§ 95.6605 VOR Federal Airway V605 Is Amended To Read in Part		
#SPARTANBURG, SC VORTAC *10000—MCA GENOD, NC FIX, N BND **6000—MOCA **6000—GNSS MEA #5200—MCA SPARTANBURG, SC VORTAC, N BND.	*GENOD, NC FIX	**7000
GENOD, NC FIX *8500—MCA **8500—MOCA	*HOLSTON MOUNTAIN, TN VORTAC HOLSTON MOUNTAIN, TN VORTAC, S BND	**10000 .....

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7211 Jet Route J211 Is Amended To Read in Part**			
YOUNGSTOWN, OH VORTAC	JOHNSTOWN, PA VOR/DME	18000	45000

Airway segment		Changeover points	
From	To	Distance	From
§ 95.8003 VOR Federal Airway Changeover Point **V159 Is Amended To Add Changeover Point**			
OCALA, FL VORTAC	CROSS CITY, FL VORTAC	28	OCALA
V295 Is Amended To Add Changeover Point			
OCALA, FL VORTAC	CROSS CITY, FL VORTAC	28	OCALA

[FR Doc. 2019–10951 Filed 5–23–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738 and 740

[Docket No. 190503423–9423–01]

RIN 0694–AH78

Revisions to Country Group Designations for Venezuela and Conforming Changes for License Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to remove Venezuela from Country Group B, which affords favorable treatment for certain exports of National Security-controlled items, and moves Venezuela to Country Group D:1, which lists countries of national security concern. This final rule makes these changes to the EAR to reflect current national security concerns related to Venezuela, *e.g.,* the introduction of foreign military personnel and equipment into Venezuela, and to better protect U.S. national security. The changes in this final rule also better align the Country Group designations for Venezuela with other EAR national security-related provisions that already apply to Venezuela, *e.g.,* the military end-use and end-user controls that apply to certain items for export, reexport, or transfer (in-country) and provisions that are specific to countries subject to U.S. arms embargoes. In addition, this final rule adds Venezuela to Country Groups D:2–4, which list countries of nuclear, chemical and biological weapons, and missile technology concern, respectively.

DATES: This rule is effective May 24, 2019.

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement a decision to remove Venezuela from Country Group B, which affords favorable treatment for certain exports of National Security-controlled items, and moves Venezuela to Country Group D:1, which lists countries of national security concern (Supplement No. 1 to part 740). In addition, this final rule adds Venezuela to Country Groups D:2–4, which list countries of nuclear, chemical and biological weapons, and missile technology concern, respectively.

This final rule protects U.S. national security interests by making changes to the EAR to address current national security concerns related to Venezuela, *e.g.,* the introduction of foreign military personnel and equipment into Venezuela, and better align the Country Group designation for Venezuela with other EAR national security related provisions that apply to Venezuela. For example, Venezuela is included in the military end-use and end-user control in § 744.21: Restrictions on certain 'Military end uses' in the People's Republic of China or for a 'Military end use' or 'Military end user' in Russia or Venezuela. Venezuela is also already designated in Country Group D:5 as a U.S. Arms Embargoed Country, meaning that the general restrictions on the use of license exceptions in § 740.2(a)(12) for 9x515 and ''600 series'' items apply, along with the more restrictive license review policy for national security controlled items in § 742.4(b)(1)(ii) for 9x515 and ''600 series'' items.

The removal of Venezuela from Country Group B and its addition to Country Group D:1 will make exports and reexports to Venezuela and transfers within Venezuela ineligible for certain license exceptions set forth in Part 740. In addition, the national security licensing policy set forth in § 742.4(b) for Country Group D:1 countries will apply to those exports, reexports, and transfers (in-country). The U.S. Government has determined that the conduct of Venezuela raises sufficient concern that interagency review of proposed exports, reexports, or transfers (in-country) of national security controlled items subject to the EAR, previously eligible for certain license exceptions to Venezuela, and the possible imposition of license conditions or license denials on exports, reexports, and transfers (in-country), will enhance BIS's ability to protect U.S. national security interests.

In addition, the U.S. Government has determined that Venezuela's increasing dependence on countries in Country Groups D:3 and E merited its placement in Country Groups D:2–4.

Amendments to Country Groups B and D:1–4 Affecting License Exception Eligibility, License Requirements (Including CCL-Based and End-Use-Based License Requirements), and Licensing Policy for Venezuela

Supplement No. 1 to Part 740 contains several tables of ''Country Groups'' that are used to identify, among other things, license exception eligibility and licensing policy. This rule removes Venezuela from Country Group B and adds Venezuela to Country Groups D:1–4.

Effects of Removing Venezuela From Country Group B

License exceptions found in § 740.3, Shipments of limited value (LVS); § 740.4, Shipments to Country Group B countries (GBS); and § 740.6, Technology and software under restriction (TSR) are available only if the destination is in Country Group B. This change removes Venezuela from the list of eligible destinations for exports, reexports, and transfers (in-country) that are authorized by License Exceptions LVS, GBS and TSR.

Effects of Adding Venezuela to Country Groups D:1–4

License exceptions found in § 740.9, Temporary imports, exports, reexports, and transfers (in-country) (TMP); § 740.10, Servicing and replacement of parts and equipment (RPL); § 740.12, Gift parcels and humanitarian donations (GFT); § 740.14, Baggage (BAG); § 740.15, Aircraft and vessels (AVS); § 740.16, Additional permissive reexports (APR); and § 740.17, Encryption, commodities, software, and technology (ENC) all contain limitations or restrictions on their use for exports or reexports to destinations in Country Groups D:1, D:2, D:3, and/or D:4. Those limitations and restrictions will now apply to License Exceptions TMP, RPL, GFT, BAG, AVS, APR, and ENC to Venezuela.

Section 742.4(b)(2) of the EAR states the licensing policy for exports and reexports of national security controlled items to destinations in Country Group D:1. That licensing policy is to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or otherwise would not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States. Applications to export or reexport national security controlled items to Venezuela will now be subject to this licensing policy.

In addition, Venezuela's placement in Country Group D:1 will result in the imposition of restrictions on the export, reexport, and transfer (in-country) of certain microprocessors to military end uses and end users in Venezuela, pursuant to § 744.17: Restrictions on certain exports, reexports and transfers (in-country) of microprocessors and associated ''software'' and ''technology'' for 'military end uses' and to 'military end users.' Furthermore, restrictions on certain exports and reexports to vessels and aircraft located in Venezuelan ports or registered in Venezuela will become effective pursuant to § 744.7, Restrictions on certain exports to and for the use of certain foreign vessels or aircraft. Finally, the addition of Venezuela to Country Group D:1 will expand the licensing requirements for reexports of the foreign-produced direct product of U.S.-origin technology and software to Venezuela pursuant to § 736.2(b)(3), General Prohibition Three.

Consistent with adding Venezuela to Country Group D:2, a license will be required for the export or reexport of items subject to the nuclear nonproliferation column 2 (NP 2) controls [Export Control Classification Numbers (ECCNs) 1A290, 1C298, 2A290, 2A291, 2D290, 2E001 (for that portion that applies for 2A290, 2A291 and 2D290) and 2E002 (for that portion that applies to 2A290 and 2A291) and 2E290]. This final rule adds an ''X'' in the NP 2 column of the nuclear nonproliferation column in Supplement No. 1 to Part 738 of the EAR for Venezuela. License applications for these items will be reviewed under the licensing policy in § 742.3 of the EAR. Consistent with adding Venezuela to Country Group D:2, the general prohibition in paragraph (a)(1)(i)(A) of § 744.6, Restrictions on certain activities of U.S. persons, will be applicable if the U.S. person exporter, reexporter, or transferor has ''knowledge'' of a prohibited end use in or by Venezuela.

Consistent with adding Venezuela to Country Group D:3, a license will be required for the export or reexport of items subject to the chemical and biological weapons column 3 (CB 3) controls (ECCN 1C991.d). This final rule adds an ''X'' in column 3 of the chemical and biological weapons column (CB 3) in Supplement No. 1 to Part 738 of the EAR. License applications for these items will be reviewed under the licensing policy in § 742.2 of the EAR.

Consistent with adding Venezuela to Country Group D:4, the general prohibitions in § 744.3—Restrictions on certain rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned aerial vehicles (including cruise missiles, target drones and reconnaissance drones) end-uses—under paragraphs (a)(1) and (a)(3) will be applicable if the exporter, reexporter, or transferor has ''knowledge'' the transaction involves one of those prohibited end uses in or by Venezuela. In addition, consistent with adding Venezuela to Country Group D:4, the general prohibitions in § 744.6 under paragraphs (a)(1)(i)(B) and (a)(2)(i) will be applicable if the U.S. person exporter, reexporter, or transferor (for purposes of paragraph (a)(1)(i)(B)) or other activities unrelated to exports (for purposes of paragraph (a)(2)(i)) has ''knowledge'' the transaction involved one of those prohibited transactions or other activities in or by Venezuela.

Prior to publication of this final rule, Venezuela was already included in Country Group D:5 and the license review policy under § 742.4(b)(1)(ii) continues to apply for items classified under 9x515 and ''600 series'' ECCNs for exports and reexports to Venezuela. Pursuant to § 742.4(b)(1)(ii), these license applications will continue to be ''reviewed consistent with United States arms embargo policies in § 126.1'' of the International Traffic in Arms Regulations.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018

(ECRA) (Title XVII, Subtitle B of Pub. L. 115–232) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018 and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute 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 final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. This final rule will support the national security and foreign policy objectives of the United States by broadening the U.S. Government's visibility into transactions involving national security controlled items on the Commerce Control List and exports, reexports and transfers (in-country) to and in a country of concern.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to increase slightly by 4 hours for an estimated cost increase of $120. This increase is not expected to exceed the existing estimates currently associated with OMB control number 0694–0088.

Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to § 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

6. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. The cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicates that this rule is intended to improve national security as its primary direct benefit. Specifically, the change in the Country Group designations for Venezuela and its impact on the availability of license exceptions and more restrictive license review policies described herein will enhance the national security of the United States by reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could be diverted and contribute to the military capability of countries of concern, contrary to U.S. national security interests. This final rule will allow the U.S. Government to review transactions involving military end uses or end users in Venezuela prior to their completion to mitigate this risk. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O. 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued ''with respect to a national security function of the United States'' and it is, therefore, exempt from the requirements of E.O. 13771.

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on May 24, 2019, pursuant to actual orders for exports, reexports and transfers (in-country) to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before June 24, 2019. Any such items not actually exported, reexported or transferred (in-country) before midnight, on June 24, 2019 require a license in accordance with this final rule.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738 and 740 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

■ 1. The authority citation for part 738 is revised to read as follows:

Authority: Pub. L. 115–232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*); 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

■ 2. Supplement No. 1 to Part 738 is amended by revising the entry for ''Venezuela'' to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
*			*		*		*		*		*		*			
Venezuela	X	X	X	X	X	X	X	X	X	X	X	X		X		
*			*		*		*		*		*		*			

* * * * *

PART 740—LICENSE EXCEPTIONS

■ 3. The authority citation for part 740 is revised to read as follows:

Authority: Pub. L. 115–232, 132 Stat. 2208 (50 U.S.C. 4801 *et seq.*); 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

■ 4. Supplement No. 1 to Part 740 is amended by:

■ a. Removing Venezuela from the table labeled ''Country Group B—Countries;'' and

■ b. Revising the entry for ''Venezuela'' under ''Country Group D'' to read as follows:

* * * * *

SUPPLEMENT NO. 1 TO PART 740—COUNTRY GROUPS

[Country Group D]

Country	[D: 1] National security	[D: 2] Nuclear	[D: 3] Chemical and biological	[D: 4] Missile technology	[D: 5] U.S. arms embargoed countries [1]
*		*	*		*
Venezuela	X	X	X	X	X
*		*	*		*

[1] **Note to Country Group D:5:** Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this paragraph is drawn from 22 CFR 126.1 and State Department **Federal Register** notices related to arms embargoes (compiled at *http://www.pmddtc.state.gov/embargoed_countries/index.html*) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this paragraph and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

* * * * *

Dated: May 17, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2019–11034 Filed 5–22–19; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 181219999–8999–01]

RIN 0694–AH72

Addition of Certain Entities to the Entity List, Revision of an Entry on the Entity List, and Removal of an Entity From the Entity List

Correction

In rule document 2019–09945, appearing on pages 21233 through 21238, in the issue of Tuesday, May 14, 2019, make the following correction:

PART 744 [CORRECTED]

On page 21236, in the table labeled ''Supplement No. 4 to Part 744—Entity List'', in the second column, in the third entry ''Multi-Mart Electronics Technology Co, Ltd.,'' in the second line, ''S/F'' should read ''5/F''.

[FR Doc. C1–2019–09945 Filed 5–23–19; 8:45 am]

BILLING CODE 1301–00–D

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1450

[Docket No. CPSC–2019–0012]

Virginia Graeme Baker Pool and Spa Safety Act; Incorporation by Reference of Successor Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Virginia Graeme Baker Pool and Spa Act (VGBA, or Act) requires that drain covers must comply with entrapment protection requirements specified by the joint American Society of Mechanical Engineers (ASME) and American National Standards Institute (ANSI) ASME/ANSI A112.19.8 performance standard, or any successor standard. The Consumer Product Safety Commission incorporates sections of APSP–16 2017 as the successor drain cover standard.

DATES: The rule is effective November 24, 2020, unless we receive significant adverse comment by June 24, 2019. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is

approved by the Director of the Federal Register as of November 24, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2019–0012, by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely processing of comments, please submit all electronic (email) comments through *www.regulations.gov* rather than to CPSC. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written comments in the following way: Mail/Hand delivery/Courier (for paper, disk or CD–ROM submissions), preferably in five copies, to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal identifiers, contact information, or other personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted by mail/hand delivery/courier.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* insert docket number CPSC–2019–0012 into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Troy Whitfield, Lead Compliance Officer, Directorate for Compliance Regulatory Enforcement, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7548; email: *twhitfield@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

The VGBA, 15 U.S.C. 8001 *et seq.,* took effect on December 19, 2008. The VGBA's purpose is to prevent drain entrapment and child drowning in swimming pools and spas. In part, the Act requires that drain covers must comply with entrapment protection requirements specified by the joint ASME/ANSI A112.19.8 performance standard, or any successor standard. The VGBA also states that public pools [1] must be equipped with drain covers that meet the requirements of the ASME/ANSI or any successor standard. The VGBA provides that if a successor standard to ASME/ANSI/A112.19.8 is proposed and the Commission determines the successor standard is in the public interest, the Commission must incorporate the revision into the mandatory drain cover standard.

On August 5, 2011, the Commission recognized the Association of Pool and Spa Professionals (APSP) [2] standard APSP–16 2011, *Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs,* as the successor standard to ASME/ANSI A112.19.8. The Commission incorporated by reference APSP–16 2011 into 16 CFR part 1450. 76 FR 47436 (Aug. 5, 2011). ASME/ANSI A112.19.8 and its successor standard, APSP–16 2011, contain requirements that address hair entrapment,[3] body entrapment,[4] and, in a limited way, limb entrapment.[5]

On March 27, 2018, APSP notified the Commission of the publication of a successor pool drain cover standard to APSP–16 2011, in conjunction with ANSI and the International Code Council (ICC), ANSI/APSP/ICC–16 2017 (APSP–16 2017).

II. APSP–16 2017

APSP–16 2017 establishes materials, testing, use, installation, and marketing requirements for new or replacement bather-accessible suction outlet fitting assemblies, other than maintenance drains, that are designed to be fully submerged for use in any pool. APSP–16 2017 contains a new effective date for the standard, changes to physical testing requirements, new definitions, and new labeling requirements for the drain cover. These changes are discussed in section III of this preamble. APSP–16 2017 also contains new requirements that apply to the installation of the drain cover, to pools, to the operation of pools, and to pool owners. These changes are discussed in section IV of this preamble. As explained in section IV.A, the Commission does not have the authority to impose these requirements under section 1404(b) of the VGBA.

III. Changes to APSP–16 2017 That Are Within the Commission's Authority

A. Effective Date

The VGBA does not specify an effective date for implementing successor standards. The Commission expects drain covers that meet APSP–16 2011 to be able to meet APSP–16 2017 with minimal changes to the drain covers. The changes necessary for the product to comply with the revised standard are limited to minor changes in on-product markings and new requirements for what must be included in the documentation accompanying the product. Product instructions and on-product markings are already required; thus, costs are limited to altering the content of these items. The APSP–16 2017 standard states that it will take effect 18 months after its adoption by CPSC.

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule (5 U.S.C. 553(d)). Because of the low rate of injuries under APSP–16 2011,[6] and because the APA does not prohibit an 18-month effective date, accelerated adoption of the new standard is not warranted. Therefore, unless the Commission receives timely significant adverse comments, CPSC's revised standard will take effect 18 months after publication of this **Federal Register** notice incorporating APSP–16 2017 as the successor standard.

B. Changes to Physical Testing Requirements

The APSP–16 technical committee considered many possible changes to physical testing requirements when it was developing the 2017 version of the APSP–16 standard. Ultimately, CPSC staff found only two changes to physical testing requirements that maintain or increase the level of safety afforded by APSP–16 2011. These are the changes to the hair test approach time (section 5.9.5.5 of APSP–16 2017), and changes

[1] The Act defines the term ''pool'' to mean any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and above ground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

[2] On April 1, 2019, the Association of Pool and Spa Professionals changed its name to the Pool & Hot Tub Alliance (PHTA).

[3] Hair entrapment typically occurs when water flowing into the suction outlet carries a person's hair through and behind the openings in the drain cover, where it becomes so entangled that it prevents escape.

[4] Body entrapment typically occurs on drains that are not unblockable and are served by direct-suction pumps when a person's body forms a seal around the perimeter of a drain, and they are thus held against the drain by the pump suction.

[5] Limb entrapment typically occurs on drain covers when a cover is broken and a person gets a limb stuck in the broken portion of the cover; or when the cover is completely missing and a person gets a limb stuck in the suction outlet, or other geometry that is within the sump.

[6] There were two fatalities and nine injuries between 2013 and 2017. *https://www.cpsc.gov/s3fs-public/2018-Circulation-Entrapment.pdf?36TkV6OzJPzZPvRvC5IBnB5YhD1qkOPT.*

to hair testing at specific ports in suction outlet fitting assemblies (section 1.3.7.1 of APSP–16 2017).

1. Changes to Hair Test Approach Time

For three of the most significant tests specified in the 2011 version of APSP–16, the test results are given as a flow rating of gallons per minute of water through the drain cover. These three tests are the pony tail hair test, the full head of hair test, and the body-blocking test. The highest flow rate at which the drain cover meets the performance criteria of all three tests is the maximum allowable flow rate of water for which the drain cover may be certified. Drain cover manufacturers seek the highest possible flow rating. A higher flow rating increases the number of applications for which the drain cover is suitable.

The hair and body-blocking tests are conducted in a simulated pool installation. The test technician selects an initial water flow rate for testing through the drain cover, and then increases the test flow rate until the test requirements are no longer met for the hair or body tests. The test technician records the maximum flow rate for each of the tests where the drain cover meets the standard. The lower of the flow rates from the pony tail or full head of hair tests is considered to be the hair test result. The flow rating of the cover is the highest flow rating at which the drain cover meets the requirements for the hair and body-blocking tests.

The pony tail and full head of hair tests begin with the free ends of hair two inches away from the drain cover. APSP–16 2011 specified that the head and ponytail fixtures are moved in a side-to-side motion as they are lowered over a period of 60 seconds toward the drain cover during their respective tests. The hair ends move in response to, or generally opposite to, these motions, until the flow of water draws the hair into the drain cover. Due to the iterative nature of the tests, coupled with the dual requirement for the drain cover to meet two types of hair test requirements, it can take numerous tests to determine a hair flow rating.

To reduce the time required to perform the hair tests, and therefore, to lower the cost of testing, APSP–16 2017 decreases the hair test approach time from 60 seconds to 30 seconds. CPSC staff studied the change in hair approach time extensively. Staff explained the results of its testing in a detailed letter to APSP.[7] Staff's test experiences indicate that most of the time spent moving hair the full 60 seconds is unnecessary, because the hair is effectively drawn to the target area within a few seconds. Moreover, too much movement can lead to the hair being self-entangled above the drain and not within the drain, thus producing inaccurate results. The Commission concludes that the change to 30 seconds in section 5.9.5.5 of APSP–16 2017 is in the public interest because it is at least as protective as the 60 seconds specified in APSP–16 2011; it may minimize the risk of the hair being self-entangled above the drain; and it reduces the cost of performing the testing that is required to meet the standard because it reduces the time necessary to perform the tests.

2. Changes to Hair Testing To Include all Suction Outlet Fittings

To ease product installation, many SOFA manufacturers include more than one suction outlet on their products. Suction outlets may be located on one or more sides of the SOFA, on the bottom, or on a combination of these locations. For SOFAs with multiple suction outlets, APSP–16 2011, and before it, ASME/ANSI A112.19.8, only required that the hair and body-blocking element tests be performed on the drain cover while water was flowing through one of the suction outlets. The standards did not require testing the drain cover using the additional suction outlets, when present.

The introduction of channel drains, whose length is much longer than their width, provided a new scenario for entrapment. Figure 1 shows an example of a channel drain.

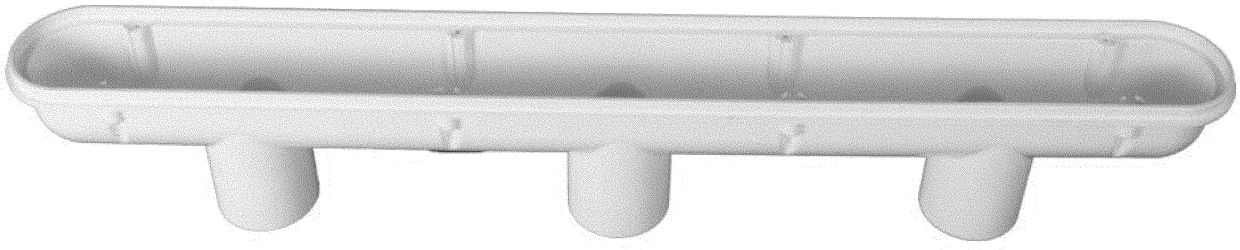


Figure 1. A commercially available channel drain, shown without a drain cover.

Like traditional SOFAs, channel drains are often equipped with multiple suction outlets, not all of which must necessarily be connected during installation. However, because channel drains have very narrow widths compared to their lengths, their design potentially concentrates the low-pressure area underneath the portion of the drain cover that is closest to the suction outlet. Because there was no previous requirement to test SOFAs using every suction outlet as the water source for the pump, it was possible that a channel drain could be tested using only the suction outlet that yielded the highest flow rating, *i.e.,* the suction outlet least likely to produce entrapment for a given flow rate. However, channel SOFAs could be installed using a different suction outlet than the one that was used during testing; thus, this could potentially expose bathers to conditions that exceed what is allowed by the standard. To ensure that channel-type SOFAs did not receive an improper flow rating, the committee initially proposed that channel drains must meet the hair and body-block tests when each suction outlet was tested. Due to the wide variety of styles and suction outlet configurations available on traditional, non-channel-type SOFAs, and because all types of SOFAs could be subject to differing flow through the drain cover that are dependent on the suction outlet location, the committee decided that the new requirement to test at all suction outlets on channel drains should also apply to all types of SOFAs.

[7] *https://www.cpsc.gov/s3fs-public/pdfs/blk_media_CPSCCommentstoRevisionAPSP162011.pdf.*

The additional requirement to perform hair tests at all suction outlets for all types of SOFAs will increase the testing burden because it increases the number of tests that are required to be performed. However, the possible increase in testing burden will be offset by other changes to the testing requirements. Under the revised standard, if the hair cannot reach the suction outlet, there is no need to test that outlet. Thus, APSP–17 2017 provides that the requirement to test at each suction outlet, which is included in section 5.7.2, only applies to suction outlets that have a ''flow path length'' (*i.e.,* the distance between the drain cover the suction outlet) of less than 16 inches, which is the maximum length of hair used in the hair tests. Furthermore, as discussed above, the 2017 standard reduced the hair approach time from 60 seconds to 30 seconds. The additional testing required to evaluate all of the suction outlets on a SOFA is offset by the reduction in hair test approach time discussed in Section II.A.2.a.

The requirement in APSP–16 2017 to test at every suction outlet reachable by the hair test specimen will increase the safety of bathers because it precludes the chance of a SOFA being installed in a manner that is different from the way it was tested, serves to clarify prior practice, and is supported by laboratory testing. Accordingly, the Commission determines that testing of SOFAS at every suction outlet is in the public interest.

C. Definition of ''Unblockable Drain''

The 2011 version of the APSP standard did not define ''unblockable drain'' or ''unblockable SOFA.'' The definitions section of APSP–16 2017 includes the following definition of ''Unblockable SOFA'':

> A suction outlet fitting assembly that, when installed according to the manufacturer's instructions, cannot be shadowed by an 18″ x 23″ Body Blocking Element, and has a rated flow through the remaining open area beyond the shadowed portion that cannot create a suction force in excess of the force calculated in equation 2.

Pool drain professionals have essentially been using this definition to determine whether a SOFA is unblockable since a similar version was first published as an interpretive rule by CPSC on April 27, 2010.[8] At least 149 state and local building codes now reference the 18″ x 23″ dimension and the pull-off force requirements originally found in Table 1 of A112.19.8, which are consistent with the definition of ''unblockable'' in APSP–16 2017. Other state and local codes reference slight variations of this definition of ''unblockable.'' Because this is an accepted definition among pool professionals, the Commission believes including this definition in its mandatory standard is in the public interest.

D. Labeling Requirements

Section 8.4 of APSP–16 2017 contains requirements for the labelling of a SOFA, requiring identifying information, such as the manufacturer name and cover/grate part number, and date of the installation of the cover/grate. Section 8.5.1 of APSP–16 2017 contains labeling requirements for Registered Design Professional (RDP) SOFAs. Section 9.3 of APSP–16 2017 adds provisions regarding a General Certificate of Conformity (GCC) that are consistent with the Consumer Product Safety Act and VGBA. These requirements identify the product, the manufacturer, and the test lab that performed the analysis, as well as state the standard to which the product was tested, and when and where it was tested. Because the presence of this information makes it easy to identify relevant safety information about the product, the Commission finds these requirements are in the public interest.

IV. Changes to APSP–16 2017 That Exceed the Commission's Authority

A. The Commission's Authority Under the VGBA

Section 1404(b) of the VGBA specifies a standard for drain covers. It states ''each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of [the drain cover performance standard].'' Section 1404(a) of the VGBA states that the requirements of section 1404(b) shall be treated as a consumer product safety rule under the CPSA. Thus, the drain cover must be in compliance with the drain cover standard at the time of manufacture of the cover, distribution of the cover, or when the cover is entered into commerce. This indicates that the drain cover standard is a standard for the drain cover, as a discrete product.

Section 1404(b) requires the Commission to assess any successor drain cover standard to determine whether the changes in the standard are in the public interest, before incorporating the successor standard. CPSC's Office of Compliance enforces section 1404(b) by determining whether the drain cover, as a discrete product, at the time of manufacture, distribution, or entrance into commerce, complies with the drain cover standard.

Separately, section 1404(c) of the VGBA requires that public pools and spas in the United States:

- Have drain covers that comply with the standard specified in section 1404(b) or a successor standard; and
- if the public pool or spa does not have an unblockable drain, it must be equipped with one or more of the secondary systems specified in section 1404(c)(1)(A)(ii).

Thus, section 1404(c) gives the CPSC authority to determine and enforce these requirements for public pools and spas, and it gives the CPSC the authority to inspect these public facilities for the presence of drain covers and secondary systems and to enforce those requirements. In summary, section 1404(b) of the VGBA is the drain cover standard, which is to be treated as a consumer product safety rule. The VGBA authorizes a product safety standard for that product—drain covers (or SOFAs). The authority for the Commission to incorporate by reference the APSP drain cover standard is in section 1404(b) of the VGBA. Separately, section 1404(c) of the VGBA requires public pools and spas to have certain specified equipment, and it gives the Commission authority to check that the equipment is installed in public pools and spas.

B. Specific Sections of APSP–16 2017 That Exceed Commission Authority

APSP–16 2017 contains many changes that extend beyond the requirements for the drain cover or SOFA itself, and thus, exceed CPSC's authority under section 1404(b) of the VGBA. The voluntary standard can have such provisions. However, the Commission does not have authority to enforce them as mandatory standard provisions. The changes include requirements that can be separated into the following categories:

- Installation of the SOFA;
- Requirements applicable to pools;
- Activities of pool owners;
- Changes to statutory definitions in the VGBA.

The changes specific to each category are detailed in Tables 1 through 4.

[8] *https://www.federalregister.gov/documents/2010/04/27/2010-8160/virginia-graeme-baker-pool-and-spa-safety-act-interpretation-of-unblockable-drain.*

TABLE 1—SECTIONS OF APSP–16 2017 THAT ARE BEYOND THE AUTHORITY OF CPSC BECAUSE THEY ESTABLISH REQUIREMENTS FOR THE INSTALLATION OF THE SOFA

Section No.	Summary of topic(s) covered
1.3.3.2	Drain covers can only be installed on SOFAs deemed suitable by the drain cover manufacturer.
3.5.1	Drain covers shall only be installed on sumps in configurations authorized by the drain cover manufacturer's installation instructions, and at a specific flow rating.
3.6.1	A SOFA must be installed per the manufacturer's instructions.
3.6.3.2	Compliance with the standard requires selecting and installing a SOFA or combination of SOFAs such that the flow rating of the SOFAs is greater than the maximum system flow of the pool.
3.6.4.2	The flow rating for existing pools with blockable SOFAs is the flow rating of the SOFA, when also installed in conjunction with an additional device or system designed to prevent suction entrapment ("secondary anti-entrapment system"). A single, blockable SOFA installed in existing pools with no secondary anti-entrapment system results in a flow rating of zero.
3.7.2	Blockable SOFAs installed in existing pools must also be installed with a secondary anti-entrapment system.
3.7.3	Covers or grates marked unblockable may be installed in pools with multiple SOFA systems. Covers or grates marked unblockable may also be installed in pools with single SOFA systems when this use is authorized by the cover/grate manufacturer.
9.4.1	Blockable covers may only be installed in multiple-SOFA systems, or in pools that are also equipped with one or more secondary anti-entrapment systems.

The provisions mentioned in Table 1 set forth requirements for how to install the SOFA. The 2011 version of the APSP standard addressed installation by requiring that certain information about installation be provided in labels and instructions. In contrast, the provisions referenced in Table 1 require that the installer or pool owner/operator take certain actions. These are not provisions for the drain cover. A drain cover manufacturer has the ability to provide labels and instructions with the product. A drain cover manufacturer does not control how the product is installed.

TABLE 2—SECTIONS OF APSP–16 2017 THAT ARE BEYOND THE AUTHORITY OF CPSC BECAUSE THEY ESTABLISH REQUIREMENTS FOR POOLS

Section No.	Summary of topic(s) covered
1.3.3.1	A pool's system suction flow must not exceed the rating of the installed SOFA(s). A pool with SOFA(s) that were not installed per the manufacturer's instructions is not in compliance with the standard.
3.6.3.1	A pool's system flow ratings cannot exceed the SOFA flow rating while the pool is open to bathers.
3.6.4.1	For multiple blockable SOFA systems, the maximum system flow rating for the pool is determined by subtracting the flow rating of the largest SOFA.
3.6.4.3	The system flow rating for pools with unblockable SOFA(s) shall be determined by combining the flow rating of all SOFA(s).
3.7.1	In new pool construction, the use of a single blockable SOFA is not permitted.

The provisions mentioned in Table 2 set forth requirements for pools, not for drain covers. Several of the provisions set requirements for the pool's flow rating. The 2011 version of the APSP standard required markings and instructions regarding operation at an appropriate flow rating. However, the revised standard states requirements for the pool; these are requirements the drain cover manufacturer lacks the ability to fulfill.

TABLE 3—SECTIONS OF APSP–16 2017 THAT ARE BEYOND THE AUTHORITY OF CPSC BECAUSE THEY REQUIRE ACTIONS OF POOL OWNERS

Section No.	Summary of topic(s) covered
1.1.3	Drain covers must be replaced at the end of their stated service life.
3.6.2	No modifications to SOFAs or the SOFA flow paths are permitted unless they are subsequently re-tested.

The provisions mentioned in Table 3 require pool owners to take certain actions. The 2011 version of the APSP standard required that components of drain covers be marked to state the component's life span. In contrast, the revised standard requires that drain cover components be replaced at the end of their service life. This change makes the requirement apply to the pool owner, not the drain cover manufacturer. Similarly, a requirement prohibiting modifications to installed SOFAs applies to the pool owner, not the drain cover.

TABLE 4—SECTIONS OF APSP–16 2017 THAT SET INSTATALLATION REQUIREMENTS REGARDING SECONDARY SYSTEMS

Section No.	Summary of topic(s) covered
9.4.1	Requires that blockable SOFAs have installation instructions stating that SOFAs shall be installed only in multiple SOFA systems or instructions shall state that the installer shall include one or more of the following devices or systems
9.4.1.1	Provides a definition of safety vacuum relief system (SVRS).
9.4.1.2	Provides a definition of suction-limiting vent system (SVLS).

TABLE 4—SECTIONS OF APSP–16 2017 THAT SET INSTATALLATION REQUIREMENTS REGARDING SECONDARY SYSTEMS—Continued

Section No.	Summary of topic(s) covered
9.4.1.3	Provides a definition of gravity drainage system.
9.4.1.4	Provides a definition of automatic pump shut-off system.
9.4.1.5	Provides a definition of drain disablement.
9.4.1.6	Provides a definition of other secondary anti-entrapment systems.

The provisions listed in Table 4 set forth what seem to be requirements for instructions. As is stated above, CPSC standards can include requirements for instructions. However, the instructions specified in section 9.4 actually establish requirements for pools and for secondary devices and systems designed to prevent suction entrapment. All of section 9.4 exceeds the Commission's authority under Section 1404(a) of the VGBA because the instructions require secondary systems on *all* pools. The VGBA only requires secondary systems for *public* pools. In addition, this section provides definitions of the secondary systems that differ from the statutory definitions in the VGBA.

C. Section That Should Not Be Included Because of an Error

Section 3.2.4 requires SOFAs to be designated in their installation manual as ''blockable'' or ''unblockable.'' This requirement does fall within the enforcement authority of CPSC. However, the definition in APSP–16 2017 contains an error. As discussed, APSP–16 2017 provides a definition of ''unblockable.'' That definition has two parts: Unblockable SOFAs must meet a minimum size requirement, and they must meet the body-blocking element maximum pull-off force requirement. Due to a printing error, section 3.2.4 omitted the pull-off force requirement. Thus, the Commission will not adopt section 3.2.4 of APSP–16 2017.

V. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested person and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section II of this preamble summarizes the major provisions of the APSP–16 2017 standard that the Commission incorporates by reference into 16 CFR 1450.3. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from The Association of Pool & Spa Professionals. A copy of the standard can also be inspected at CPSC's Office of the Secretary.

VI. Direct Final Rule Process

The APA generally requires that agencies use notice and comment rulemaking when issuing a rule. 5 U.S.C. 553. The Commission is adopting as a mandatory standard a voluntary standard that was developed through the consensus process. The voluntary standard is noncontroversial and receives widespread support. In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). The Commission believes it is very unlikely that there will be adverse comments to this rule. Consistent with the ACUS recommendation, the Commission is satisfying the notice and comment procedure by publishing this rule as a direct final rule and providing that, unless adverse comment is received within 30 days, the rule will become effective as a final rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that when agencies are required to issue a notice of proposed rulemaking they must review the rulemaking's potential economic impact on small entities, including small businesses. Section 603 of the RFA requires the Commission to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. However, under Section 605 of the RFA, if an agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, an IRFA is not required, provided that the agency publishes the certification in the **Federal Register**, along with a statement providing the factual basis for the certification.

As discussed in section III.B of this preamble, the revised standard includes two changes to the testing procedures in ANSI/APSP/ICC–16: Hair test approach time and hair testing at specific ports in channel SOFAs. In addition to these two changes in hair tests from the current standard, ANSI/APSP/ICC–16 2017 specifies additional editorial changes, which are intended to clarify existing wording. Clarifying language pertaining to installation and maintenance instructions to be provided with the covers/grates for SOFAs was also added to the standard. Also, manufacturers are required to make minor changes to the information that is provided in permanent markings of compliant covers and grates.

Overall, the changes in testing requirements in the standard revision should have minimal impacts on small businesses, either in costs of testing, or in product modifications necessitated to comply with the revised testing provisions. The revisions that this rule would require in the information that must be provided in installation and maintenance instructions, and the changes in the permanent markings required for covers, and grates should also not impose significant costs on small cover and grate manufacturers. Because small firms should only experience minimal increases in compliance costs or other burdens associated with this rule, the Commission certifies that referencing the revised standard, ANSI/APSP/ICC–16–2017, as the successor standard under the VGBA will not be likely to have significant economic impact on a substantial number of small businesses or other entities.

VIII. Paperwork Reduction Act

This rule does not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

IX. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

X. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the Consumer Product Safety Act (CPSA)]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury, unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption in certain circumstances.

Section 1404(a) of the VGBA specifies that a rule issued under section 1404(b) of the VGBA shall be treated as a consumer product safety standard under the CPSA, thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, this rule will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

List of Subjects in 16 CFR Part 1450

Consumer protection, Incorporation by reference, Infants and children, Law enforcement.

For the reasons stated above, the Commission amends part 1450 of title 16 of the Code of the Federal Regulations as follows:

PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

■ 1. The authority citation for part 1450 continues to read as follows:

Authority: 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794.

■ 2. Revise § 1450.3 to read as follows:

§ 1450.3 Incorporation by reference.

(a) Except as provided in paragraph (b) of this section, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of ANSI/APSP/ICC–16 2017, American National Standard for *Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas and Hot Tubs,* approved on August 18, 2017. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Pool & Hot Tub Alliance (formerly known as the Association of Pool & Spa Professionals), 2111 Eisenhower Avenue, Alexandria, Virginia 22314; *http://www.apsp.org,* telephone 703–838–0083. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or 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 *https://www.archives.gov/federal-regster/cfr/ibr-locations.html.*

(b) The CPSC standard does not require compliance with the following provisions:

(1) Section 1.1.3 of ANSI/APSP/ICC–16 2017.

(2) Sections 1.3.3.1 through 1.3.3.2 of ANSP/APSP/ICC–16 2017.

(3) Section 3.2.4 of ANSI/APSP/ICC–16 2017.

(4) Section 3.5.1 of ANSI/APSP/ICC–16 2017.

(5) Sections 3.6.1 through 3.6.4.3 of ANSI/APSP/ICC–16 2017.

(6) Section 3.7 of ANSI/APSP/ICC–16 2017.

(7) Section 9.4 of ANSI/APSP/ICC–16 2017.

Abioye E. Mosheim,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–10845 Filed 5–23–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 216

[Docket No. FDA–2019–D–2011]

Section 503A Bulks List Final Rule Questions and Answers; Guidance for Industry; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for industry entitled ''Section 503A Bulks List Final Rule Questions and Answers—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entities comply with the final rule establishing the list of bulk drug substances that can be used in accordance with certain compounding provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on May 24, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–2011 for ''Section 503A Bulks List Final Rule Questions and Answers; Guidance for Industry; Small Entity Compliance Guide; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the SECG to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Rosilend Lawson, Center for Drug Evaluation and Research, Office of Unapproved Drugs and Labeling Compliance, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5197, Silver Spring, MD 20993–0002, 240–402–6223, *Rosilend.Lawson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 19, 2019 (84 FR 4696), we issued a final rule establishing the list of bulk drug substances that can be used in compounding under section 503A of the FD&C Act (the final rule) (21 U.S.C. 353a). The final rule, entitled ''List of Bulk Drug Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act,'' is codified at 21 CFR 216.23 and became effective March 21, 2019.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and, because we do not have enough information about the effect of the final rule on small entities, determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115). The SECG represents the current thinking of FDA on the final rule. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Electronic Access

Persons with access to the internet may obtain the SECG at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: May 21, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–10953 Filed 5–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0357]

Special Local Regulations; Marine Events Within the Captain of the Port Zone Columbia River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations at eight locations in the Sector Columbia River Captain of the Port zone during the dates and times noted in this document. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with special marine events. These regulations prohibit persons and vessels from entry into, transit through, mooring, anchoring, or loitering within the regulated area unless authorized by the Captain of the Port, Sector Columbia River or their designated representative.

DATES: The regulations in 33 CFR 100.1302 will be enforced for the eight regulated areas identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified in this document.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations established in 33 CFR 100.1302 for the following eight events during the hours specified on the dates and at the locations listed in the following Table:

TABLE—DATES AND TIMES OF ENFORCEMENT OF 33 CFR 100.1302 SPECIAL LOCAL REGULATIONS AT VARIOUS LOCATIONS IN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE IN 2019

No.	Date	Event	Sponsor	Location
1	May 31, 2019, 9 a.m. to 5 p.m.	Spring Testing Hydroplane races.	Tri-Cities Water Follies Association.	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
2	June 8, 2019–June 9, 2019, 7 a.m. to 4 p.m.	Rose Fest Dragon Boat Races.	Portland-Kaohsiung Sister Association.	Portland, OR. Regulated area includes all waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge.
3	June 28, 2019–June 30, 2019, 8 a.m. to 7 p.m.	Richland Regatta Hydroplane races.	Northwest Power Boat Association.	Richland, WA. Regulated area includes all navigable waters of the Columbia River in the vicinity of Howard Amon Park, between River Miles 337 and 338.
4	July 13, 2019, 11 a.m. to 7 p.m.	The Big Float, group inner-tube float.	Human Access Project.	Portland, OR. Regulated area includes all navigable waters of the Willamette River, in Portland, Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N; 122°40′21″ W, and running south to the Marquam Bridge at approximate location 45°30′27″ N; 122°40′11″ W.
5	July 26, 2019–July 28, 2019, 6 a.m. to 6 p.m.	Kennewick Hydroplane Races.	Tri-Cities Water Follies Association.	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
6	August 10, 2019, 11 a.m. to 1 p.m.	Swim the Snake	Blue Mountain Resource Conservation and Development.	Perry, WA. Regulated area includes all navigable waters, bank-to-bank of the Snake River, 500 yards upstream and 500 yards downstream from the Washington State Highway 261 Bridge at the approximate position of 46°35′23″ N; 118°13′10″ W.
7	September 7, 2019, 9 a.m. to 10:30 a.m.	Columbia Crossing Swim.	3 Rivers Road Runners.	Pasco, WA. Regulated area includes all navigable waters, bank-to-bank of the Columbia River in Pasco, Washington, between river mile 332 and river mile 335.
8	September 7, 2019– September 8, 2019, 8 a.m. to 6 p.m.	Portland Dragon Boat Races.	DragonSports USA.	Portland, OR. Regulated area includes the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR: Line one starting at 45–30′49″ N/122–40′24″ W then heading east to 45–30′49″ N/122–40′22″ W then heading south to 45–30′29″ N/122–40′08″ W then heading west to 45–30′26″ N/122–40′14″ W then heading north ending at 45–30′49″N/122–40′24″ W.

All coordinates are listed in reference Datum NAD 1983.

The special requirements listed in 33 CFR 100.1302 apply to the activation and enforcement of these special local regulations. All vessel operators who desire to enter the designated zone must obtain permission from the Captain of the Port or their Designated Representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: May 20, 2019.

J.C. Smith,

Captain, U.S. Coast Guard, Captain of the Port Columbia River.

[FR Doc. 2019–10890 Filed 5–23–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0288]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce certain safety zones located in federal regulations for Annual Events in the Captain of the Port Buffalo. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after these events. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR 165.939(b)(1), as listed in Table 165.939, will be enforced from 6:15 a.m. through 10:45 a.m. on July 21, 2019.

The regulations in 33 CFR 165.939(b)(4), as listed in Table 165.939, will be enforced from 9:15 p.m. through 10:15 p.m. on July 4, 2019.

The regulations in 33 CFR 165.939(b)(6), as listed in Table 165.939, will be enforced from 8:45 p.m. through 11:45 p.m. on July 27, 2019.

The regulations in 33 CFR 165.939(b)(12), as listed in Table 165.939, will be enforced from 6:45 a.m. through 10:45 a.m. on July 13, 2019.

The regulations in 33 CFR 165.939(d)(2), as listed in Table 165.939, will be enforced daily from 9 a.m. through 6 p.m. August 30, 2019 through September 2, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Ryan Junod, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone (216) 937–0124, email *ryan.s.junod@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Events in the Captain of the Port

Buffalo Zone listed in 33 CFR 165.939 for the following events:

(1) *Cleveland Triathlon, Cleveland, OH;* The safety zone listed in Table 165.939 as (b)(1) will be enforced from 6:15 a.m. through 10:45 a.m. on July 21, 2019.

(2) *Downtown Cleveland Alliance July 4th Fireworks, Cleveland, OH;* The safety zone listed in Table 165.939 as (b)(4) will be enforced from 9:15 p.m. through 10:15 p.m. on July 4, 2019.

(3) *Parade of Lights, Cleveland, OH;* The safety zone listed in Table 165.939 as (b)(6) will be enforced from 8:45 p.m. through 11:45 p.m. on July 27, 2019.

(4) *Open Water Swim;* The safety zone listed in Table 165.939 as (b)(12) will be enforced from 6:45 a.m. through 10:45 a.m. on July 13, 2019.

(5) *Cleveland National Air Show, Cleveland, OH;* The safety zone listed in Table 165.939 as (d)(2) will be enforced daily from 9 a.m. through 6 p.m. August 30, 2019 through September 2, 2019.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: May 20, 2019.

Joseph S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2019–10887 Filed 5–23–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0398]

RIN 1625–AA00

Safety Zone; Prom Fireworks Display; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay near Pier 15 in support of the Pier 15 Prom Fireworks Display on May 25, 2019. This safety zone is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or a designated representative.

DATES: This rule is effective from noon to 10:50 p.m. on May 25, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0398 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Emily Rowan, Waterways Management, U.S. Coast Guard; telephone (415) 399–7443, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
TFR Temporary Final Rule
§ Section
COTP Captain of the Port
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Because the Coast Guard received notice of this event on May 20, 2019, notice and comment procedures would be impracticable in this instance.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For similar reasons as stated above, notice and comment procedures would be impractical in this instance due to the short notice provided for this event.

III. Legal Authority and Need for Rule

The Coast Guard is establishing a safety zone under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the Pier 15 Prom Fireworks Display on May 25, 2019, will be a safety concern for anyone within a 100-foot radius of the fireworks barge and anyone within a 280-foot radius of the fireworks firing site. For this reason, a safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks barge during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 12:00 p.m. until 10:50 p.m. on May 25, 2019 during the loading, staging, and transit of the fireworks barge, and the fireworks display, until approximately 30 minutes after completion of the fireworks display. During the loading and staging of the pyrotechnics onto the fireworks barge, scheduled to take place from noon to 4:00 p.m. on May 25, 2019, at Pier 50 in San Francisco, CA, the safety zone will encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a radius of 100 feet. This 100-foot zone will remain in place while the barge is at the pier and while it is being towed to the display location.

The fireworks barge will remain at Pier 50 until the start of its transit to the display location. Towing of the barge from Pier 50 to the display location is scheduled to take place from 9:15 p.m. to 9:40 p.m. on May 25, 2019, where it will remain until the conclusion of the fireworks display.

At 9:45 p.m. on May 25, 2019, 30 minutes prior to the commencement of the 5-minute Pier 15 Prom Fireworks

Display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge, from surface to bottom, within a radius of 280 feet from the circle center at approximate position 37°48′08″ N, 122°23′46″ W (NAD 83). The safety zone shall terminate at 10:50 p.m. on May 25, 2019.

The effect of the safety zone is to restrict navigation in the vicinity of the fireworks loading, staging, transit, and firing site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing site to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Notice to Mariners to ensure the safety zone will result in minimum impact. Vessels will be able to transit the area near the safety zone and the entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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 rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway, (ii) this rule will only be in place for a short period of time, and (iii) the maritime public will be advised in advance of this safety zone via Notice to Mariners.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. It is categorically excluded from further review under Categorical Exclusion L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing

Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T11–974 to read as follows:

§ 165.T11–974 Safety Zone; Pier 15 Prom Fireworks Display, San Francisco Bay, San Francisco, CA.

(a) *Location.* The following area is a safety zone: From noon on May 25, 2019 until 9:45 p.m. on May 25, 2019, the safety zone will encompass all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading and staging at Pier 50 in San Francisco, as well as transit and arrival to the fireworks display site. At 9:45 p.m., the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connecting all points 280 feet out from the fireworks barge in approximate position 37°48′10″ N, 122°23′43″ W (NAD 83). The safety zone will remain in place until 10:50 p.m.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zones on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from noon on May 25, 2019 until 10:50 p.m. on May 25, 2019. The Captain of the Port San Francisco will notify the maritime community of periods during which this zone will be enforced via Notice to Mariners in accordance with § 165.7.

Dated: May 22, 2019.

Marie B. Byrd,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2019–11045 Filed 5–22–19; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP37

Removing Net Worth Requirement From Health Care Enrollment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is removing the regulatory provisions regarding the veteran's net worth as a factor in determining the veteran's eligibility for VA health care. Prior to January 1, 2015, VA considered a veteran's net worth and annual income when determining a veteran's assignment to an enrollment priority group for VA health care. Reporting net worth information imposed a significant burden on veterans and VA dedicated substantial administrative resources to verify the reported information. VA changed its policy regarding net worth reporting in order to improve access to VA health care to lower-income veterans and to remove the reporting burden from veterans by discontinuing collection of net worth information. As VA no longer considers net worth in making eligibility determinations, this final rule amends the regulation to remove reference to VA's discretionary statutory authority to consider a veteran's net worth as a factor in determining eligibility for VA health care. Because of the net worth reporting requirement, certain veterans who would have been eligible to receive VA health care based on their annual income were ineligible for such care, or they were placed in a lower priority category, because their net worth was too high.

DATES: *The final rule is effective* June 24, 2019.

FOR FURTHER INFORMATION CONTACT: Ralph Weishaar, Director, Program Administration, Member Services, (10NF), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on October 20, 2015 (80 FR 63480), VA proposed to amend its regulations that govern enrollment in the VA health care system by removing the regulatory provision that restates VA's discretionary authority to consider the veteran's net worth when determining eligibility for lower-cost health care. VA provided a 60-day comment period, which ended on December 21, 2015. We received thirteen (13) comments on the proposed rule. Pursuant to 38 U.S.C. 1705, VA established a health care enrollment system with implementing regulations at 38 CFR 17.36. When veterans apply for VA health care benefits, VA assigns a priority category that reflects the basis for that veteran's eligibility, such as whether the veteran was rated as having a service-connected disability or would be unable to defray the costs of necessary expenses because of low income. Veterans are placed in the highest priority category they are eligible for based on the criteria described in § 17.36(b). Veterans who do not meet the requirements of priority categories 1 through 4, and are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a) are placed in priority category 5. See 38 CFR 17.36(b)(5). This rulemaking affects a regulatory provision related to priority category 5.

Veterans are considered unable to defray the costs of necessary care if they have a low annual income, qualify for VA pension benefits, or otherwise meet the criteria set forth in 38 U.S.C. 1722(a) and 38 CFR 17.47(d). VA has the authority to use a veteran's net worth to determine whether the veteran is unable to defray the cost of health care at 38 U.S.C. 1722(d)(1), but this authority is discretionary.

In 2013, VA informed the public of its intent to discontinue annual income and asset information reporting by veterans. See 78 FR 64065 (Oct. 25, 2013) and 78 FR 79564 (Dec. 30, 2013). VA did not receive any adverse response to those notices. With this in mind, VA has determined that it is appropriate to cease consideration of the veteran's net worth in determining whether they are able to defray the expenses of necessary health care and qualify for inclusion in priority category 5 effective January 1, 2015.

By eliminating consideration of the veteran's net worth for purposes of health care enrollment, more veterans have qualified for VA health care in a higher priority category, which has improved access and affordability of VA health care for many lower-income veterans. This change reduced administrative burdens for veterans and VA. By eliminating the requirement to have veterans report net worth information VA will be able to use established practices with the Internal Revenue Service and Social Security Administration to verify veterans' reported annual income far more efficiently. Since this process can be done without requiring a collection of information with the Veteran, this policy has eliminated the significant burden on veterans to report their net worth, and it also eliminated the need for VA to use resources to verify that information.

For these reasons, we are removing § 17.47(d)(5) in its entirety and renumbering current § 17.47(d)(6) as § 17.47(d)(5). Current paragraph (d)(5) restates VA's discretionary statutory authority to use the veteran's net worth to determine whether he is able to defray the costs of health care. By removing the regulatory restatement of VA's discretionary statutory authority to consider a veteran's net worth, VA removed language in the regulation that will be perceived as inconsistent with the policy change. The amendments in this rulemaking are consistent with current VA policy and help ensure our regulations are not interpreted more narrowly than VA intends.

Nine (9) commenters agreed with the change in rulemaking. One commenter stated that ''all vets deserve the care they rightly earned. Net worth has nothing to do with it.'' Two (2) of these commenters ''agree[d] with the decision to remove the net worth requirement for veterans seeking health care through the VA'' and ''believe[d] removing the wording that gives VA discretionary authority and replacing it with wording that leaves out financial status discrimination against Veterans is a good idea.'' Additionally, two (2) other of these commenters remarked ''the role of this rule is to more properly and efficiently administer the health care of veterans'' and that the rule ''is fair, cost-effective, and supports VA's main mission of caring about Veterans.'' We thank the commenters for supporting the rule and make no edits based on these comments.

Four (4) others disagreed or appeared to misunderstand the proposal. The comments ranged from requesting that VA ''not take away the insurance promised to our veterans'' to ''they served their time/retired & went on to a higher paying career, does not mean they don't deserve equal benefits.'' Two (2) commenters expressed concerns regarding the costs VA would incur implementing this rulemaking. Shifting veterans previously classified in categories 7 and 8 to category 5 does not increase the cost of care. Veterans shifting from categories 7 and 8 to category 5 merely collapses the categories administratively for more effective management and tracking. This shift merely reclassifies the veterans. We recognize that it is reasonable to expect an uptick in expenditures when collapsing categories in this manner, especially when more veterans will occupy the same category. However, VA expects that it will see a decrease in collections of $55,873,000 from 2015–2019 for categories 7 and 8. The authority to consider net worth in making these determinations is discretionary. In weighing all factors, including the economic impact of this change, VA has decided this amendment is best for VA and veterans. Therefore, VA makes no changes based on this comment. Some questioned why VA requested the income and net worth of veterans. These responses may have come from a misunderstanding of the intent of the rule. The intent of the rule is to eliminate the net worth reporting burden for veterans who seek VA health care. VA makes no edits based on these comments. Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule and in this final rule, VA is adopting the proposed rule with no changes.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

Although, this final rule contains provisions constituting a collection of information, at 38 CFR 17.47, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), no new or revised collections of information are associated with this final rule. The information collection requirements for 38 CFR 17.47(d)(5) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0091. On November 24, 2014 and prior to publication of the proposed rule associated with this final regulation, VA revised the Information Collection Request (ICR) to remove the net worth information collection from VA form 10–10EZ, in accordance with the Paperwork Reduction Act of 1995.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866, 13563, and 13771

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

promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that the action is a significant regulatory action because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD. This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, 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. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on May 20, 2019, for publication.

Dated: May 21, 2019.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

§ 17.47 [Amended]

■ 2. Amend § 17.47 by removing paragraph (d)(5) and the authority citation immediately following paragraph (d)(5) and re-designating paragraph (d)(6) as new paragraph (d)(5).

[FR Doc. 2019–10869 Filed 5–23–19; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0384; FRL–9994–12–Region 5]

Air Plan Approval; Ohio; Revisions to Particulate Matter Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving assorted revisions to Ohio's particulate matter rules that the state requested EPA approve into the Ohio State Implementation Plan (SIP) under the Clean Air Act. One set of revisions addresses sources subject to a requirement for continuous opacity monitoring for which such monitoring is unreliable. The revisions add two alternatives: One alternative requires the source to conduct continuous emission monitoring, and the other alternative subjects the source to an alternative monitoring plan assessing compliance with limits specified for alternative parameters. Other revisions in the rules remove provisions for facilities that have shut down and make nonsubstantive revisions to the language of the rules.

DATES: This final rule is effective on June 24, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0384. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John

Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Proposed Action
II. What action is EPA taking?
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Proposed Action

On June 1, 2018, amended on August 9, 2018, the Ohio Environmental Protection Agency (Ohio) requested SIP approval of a variety of amendments to its regulations in Ohio Administrative Code (OAC) Chapter 3745–17, entitled ''Particulate Matter Standards.'' The most significant revisions in Ohio's rules address requirements for power plants to conduct continuous opacity monitoring, and provide two alternatives in cases where continuous opacity monitors are determined not to provide a reliable assessment of particulate matter control. One of these alternatives is to conduct continuous monitoring of the mass of emitted particulate matter, in which case the measured mass must meet limits specified in the rule. The other alternative is to conduct monitoring of parameters shown to indicate satisfaction of applicable particulate matter control requirements, in which case the source must specify the range of values of these parameters and must achieve this range of values. The amended rules also include more administrative revisions, for example removing sources that no longer operate from the rules.

Ohio's submittal of June 1, 2018 requested action only on the second of the above alternatives, to authorize parameter monitoring in lieu of continuous opacity monitoring in appropriate cases, and not on the first alternative, involving continuous mass monitoring. However, Ohio amended its request on August 9, 2018, to request approval of both alternatives to continuous opacity monitoring.

EPA proposed to approve the requested revisions on December 11, 2018, at 83 FR 63607. The notice of proposed rulemaking (NPRM) provides a more complete discussion of the revisions that Ohio requested be approved and EPA's evaluation of these revisions.

Ohio excluded selected portions of OAC Rule 3745–17–03, pertaining to opacity requirements, from its request for EPA approval. These provisions were submitted on June 4, 2003, as part of a rule package intended to offer alternative opacity limits for power plants operating continuous opacity monitors. EPA proposed to disapprove these provisions on June 27, 2005, and Ohio withdrew its request for approval of these provisions on September 5, 2014. Accordingly, EPA is not taking action on these provisions.

II. What action is EPA taking?

In response to the NPRM, EPA received one comment, which was not relevant to the proposed rulemaking. EPA continues to find that the requested revisions warrant approval, for the reasons given in the notice of proposed rulemaking. Therefore, EPA is approving the requested revisions and is approving the entirety of all of these rules except for OAC 3745–17–03, for which Ohio excluded specified sections from its request for action. Specifically, EPA is approving amended OAC rules 3745–17–01, 3745–17–03 [except for paragraph (B)(1)(b) and the phrase ''Except as provided in paragraph (8)(1)(b) of this rule,'' in paragraph (B)(1)(a)], 3745–17–04, 37 45–17–07, 3745–17–08, 3745–17–09, 3745–17–10, 3745–17–11, 3745–17–12, 3745–17–13, and 3745–17–14. In addition, EPA is removing from the SIP the rule at OAC 3745–17–02, which Ohio has rescinded and the substance of which has been recodified (and approved into the SIP) within OAC 3745–25–02.

III. 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 Ohio particulate matter rules described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 14, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (c) is amended by revising the section entitled ''Chapter 3745–17 Particulate Matter Standards'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/Subject	Ohio effective date	EPA approval date	Notes
*	*	*	*	*
	Chapter 3745–17 Particulate Matter Standards			
3745–17–01	Definitions	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–03	Measurement Methods and Procedures.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	Except for paragraph (B)(1)(b) and the phrase in paragraph (B)(1)(a) reading ''Except as provided in paragraph (B)(1)(b) of this rule''.
3745–17–04	Compliance Time Schedules	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–07	Control of Visible Particulate Emissions from Stationary Sources.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–08	Restriction of Emission of Fugitive Dust.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–09	Restrictions on Particulate Emissions and Odors from Incinerators.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–10	Restrictions on Particulate Emissions from Fuel-burning Equipment.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–11	Restrictions on Particulate Emissions from Industrial Processes.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–12	Additional Restrictions on Particulate Emissions from Specific Air Contaminant Sources in Cuyahoga County.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	.
3745–17–13	Additional Restrictions on Particulate Emissions from Specific Air Contaminant Sources in Jefferson County.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
3745–17–14	Contingency Plan Requirements for Cuyahoga and Jefferson Counties.	1/20/2018	5/24/2019, [insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–10820 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R08–OAR–2018–0235; FRL–9993–66–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Missoula PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Limited Maintenance Plan (LMP), submitted by the State of Montana to the EPA on August 3, 2016, for the Missoula moderate particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) nonattainment area (Missoula NAA) and concurrently redesignating the Missoula NAA to attainment of the 24-hour PM_{10} National Ambient Air Quality Standard (NAAQS). In order to approve the LMP and redesignation, the EPA is determining that the Missoula NAA has attained the 1987 24-hour PM_{10} NAAQS of 150 μg/m³. This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2015–2017. The EPA is also approving the Missoula LMP as meeting the appropriate transportation conformity requirements. Lastly, the EPA is approving certain rule revisions the Missoula City-County Air Pollution Control Program submitted on August 3, 2016, and August 22, 2018.

DATES: Effective June 24, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R08–OAR–2018–0235. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through , or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: James Hou, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6210, *hou.james@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The Missoula NAA encompasses the City of Missoula and was designated nonattainment for the 1987 24-hour PM_{10} NAAQS and classified as moderate under section 107(d)(4)(B), following enactment of the Clean Air Act (CAA) Amendments of 1990. *See* 56 FR 56694 (November 6, 1991). On August 30, 1995, the EPA fully approved the Missoula NAA PM_{10} plan including reasonably available control measures (RACM), an attainment demonstration, emissions inventory, quantitative milestones, and control and contingency requirements.

The factual and legal background for this action is discussed in detail in our March 5, 2019 (84 FR 7846) proposed approval of certain rule revisions to the Missoula City-County Air Pollution Control Program, the Missoula Limited Maintenance Plan, the Missoula LMP as meeting the appropriate transportation conformity requirements, and concurrent redesignation of the Missoula NAA to attainment of the NAAQS for PM_{10}.

II. Response to Comments

The public comment period on the EPA's proposed rule opened on March 5, 2019, the date of its publicaction in the **Federal Register**, (84 FR 7846), and closed on April 4, 2019. During this time, the EPA received no comments.

III. Final Action

The EPA is making the determination that the Missoula NAA has attained the 1987 24-hour PM_{10} NAAQS of 150 μg/m³. This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2015–2017. Additionally, the EPA is approving the Missoula NAA LMP submitted on August 3, 2016, as meeting the applicable CAA requirements, and we have determined the LMP to be sufficient to provide for maintenance of the PM_{10} NAAQS over the course of the 10-year maintenance period out to 2029. The EPA is also approving the Missoula LMP as meeting the appropriate transportation conformity requirements found in 40 CFR 93, subpart A. The EPA is approving most of the revisions submitted on August 3, 2016 and August 22, 2018 (Chapter 4 revisions). Specifically, the EPA is approving revisions to the eight chapters on Definitions, Failure to Attain Standards, Emergency Episode Avoidance Plan, Industrial Sources, Fugitive Particulate, Solid Fuel Burning Devices, Administrative Procedures, and Penalties. As identified in Section IV of the March 5, 2019 proposed approval, the EPA is not acting on Chapter 9, rule 9.204 in the August 3, 2016 submittal or the IBR revisions in the August 22, 2018 submittal. Lastly, this rule redesignates the Missoula NAA from nonattainment to attainment of the PM_{10} NAAQS. A list of the revisions to the Missoula City-County Air Pollution Control Program that the EPA is approving is outlined in Table 1 below.

TABLE 1—LIST OF MONTANA REVISIONS THAT EPA IS APPROVING

Revised sections in August 3, 2016 and August 22, 2018 submissions that EPA is approving
August 3, 2016 submittal—Missoula City-County Air Pollution Control Program:
2.101, 3.102, 4.102, 4.103, 4.104, 4.112, 4.113, 6.101, 6.102, 6.106, 6.107, 6.108, 6.501, 6.502, 6.504, 6.601, 6.605, 7.101, 7.106, 7.107, 7.110, 8.101, 8.102, 8.104, 8.202, 8.203, 8.204, 8.205, 9.101, 9.102, 9.103, 9.104, 9.201, 9.202, 9.203, 9.205, 9.206, 9.207, 9.208, 9.209, 9.210, 9.211, 9.301, 9.302, 9.401, 9.402, 9.501, 9.601, 14.106, 14.107, 15.104.
August 22, 2018 submittal—Missoula City-County Air Pollution Control Program:
4.103, 4.104, 4.112.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan (SIP), have been incorporated by reference by the 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Orders Review

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Dated: May 18, 2019.

Debra Thomas,

Acting Regional Administrator, EPA Region 8.

40 CFR parts 52 and 81 are 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 BB—Montana

■ 2. In § 52.1370:

■ a. In the table in paragraph (c), under (c)(2)(iv) (''Missoula County''), is amended by:

■ i. Revising the table entries for ''2.101,'' ''3.102,'' ''4.102,'' ''4.103,'' ''4.104,'' ''6.101,'' ''6.102,'' ''6.103,'' ''6.106,'' ''6.107,'' ''6.108,'' ''6.501,'' ''6.502,'' ''6.504,'' ''6.601,'' ''7.101,'' ''7.106,'' ''7.107,'' ''7.110,'' ''8.101,'' ''8.102,'' ''8.104,'' ''8.202,'' ''8.203,'' ''8.204,'' ''8.205,'' ''9.101,'' ''9.102,'' ''9.103,'' and ''9.104,'' ''14.106,'' ''14.107,'' and ''15.104;''

■ ii. Removing the table entries for ''4.112,'' ''9.105,'' ''9.106,'' ''9.107,'' ''9.108,'' ''9.109,'' ''9.110,'' ''9.111,'' ''9.112,'' ''9.113,'' ''9.114,'' ''9.115,'' ''9.116,'' ''9.117,'' ''9.118,'' and ''9.119;''

■ iii. Adding in numerical order the table entries for ''4.113,'' ''9.201,'' 9.202,'' 9.203,'' ''9.205,'' ''9.206,'' ''9.207,'' ''9.208,'' ''9.209,'' ''9.210,'' ''9.211,'' ''9.301,'' ''9.302,'' ''9.401,'' ''9.402,'' ''9.501,'' and ''9.601''; and

■ b. In the table in paragraph (e) under (e)(6) (''Missoula County''), by adding in alphabetical order an entry for ''Missoula 1987 PM_{10} Limited Maintenance Plan''.

The revisions and additions read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
*	*	*	*	*	*
(2) County Specific					
*	*	*	*	*	*
(iv) Missoula County					
*	*	*	*	*	*
2.101	Definitions	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
3.102	Particulate Matter Contingency Measures.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
4.102	Applicability	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
4.103	General provisions	5/14/2010, 4/06/2018.	5/24/2019	[Insert **Federal Register** citation]	
4.104	Air Pollution Control Stages	5/14/2010, 4/06/2018.	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
4.113	Contingency Measure	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
6.101	Definitions	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
6.102	Air Quality Permit Required	5/14/2010, 3/21/2014.	5/24/2019	[Insert **Federal Register** citation]	
6.103	General Conditions	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
6.106	Public Review of Air Quality Permit Application.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
6.107	Issuance or Denial of an Air Quality Permit.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
6.108	Revocation or Modification of an Air Quality Permit.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
6.501	Emission Control Requirements	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
6.502	Particulate Matter from Fuel Burning Equipment.	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
6.504	Visible Air Pollutants	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
6.601	Minimum Standards	5/14/2010, 3/21/2014.	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
7.101	Definitions	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
7.106	Minor Outdoor Burning Source Requirements.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
7.107	Major Outdoor Burning Source Requirements.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
*	* *	*		* *	*
7.110	Conditional Outdoor Burning Permits	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	* *	*		* *	*
8.101	Definitions	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
8.102	General Requirements	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	* *	*		* *	*
8.104	Construction and Mining Sites	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	* *	*		* *	*
8.202	New Roads in the Air Stagnation Zone.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
8.203	New Parking Areas in the Air Stagnation Zone.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
8.204	New Driveways in the Air Stagnation Zone.	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
8.205	Unpaved Access Roads	3/21/2014	5/24/2019	[Insert **Federal Register**citation]	
*	* *	*		* *	*
9.101	Intent	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.102	Definitions	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.103	Fuels	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.104	Non-Alert Visible Emission Standards	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.201	Swan River Watershed Exempt from Subchapter 2 Rules.	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.202	Permits Required for Solid Fuel Burning Devices.	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.203	Installation permits Inside the Air Stagnation Zone.	5/14/2010, 3/21/2014.	5/24/2019	[Insert **Federal Register** citation]	
9.205	Alert Permits	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.206	Sole Source Permits	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.207	Special Need Permits	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.208	Temporary Sole Source Permit	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.209	Permit Applications	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.210	Revocation or Modification of Permit	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.211	Transfer of Permit	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.301	Applicability	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.302	Prohibition of Visible Emissions during Air Pollution Alerts and Warnings.	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.401	Emissions Certification	5/14/2010, 3/21/2014.	5/24/2019	[Insert **Federal Register** citation]	
9.402	Sale of New Solid Fuel Burning Devices.	5/14/2010, 3/21/2014.	5/24/2019	[Insert **Federal Register** citation]	
9.501	Removal of Solid Fuel Burning Devices upon Sale of the Property.	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	
9.601	Contingency Measures listed below in this subchapter go into affect if the non-attainment area fails to attain the NAAQS or to make reasonable progress in reducing emissions (see Chapter 3).	5/14/2010	5/24/2019	[Insert **Federal Register** citation]	

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
*	*	*	*	*	*
14.106	Administrative Review	5/14/2010, 3/21/2014.	5/24/2019	[Insert **Federal Register** citation]	
14.107	Control Board Hearings	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*
15.104	Solid Fuel Burning Device Penalties	3/21/2014	5/24/2019	[Insert **Federal Register** citation]	
*	*	*	*	*	*

* * * * * (e) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
*	*	*	*
(6) Missoula County			
*	*	*	*
Missoula 1987 PM–10 Limited Maintenance Plan		6/24/19	[Insert **Federal Register** citation].
*	*	*	*

■ 3. Section 52.1374 is amended by adding paragraph (d) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(d) On August 3, 2016, the State of Montana submitted a maintenance plan for the Missoula PM_{10} nonattaiment area and requested that this area be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and maintenance plan satisfy all applicable requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.327 the table entitled ''Montana—PM–10'' is amended by revising the entry for ''Missoula County, Missoula and vicinity including the following sections:'' to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
*	*	*	*	*
Missoula County, Missoula and vicinity including the following sections:	6/24/2019	Attainment.		
*	*	*	*	*

* * * * *

[FR Doc. 2019–10797 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Oxathiapiprolin; Pesticide Tolerances

CFR Correction

■ In Title 40 of the Code of Federal Regulations, Parts 150 to 189, revised as of July 1, 2018, on page 727, in § 180.685, an entry for ''Vegetable, *Brassica* head and stem, group 5–16, 1.5 ppm'' is added alphabetically to the table in paragraph (a).

[FR Doc. 2019–11000 Filed 5–23–19; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0572; FRL–9992–69]

Fluensulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes and amends tolerances for residues of fluensulfone in or on multiple commodities which are identified and discussed later in this document. Makhteshim Agan of North America (d/b/a ADAMA) requested these tolerances and tolerance amendments under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 24, 2019. Objections and requests for hearings must be received on or before July 23, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0572, 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.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0572 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 23, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0572, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 27, 2018 (83 FR 8408) (FRL–9972–17), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8614) by Makhteshim Agan of North America d/b/a ADAMA, 3120 Highlands Blvd., Suite 100, Raleigh, NC 27604. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the nematicide, fluensulfone, including its metabolites and degradates, in or on the following commodities: Citrus dried pulp at 0.4 parts per million (ppm); Crop Group 10–10, citrus fruit at 0.15 ppm; peanut at 0.15 ppm; peanut, hay at 8.0 ppm; and peanut, meal at 0.30 ppm. That document referenced a summary of the petition prepared by Makhteshim Agan of North America, the registrant, which is available in docket ID number EPA–HQ–OPP–2017–0572 at *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

In the **Federal Register** of May 18, 2018 (83 FR 23247) (FRL–9976–87), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8650) by Makhteshim Agan of North America, d/b/a ADAMA, 3120 Highlands Blvd., Suite 100, Raleigh, NC 27604. The petition requested to amend the tolerances in 40 CFR 180.680 for residues of the nematicide, fluensulfone and its metabolite BSA expressed as fluensulfone equivalents, in or on Berry, low growing, subgroup 13–07G at 0.5 parts per million (ppm); *Brassica,* head and stem, subgroup 5A at 1.5 ppm; *Brassica,* leafy greens, subgroup 5B at 20 ppm; Potato, chips at 2 ppm; Potato, granules/flakes at 2 ppm; Tomato, paste at 1.5 ppm; Vegetables, cucurbits, group 9 at 0.7 ppm; Vegetables, fruiting, group 8–10 at 0.7 ppm; Vegetables, leafy, except *Brassica,* group 4 at 4 ppm; Vegetables, leaves of root and tuber, group 2, except sugar beet at 50 ppm;

Vegetables, root, except sugar beet, subgroup 1B at 4 ppm; and Vegetables, tuberous and corm, subgroup 1C at 0.8 ppm. That document referenced a summary of the petition prepared by Makhteshim Agan of North America, the registrant, which is available in docket ID number EPA–HQ–OPP–2018–0030 at *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

In the **Federal Register** of March 18, 2019 (84 FR 9737) (FRL–9989–71), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8650) by Makhteshim Agan of North America, d/b/a ADAMA, 3120 Highlands Blvd., Suite 100, Raleigh, NC 27604. The petition requested to: (1) Amend the tolerance expression in 40 CFR 180.680 paragraphs (a) and (d) to read ''Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of fluensulfone, 5-chloro-2-[(3,4,4-trifluoro-3-buten-1-yl)sulfonyl]thiazole and its metabolite, 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, calculated as the stoichiometric equivalent of fluensulfone, in or on the commodity''; and (2) amend the tolerances in 40 CFR 180.680 for residues of the nematicide, fluensulfone and its metabolite BSA expressed as fluensulfone equivalents, on the raw agricultural commodities as follows: Almond hulls at 5 parts per million (ppm); Fruit, pome, group 11 at 0.4 ppm; Fruit, small vine climbing subgroup 13–07D at 0.8 ppm; Fruit, stone, group 12 at 0.1 ppm; Grain cereal, forage, fodder and straw, group 16 at 3 ppm; and, rotated wheat (inadvertent residues with 90-day PBI): Grain, cereal, group 15 at 0.05 ppm; Molasses at 0.3 ppm; and, rotated cereal grains (inadvertent residues with 10-month PBI): Nut, tree, group 14 at 0.04 ppm; Sugarcane at 0.05 ppm and Wheat grain (includes triticale) (Barley grain; Buckwheat grain; Oat grain; and Teosinte grain) at 0.1 ppm; Wheat bran (Barley bran) at 0.14 ppm; Wheat forage (Oat forage) at 6 ppm; Wheat germ at 0.10 ppm; Wheat hay (Barley hay and Oat hay) at *15* ppm; Wheat middlings at 0.10 ppm; Wheat shorts at 0.11 ppm; and, Wheat straw (Barley straw and Oat straw) at 6 ppm. That document referenced a summary of the petition prepared by Makhteshim Agan of North America, the registrant, which is available in docket ID number EPA–HQ–OPP–2018–0793 at *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petitions, EPA has modified the levels at which tolerances are being established as well as which commodities will have tolerances. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluensulfone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluensulfone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A summary of the toxicological effects of fluensulfone are discussed in the final rule published in the **Federal Register** of April 13, 2018 (83 FR 15971) (FRL–9975–76).

Specific information on the studies received and the nature of the adverse effects caused by fluensulfone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Fluensulfone—Aggregate Human Health Risk Assessment in Support of Section 3 Registration of New Uses on Citrus and Peanut, and Change in the Tolerance Expression*'' on pages 39–49 in docket ID number EPA–HQ–OPP–2017–0572.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for fluensulfone used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 1, 2016 (81 FR 34898) (FRL–9946–07).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluensulfone, EPA considered exposure under the petitioned-for tolerances as well as all

existing fluensulfone tolerances in 40 CFR 180.680. EPA assessed dietary exposures from fluensulfone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for fluensulfone. In estimating acute dietary exposure, EPA used 2003–2008 food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, the acute dietary risk assessment assumed tolerance-equivalent residues and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used 2003–2008 food consumption information from the USDA's NHANES/WWEIA. As to residue levels in food, the chronic dietary risk assessment assumed tolerance-equivalent residues and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to fluensulfone. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., chronic exposure.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for fluensulfone. Tolerance-equivalent residue levels and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for fluensulfone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluensulfone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) for acute exposures are estimated to be 11.8 parts per billion (ppb) for surface water and 77.6 ppb for ground water and for chronic exposures are estimated to be 0.173 ppb for surface water and 52.5 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 77.6 ppb was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the water concentration of value 52.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluensulfone is currently registered for the following uses that could result in residential exposures: Golf courses and residential lawns. EPA assessed residential exposure using the following assumptions: No residential handler exposure for fluensulfone is expected because the products are not intended for homeowner use. The product label requires that handlers wear specific clothing (*e.g.,* long sleeve shirt/long pants) and/or personal protective equipment (PPE). The Agency has made the assumption that the product is not for homeowner use and is intended for use by professional applicators. As a result, a residential handler assessment has not been conducted.

For adult residential post-application exposure, the Agency evaluated dermal post-application exposure only to outdoor turf/lawn applications (high contact activities). The Agency also evaluated residential post-application exposure for children via dermal and hand-to-mouth routes of exposure, resulting from treated outdoor turf/lawn applications (high contact activities). Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluensulfone to share a common mechanism of toxicity with any other substances, and fluensulfone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluensulfone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No evidence of increased quantitative or qualitative susceptibility was seen in developmental toxicity studies in rats and rabbits. Fetal effects in those studies occurred in the presence of maternal toxicity and were not considered more severe than the maternal effects. However, there was evidence of increased qualitative, but not quantitative, susceptibility of pups in the 2-generation reproduction study in rats. Maternal effects observed in that study were decreased body weight; at the same dose, effects in offspring were decreased pup weights, decreased spleen weight, and increased pup loss (post-natal day 1–4). Although there is evidence of increased qualitative susceptibility in the 2-generation reproduction study in rats, there are no residual uncertainties with regard to pre- and post-natal toxicity following in utero exposure to rats or rabbits and pre- and post-natal exposures to rats. Considering the overall toxicity profile, the clear NOAEL for the pup effects observed in the 2-generation reproduction study, and that the doses selected for risk assessment are protective of all effects in the toxicity database including the offspring effects,

the degree of concern for the susceptibility is low.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for fluensulfone is complete.

ii. Evidence of potential neurotoxicity was only seen following acute exposure to fluensulfone and the current PODs chosen for risk assessment are protective of the effects observed. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no indication of quantitative susceptibility in the developmental and reproductive toxicity studies, and there are no residual uncertainties concerning pre- or post-natal toxicity. In addition, the endpoints and doses chosen for risk assessment are protective of the qualitative susceptibility observed in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-equivalent residue levels. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluensulfone in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by fluensulfone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluensulfone will occupy 9.4% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluensulfone from food and water will utilize 4.1% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluensulfone is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluensulfone is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluensulfone.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 5300 for adults and 2500 for children. Because EPA's level of concern for fluensulfone is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, fluensulfone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluensulfone.

5. *Aggregate cancer risk for U.S. population.* EPA assessed cancer risk using a non-linear approach (*i.e.,* RfD) since it adequately accounts for all chronic toxicity, including carcinogenicity, that could result from exposure to fluensulfone. As the chronic dietary endpoint and dose are protective of potential cancer effects, fluensulfone is not expected to pose an aggregate cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluensulfone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An enforcement analytical method for the BSA metabolite was previously submitted and found to be acceptable. The method extracts residues from matrices into an acetonitrile-based solvent, involves minimal cleanup, and uses high-performance liquid chromatography with tandem mass spectrometric detection (LC–MS/MS) in negative-ion mode to isolate, identify and quantify residues. For all matrices and analytes, the limit of quantitation (LOQ), defined as the lowest level of method validation (LLMV), was 0.01 ppm. With the change to the tolerance expression, an enforcement method is now needed for parent fluensulfone. A method for analysis of fluensulfone residues was previously submitted and has been found to be suitable for enforcement. The method is essentially identical to that used for BSA analysis but omits the cleanup step and uses LC–MS/MS in the positive-ion mode for isolation, identification, and quantification of residues.

The FDA multi-residue protocols are not suitable for the analysis of fluensulfone or its metabolites BSA and TSA. The Agency notes that QuEChERS multi-residue method may be suitable for the analysis of these compounds, based on extraction solvents and clean-up strategies being similar to the analytical method described above.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture

Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fluensulfone for citrus.

The Codex has established MRLs for fluensulfone in or on some of the commodities or parts of some of the crop groups that are being revised in this document. The U.S. tolerances are harmonized with the Codex MRLs to the extent possible. In several cases (below), there is disharmony between U.S. crop group tolerances and Codex MRLs for individual commodities covered by the crop group. Because EPA has data supporting the establishment of the crop groups and no data that indicate a need to establish separate individual commodities, the effect is that tolerances for some individual commodities are not harmonized with Codex MRLs.

Commodity	Tolerance (ppm) U.S.	MRL (mg/kg) Codex
Brassica, leafy green, subgroup 5B	20	1 (Group of leafy vegetables) 9 (Komatsuna).
Vegetables, cucurbits, group 9	0.70	0.3 (Melons, except watermelon).
Vegetables, leafy, except Brassica, group 4	4.0	1 (Group of leafy vegetables).
Vegetables, leaves of root and tuber, group 2, except sugar beet.	50	1 (Group of leafy vegetables) 10 (Turnip greens).
Vegetables, root, except sugar beet, subgroup 1B	4.0	3 (Root and tuber vegetables).

C. Response to Comments

One comment generally opposing the use of fluensulfone was received in response to the notice of filing for citrus and peanut uses (EPA–HQ–OPP–2017–0572). Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that these fluensulfone tolerances are safe. The commenter has provided no information supporting a contrary conclusion.

One comment was received in response to the notice of filing to amend the tolerance expression for fluensulfone to harmonize with the Codex residue definition (EPA–HQ–OPP–2018–0793). The commenter supported the federal government regulating the chemicals in pesticides and specifically wanted EPA to set higher safety standards for pesticides. As explained in the previous paragraph, EPA evaluated fluensulfone using the existing safety standard in the FFDCA and has determined that these fluensulfone tolerances are safe.

D. Revisions to Petitioned-For Tolerances

For stone fruit (Crop Group 12–12) and sugarcane, the tolerances being established by the Agency are derived using the Organization for Economic Cooperation and Development (OECD) MRL calculation procedures and based on available residue data.

The tolerance for tree nuts is based on the requested revision to the tolerance expression. As such, it is the combination of 0.01 ppm BSA and 0.01 ppm fluensulfone, resulting in the level of 0.02 ppm as opposed to the proposed 0.04 ppm.

Inadvertent tolerances in barley bran and wheat bran are being revised to 0.15 ppm (based on the OECD calculation procedure rounding classes), rather than the proposed tolerances at 0.14 ppm.

The petitioner had requested a higher tolerance for inadvertent residues on teosinte grain than the tolerance level set for crop group 15, based on the residue data used to establish the higher tolerance for wheat grain. These higher tolerances are based on residue data that indicate higher tolerances are necessary for crops for which the pesticide label permits a shorter plant-back interval (*i.e.,* wheat, barley, buckwheat, oats). For other crops, including teosinte, the pesticide label establishes a longer plant-back interval, and associated residue data indicate that such intervals result in lower residues on those crops. It is this latter set of residue data and the pesticide label instructions for plant-back intervals that support the crop group 15 tolerance as well as the Agency's conclusion that residues in teosinte will be covered by the crop group 15 tolerance. A tolerance in wheat milled byproducts is being established at 0.15 ppm (based on the OECD calculation procedure rounding classes); because a tolerance on wheat milled byproducts covers residues in both wheat shorts and wheat middlings, tolerances on those individual commodities are unnecessary.

Although the petitioner did not request a revision of the existing grape, raisin tolerance, EPA is modifying that tolerance to 1.5 ppm. As noted in 40 CFR 180.40(f)(1), EPA will not establish crop group tolerances unless necessary tolerances for processed foods are also established. In this action, the petitioner has requested an increase in the tolerance for subgroup 13–07D, which includes grape. Based on available data, EPA has determined that an amended tolerance for grape, raisin would be necessary. This tolerance is derived from the revised highest average field trial (HAFT) of 0.49 ppm from the grape field trials, using the revised residue definition (fluensulfone + BSA, in terms of fluensulfone), multiplied by the median processing factor for raisins from the processing study (2.7X), resulting in 1.32 ppm; therefore, a tolerance of 1.5 ppm in raisin is appropriate.

For citrus, EPA used processing factors of 233X for fluensulfone and <0.5X for BSA in citrus oil. Application of these processing factors and OECD MRL rounding classes indicates that residues will concentrate in dried pulp at higher levels than requested as well as in citrus oil. In accordance with 40 CFR 180.40(f)(1), EPA is establishing a tolerance for fruit, citrus, group 10–10, oil at 15 ppm. Based on the Agency's calculations, EPA is also establishing the proposed tolerance for citrus, dried pulp as a tolerance for fruit, citrus, group 10–10, dried pulp at 0.9 ppm, rather than 0.4 ppm.

Although the petitioner requested tolerances on peanut commodities, after EPA determined that the submitted field trial data were not adequate to support a tolerance the petitioner withdrew its request for those tolerances; therefore,

EPA is not establishing tolerances for residues on peanut; peanut, hay; or peanut, meal.

V. Conclusion

Therefore, tolerances are established for residues of fluensulfone, and its metabolite BSA expressed as fluensulfone equivalents, in or on fruit, citrus, group 10–10 at 0.3 ppm; fruit, citrus, group 10–10, dried pulp at 0.9 ppm; and fruit, citrus, group 10–10, oil at 15 ppm.

Additionally, existing tolerances under paragraphs (a) and (d) are revised as follows for residues of fluensulfone, and its metabolite BSA expressed as fluensulfone equivalents, as follows: *Paragraph (a):* Almond, hulls at 5 ppm; berry, low growing, subgroup 13–07G at 0.5 ppm; *Brassica,* head and stem, subgroup 5A at 1.5 ppm; *Brassica,* leafy greens, subgroup 5B at 20 ppm; fruit, pome, group 11–10 at 0.4 ppm; fruit, small, vine climbing, subgroup 13–07D at 0.8 ppm; fruit, stone, group 12–12 at 0.15 ppm; grape, raisin at 1.5 ppm; nut, tree, group 14–12 at 0.02 ppm; potato, chips at 2 ppm; potato, granules/flakes at 2 ppm; sugarcane, cane at 0.06 ppm; sugarcane, molasses at 0.3 ppm; tomato, paste at 1.5 ppm; vegetables, cucurbits, group 9 at 0.7 ppm; vegetables, fruiting, group 8–10 at 0.7 ppm; vegetables, leafy, except *Brassica,* group 4 at 4 ppm; vegetables, leaves of root and tuber, group 2, except sugar beet at 50 ppm; vegetables, root, except sugar beet, subgroup 1B at 4 ppm; and vegetables, tuberous and corm, subgroup 1C at 0.8 ppm; *Paragraph (d):* barley, bran at 0.15 ppm; barley, grain at 0.1 ppm; barley, hay at 15 ppm; barley, straw at 6 ppm; buckwheat, grain at 0.1 ppm; grain, cereal, forage, fodder and straw, group 16 at 3 ppm; grain, cereal, group 15 at 0.05 ppm; oat, forage at 6 ppm; oat, grain at 0.1 ppm; oat, hay at 15 ppm; oat, straw at 6 ppm; wheat, bran at 0.15 ppm; wheat, forage at 6 ppm; wheat, germ at 0.1 ppm; wheat, grain at 0.1 ppm; wheat, hay at 15 ppm; wheat, milled byproducts at 0.15 ppm; and wheat, straw at 6 ppm.

Lastly, the tolerance expressions for fluensulfone currently established under 40 CFR 180.680 (a) and (d) are revised to read as follows ''Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of fluensulfone, 5-chloro-2-[(3,4,4-trifluoro-3-buten-1-yl)sulfonyl]thiazole and its metabolite, 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, calculated as the stoichiometric equivalent of fluensulfone, in or on the commodity.''

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Revise § 180.680 to read as follows:

§ 180.680 Fluensulfone; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in the table 1 to § 180.680. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of fluensulfone, 5-chloro-2-[(3,4,4-trifluoro-3-buten-1-yl)sulfonyl]thiazole and its metabolite, 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, calculated as the stoichiometric equivalent of fluensulfone, in or on the commodity.

TABLE 1 TO § 180.680

Commodity	Parts per million
Almond, hulls	5
Berry, low growing, subgroup 13–07G	0.5
Brassica, head and stem, subgroup 5A	1.5
Brassica, leafy greens, subgroup 5B	20
Fruit, citrus, group 10–10	0.3
Fruit, citrus, group 10–10, dried pulp	0.9
Fruit, citrus, group 10–10, oil	15
Fruit, pome, group 11–10	0.4
Fruit, small, vine climbing, subgroup 13–07D	0.8
Fruit, stone, group 12–12	0.15
Grape, raisin	1.5
Nut, tree, group 14–12	0.02
Potato, chips	2
Potato, granules/flakes	2
Sugarcane, cane	0.06
Sugarcane, molasses	0.3
Tomato, paste	1.5
Vegetables, cucurbits, group 9	0.7
Vegetables, fruiting, group 8–10	0.7
Vegetables, leafy, except *Brassica,* group 4	4
Vegetables, leaves of root and tuber, group 2, except sugar beet	50

TABLE 1 TO § 180.680—Continued

Commodity	Parts per million
Vegetables, root, except sugar beet, subgroup 1B	4
Vegetables, tuberous and corm, subgroup 1C	0.8

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in table 2 to § 180.680. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of fluensulfone, 5-chloro-2-[(3,4,4-trifluoro-3-buten-1-yl)sulfonyl]thiazole and its metabolite, 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, calculated as the stoichiometric equivalent of fluensulfone, in or on the commodity.

TABLE 2 TO § 180.680

Commodity	Parts per million
Barley, bran	0.15
Barley, grain	0.1
Barley, hay	15
Barley, straw	6
Buckwheat, grain	0.1
Grain, cereal, forage, fodder and straw, group 16	3
Grain, cereal, group 15	0.05
Oat, forage	6
Oat, grain	0.1
Oat, hay	15
Oat, straw	6
Wheat, bran	0.15
Wheat, forage	6
Wheat, germ	0.1
Wheat, grain	0.1
Wheat, hay	15
Wheat, milled byproducts	0.15
Wheat, straw	6

[FR Doc. 2019–10793 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 84, No. 101
Friday, May 24, 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–2018–1034; Product Identifier 2018–NE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

Correction

In proposed rule document 2019–10233, appearing on pages 22738 through 22740, in the issue of Monday, May 20, 2019, make the following corrections:

■ 1. On page 22738, in the first column, in the ''**DATES**'': section, in the second line, ''July 1, 2019'' should read ''July 5, 2019''.

§ 39.13 [Corrected]

■ 2. On page 22739, in the third column, in the fifth line from the bottom, ''July 1, 2019'' should read ''July 5, 2019''.

[FR Doc. C1–2019–10233 Filed 5–23–19; 8:45 am]

BILLING CODE 1301–00–D

FEDERAL TRADE COMMISSION

16 CFR Part 314

RIN 3084–AB35

Standards for Safeguarding Customer Information

AGENCY: Federal Trade Commission.

ACTION: Extension of deadline for submission of public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing public comments on its recent Notice of Proposed Rulemaking on the Standards for Safeguarding Customer Information (''Safeguards Rule'' or ''Rule'').

DATES: Comments must be received on or before August 2, 2019.

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Safeguards Rule, 16 CFR part 314, Project No. P145407,'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Lincicum (202–326–2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Comment Period Extension

On April 4, 2019, the Commission published a Notice of Proposed Rulemaking for the Safeguards Rule (84 FR 13158), with a deadline for filing comments of June 3, 2019. On April 23, 2019, the National Automobile Dealers Association and the National Independent Automobile Dealers Association requested that the comment period be extended for 90 days, until September 1, 2019, in order to give commenters sufficient time to respond to the extensive requests for comment found in the Notice. On the same day, EDUCAUSE, which represents members of the information technology field in higher education, requested a 60-day extension, until August 2, for the same reason. On April 26, 2019, the American Financial Services Association requested a 90-day extension.

The Commission agrees that allowing additional time for filing comments on the Safeguards Rule would help facilitate the creation of a more complete record. The Commission has therefore decided to extend the comment period for 60 days, to August 2, 2019. Although some requesters asked for a 90-day extension, the proposed rule was announced and made available on the Commission website on March 5, 30 days before it was published in the **Federal Register**, and the Commission provided a 60-day period for comment rather than 30 days. Thus, the deadline of August 2, 2019, is four months after the proposed rule was published in the **Federal Register**, and five months after the proposed rule was first announced on the Commission's website. A 60-day extension provides commenters adequate time to consider the proposed rule while not unduly delaying the rulemaking process.

II. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 2, 2019. Write ''Safeguards Rule, 16 CFR part 314, Project No. 145407'' on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://www.regulations.gov* by following the instructions on the web-based form.

If you file your comment on paper, write ''Safeguards Rule, 16 CFR part 314, Project No. P145407'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone

else's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential,'' as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2), including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website, we cannot redact or remove your comment from the website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission website at *https://www.ftc.gov* to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 2, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–10910 Filed 5–23–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–027]

Standards for Business Practices and Communication Protocols for Public Utilities

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 003.2) of certain Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). The Commission proposes to use this latest version instead of WEQ Version 003.1, which was the subject of an earlier notice of proposed rulemaking. The revisions made by NAESB in this version of the standards are designed to aid public utilities with the consistent and uniform implementation of requirements promulgated by the Commission as part of the *pro forma* Open Access Transmission Tariff.

DATES: Comments are due July 23, 2019.

ADDRESSES: Comments, identified by Docket No. RM05–5–027, may be filed electronically at *http://www.ferc.gov* in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Michael P. Lee (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6548

Michael A. Chase (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6205

SUPPLEMENTARY INFORMATION:

Table of Contents

	Paragraph Nos.
I. Overview	1
II. Background	3
III. Discussion	11
A. Revisions and Modifications to Earlier Versions of Standards Made in the WEQ Version 003.2 Standards	12
B. Treatment of Requests for Redirects	14
1. Background	14
2. WEQ Standards in Versions 003.1 and 003.2	16
3. Request for Comments in WEQ Version 003.1 NOPR	17
4. Comments on Redirect Filed in Response to WEQ Version 003.1 NOPR	18
5. Discussion	27
IV. Notice of Use of Voluntary Consensus Standards	28
V. Incorporation by Reference	29
VI. Information Collection Statement	49
VII. Environmental Analysis	56
VIII. Regulatory Flexibility Act Certification	57
IX. Comment Procedures	61
X. Document Availability	65

I. Overview

1. The Commission has issued a notice of proposed rulemaking [1] regarding the Version 003.1 business practice standards (WEQ Version 003.1 Standards) adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) and has received comments on that NOPR in Docket No. RM05–5–025; however, the Commission has not taken any final action on those standards. NAESB has now adopted its Version 003.2 WEQ Business Practice Standards (WEQ Version 003.2 Standards).[2] The WEQ Version 003.2 Standards include, in their entirety, the WEQ Version 003.1 Standards, with the addition of certain revisions and corrections. The NAESB WEQ Version 003.2 Report concludes from this that, as ''WEQ Version 003.2 includes the entirety of modifications submitted to the Commission in WEQ Version 003.1, action on the previously submitted version is unnecessary should the Commission choose.'' [3] We find this suggestion has merit and, thus, in the interest of efficiency we will issue this notice of proposed rulemaking inviting comment on the revisions and corrections NAESB made in the WEQ Version 003.2 Standards and then take final action on the WEQ Version 003.2 WEQ Standards, which include the revisions made by NAESB in the WEQ Version 003.1 Standards and carried forward as part of the WEQ Version 003.2 Standards. Comments already filed on the revisions made by NAESB in the WEQ Version 003.1 Standards will be given full consideration and need not be replicated in response to this NOPR.

2. Further, as announced in the WEQ Version 003.1 NOPR, we will address separately NAESB's WEQ–023 Modeling Business Practice Standards, which concern technical issues affecting the calculation of Available Transfer Capability for wholesale electric transmission services.[4] We also have issued a separate notice of proposed rulemaking proposing to retire and remove the incorporation by reference of the WEQ–006 Time Error Correction Business Practice Standards.[5] Thus, we are not proposing any actions on those topics here.

II. Background

3. NAESB is a non-profit standards development organization established in late 2001 (as the successor to the Gas Industry Standards Board (GISB), which was established in 1994) and serves as an industry forum for the development of business practice standards and communication protocols for the wholesale and retail natural gas and electricity industry sectors. Since 1995, NAESB, and its predecessor GISB, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.[6]

4. NAESB's standards include business practices intended to standardize and streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all three quadrants of the gas and electric industries—wholesale gas, wholesale electric, and retail markets quadrant.[7] All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.

5. NAESB develops its standards under a consensus process so that the standards draw support from a wide range of industry members. NAESB's procedures are designed to ensure that all persons choosing to participate can have input into the development of a standard, regardless of whether they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the relevant industry segments. Standards that fail to gain consensus support are not adopted. NAESB's consistent practice has been to submit a report to the Commission after it has made revisions to existing business practice standards or has developed and adopted new business practice standards. NAESB's standards are voluntary standards, which become mandatory for public utilities upon incorporation by reference by the Commission.

6. On July 21, 2016, the Commission issued a notice of proposed rulemaking in Docket No. RM05–5–025 (WEQ Version 003.1 NOPR) that proposed to incorporate by reference Version 003.1 of certain Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board. In response to the WEQ Version 003.1 NOPR, comments were filed by eight commenters.[8] A number of comments expressed general support for the Commission's proposals in the WEQ Version 003.1 NOPR and no comments were received opposing the basic direction of the NOPR, although comments did make suggestions on several specific details of the NOPR proposals. The issue that elicited the most comments was on the treatment of requests for redirects.

7. On December 8, 2017, NAESB filed a reported with the Commission informing the Commission that it had adopted and published the WEQ Version 003.2 Business Practice Standards for Public Utilities. It reports that the WEQ Version 003.2 Standards include newly created standards as well as modifications to existing standards developed through the NAESB standards development or minor correction processes. It further reports that these standards build upon WEQ Version 003.1 Standards, filed with the Commission on October 26, 2015, but not yet the subject of final Commission action. As the WEQ Version 003.2 Standards include all the modifications submitted to the Commission in the WEQ Version 003.1 Standards, NAESB suggests that action on the previously submitted version is unnecessary should the Commission choose.

8. NAESB's WEQ Version 003.2 Business Practice Standards include modifications, reservations, and/or additions to the following set of existing standards:

[1] *Standards for Business Practices and Communication Protocols for Public Utilities, Notice of Proposed Rulemaking,* 81 FR 49580 (July 28, 2016), 156 FERC ¶ 61,055 (2016), (WEQ Version 003.1 NOPR).

[2] *See* Docket No. RM05–5–027, Report of the North American Energy Standards Board on Wholesale Electric Quadrant Business Practice Standards Version 003.2 under RM05–5 (Dec. 8, 2017) (NAESB WEQ Version 003.2 Report).

[3] NAESB WEQ Version 003.2 Report at 4. We note that, in the past, the Commission followed this same procedure in Order No. 676–E, wherein the Commission incorporated changes made by NAESB in both the WEQ Version 002.0 Standards and in the WEQ Version 002.1 Standards without taking separate action on the WEQ Version 002.0 Standards. *See Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–E, 129 FERC ¶ 61,162, at P 7 (2009).

[4] *See* WEQ Version 003.1 NOPR, 156 FERC ¶ 61,055 at P 42.

[5] *Standards for Business Practices and Communication Protocols for Public Utilities, Notice of Proposed Rulemaking,* 83 FR 51654 (Oct. 12, 2018), 165 FERC ¶ 61,007 (2018).

[6] Prior to the establishment of NAESB in 2001, the Commission's development of business practice standards for the wholesale electric industry was aided by two *ad hoc* industry working groups established during the rulemaking proceeding that resulted in issuance of Order No. 889 and the creation of the OASIS, while GISB's efforts involved the development of business practice standards for the wholesale natural gas industry. Once formally established, NAESB took over the standards development previously handled by GISB and by the electric working groups.

[7] The retail gas quadrant and the retail electric quadrant were combined into the retail markets quadrant. NAESB continues to refer to these working groups as ''quadrants'' even though there are now only three quadrants.

[8] These commenters are identified *infra* note 23.

WEQ	Business Practice Standards
000	Abbreviations, Acronyms, and Definition of Terms
001	Open Access Same-Time Information System (OASIS)
002	OASIS Standards and Communication Protocols (S&CP)
003	OASIS S&CP Data Dictionaries
004	Coordinate Interchange
006	Manual Time Error Corrections
008	Transmission Loading Relief (TLR)—Eastern Interconnection Business Practice Standards
013	OASIS Implementation Guide
015	Measurement and Verification of Wholesale Electricity Demand Response Business Practice Standards
018	Specifications for Wholesale Standard Demand Response Signals Business Practice Standards
020	Smart Grid Standards Data Elements Table Business Practice Standards
022	Electric Industry Registry (EIR) Business Practice Standards

9. Over the course of years, the OASIS Suite of Standards has been revised several times to support directives contained in Order Nos. 888 [9] and 890.[10] The WEQ Version 003.2 Standards include modifications and reservations to existing standards and newly developed standards made to support the short-term preemption process (WEQ–001–25) and the merger of like transmission reservations (WEQ–001–24) prescribed in the OASIS Suite of Standards.[11]

10. The WEQ Version 003.2 Standards also included other changes that were made to support consistency with the North American Electric Reliability Corporation (NERC) Reliability Standards. NAESB made these changes as a result of direct coordination with NERC on issues regarding dynamic tagging and pseudo-ties, and the finalization of the transition of the industry registry tool from NERC to NAESB. NAESB also made additional changes to seven suites of the WEQ Business Practices to ensure the standards accurately reflect revisions to the NERC Reliability Standards. In addition, NAESB made changes to support market operator functionalities to support the full use of the market operator as a separate role within the EIR, a NAESB managed industry tool, and on electronic tags (e-Tags). NAESB also made changes to support consistency by revising certain Abbreviations, Acronyms, and Definitions of Terms in WEQ–000. Finally, the standards were revised to make minor corrections to six standards.

III. Discussion

11. As discussed below, with certain enumerated exceptions, we propose to incorporate by reference (into the Commission's regulations at 18 CFR 38.1(b) (2018)) the NAESB WEQ Version 003.2 Business Practice Standards.[12] The WEQ Version 003.2 Business Practice Standards will replace the WEQ Version 003 Business Practice Standards currently incorporated by reference into the Commission's regulations. As explained above, comments have already been filed on the NAESB WEQ Version 003.1 Business Practice Standards and we will fully take those comments into account when we consider our determination on the WEQ Version 003.2 Standards. Thus, parties have no need to replicate the comments on the WEQ Version 003.1 Standards in response to this NOPR. The standards addressed in this NOPR are consistent with the Commission's findings in Order No. 676–H [13] and do not appear to be inconsistent with any Commission directives or findings in other orders.

A. Revisions and Modifications to Earlier Versions of Standards Made in the WEQ Version 003.2 Standards

12. As explained above, the WEQ Version 003.2 Business Practice Standards include:

- Modifications and reservations to existing standards and newly developed standards to support the short-term preemption process and the merger of like transmission reservations;
- Changes to support consistency with NERC Reliability Standards;
- Changes to support market operator functionalities;
- Changes to support consistency in the use of abbreviations, acronyms, and definitions in WEQ–000; and
- Minor corrections to six standards.

13. The Commission specifically invites interested persons to submit comments on all these revisions and changes from prior versions of the WEQ Business Practice Standards and on whether the Commission should incorporate by reference into its regulations, as enforceable mandatory requirements, the latest version of these standards (*i.e.,* the WEQ Version 003.2 Business Practice Standards).

B. Treatment of Requests for Redirects

1. Background

14. In *Dynegy Power Marketing, Inc.,* [14] the Commission established its policy on a customer's right to keep its contractual rights to firm transmission service it had reserved while the customer's request for a redirect was ''pending'' as required in section 22.2 of

[9] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 77 FERC ¶ 61,080), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[10] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 118 FERC ¶ 61,119, *order on reh'g,* Order No. 890–A, 121 FERC ¶ 61,297 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228, *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[11] WEQ–001–25 addresses the preemption of previously queued short-term requests or reservations by a valid competing request. WEQ–001–24 addresses the combination of multiple firm PTP Parent Reservations for which they are the owner into a single reservation.

[12] Consistent with our past practice, we do not propose to incorporate by reference into the Commission's regulations the following standards: Standards of Conduct for Electric Transmission Providers (WEQ–009); Contracts Related Standards (WEQ–010); and WEQ/WGQ eTariff Related Standards (WEQ–014). We also do not propose to incorporate by reference at this time the WEQ–023 Modeling Business Practice Standards. We do not propose to incorporate by reference standard WEQ–009 because it contains no substantive standards and merely serves as a placeholder for future standards. We do not propose to incorporate by reference standard WEQ–010 because this standard contains an optional NAESB contract regarding funds transfers and the Commission does not require utilities to use such contracts.

[13] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–H, 79 FR 56,939 (Sept. 24, 2014), 148 FERC ¶ 61,205, *as modified, errata notice,* 149 FERC ¶ 61,014 (2014), *order on reh'g,* 151 FERC ¶ 61,046 (2015).

[14] 99 FERC ¶ 61,054 (2002) (*Dynegy*). This policy was retained and clarified in *Entergy Services, Inc.,* 143 FERC ¶ 61,143, at P 25 & n.68 (2013) (*Entergy*).

the *Pro Forma* OATT.[15] In *Dynegy,* the Commission held that ''unconditional acceptance'' would not terminate a transmission customer's right to its original path while the redirect request still can be preempted by a competing reservation up to the following conditional reservation deadline in section 13.2 of the *Pro Forma* OATT. The Commission clarified that a transmission customer submitting a redirect request does not lose its rights to its original path until the redirect request satisfies all of the following criteria: (1) It is accepted by the transmission provider; (2) it is confirmed by the transmission customer; and (3) it passes the conditional reservation deadline under section 13.2 of the transmission provider's OATT.[16] The Commission's concern was that a redirecting customer whose redirect request had been confirmed under step 2 nonetheless could lose its rights to the original parent path if the transmission provider later preempted the requested redirect in favor of a competing request prior to step 3.[17]

15. In its filing of version 3.0, NAESB proposed WEQ Standards 001–9.5 and 001–10.5. Under these standards, a customer would lose its parent transmission rights when the transmission operator confirmed the redirect request even though the customer would still be at risk for preemption by a competing transmission request. In Order No. 676–H, in consideration of the comments, the Commission declined to incorporate WEQ Version 003.1 Standards 001–9.5 and 001–10.5, stating that the standards are inconsistent with the Commission's redirect policy in *Dynegy.*[18] Additionally, the Commission requested that NAESB revisit WEQ Version 003.1 Standards 001–9.5 and 001–10.5 and any other affected standards. NAESB's revisions contained in the Version 003.1 standards purport to reflect this effort.

2. WEQ Standards in Versions 003.1 and 003.2

16. Version 003.1 of the WEQ–001–9 business practice standards (repeated again in version 003.2) attempts to implement a standard that is consistent with the Commission's policy on redirects as outlined in *Dynegy.* Proposed Version 3.1 WEQ–001–9.5.4 states

> The Transmission Provider shall ensure the Transmission Customer's rights to take firm PTP on the original unconditional Parent Reservation's reserved POR and POD are preserved until such time that the confirmed Redirect on a firm basis has reached its conditional reservation deadline as defined in Section 13.2 of the pro forma tariff.

The preamble to WEQ Version 003.1 Standard 001–9, however, contains a clause that might be interpreted to permit a transmission operator to establish a different policy if it posts that information as a ''Transmission Provider specific business practice.'' [19] WEQ Version 003.1 Standard 001–10.5 completes NAESB's proposed implementation of the Commission's *Dynegy* redirect policy by requiring revisions to Uncommitted Capacity of the Parent Reservation. WEQ Version 003.1 Standard 001–10.5 requires the Transmission Provider to reduce the amount of the redirected capacity granted for the time period of that Redirect upon confirmation by the Transmission Customer of the request to Redirect on a non-firm basis.

3. Request for Comments in WEQ Version 003.1 NOPR

17. In the NOPR pertaining to WEQ 003.1, we invited comment on whether the Commission should extend the *Dynegy* policy to both conditional parent reservations for firm transmission service and non-firm transmission service.[20] The Commission explained that the negative effects associated with the potential loss of a customer's parent path when the parent reservation is conditional and subject to competition is arguably less compelling than when the parent reservation is unconditional.[21] To aid the Commission's consideration of this issue, the Commission referenced four redirect issues in the NOPR on which NAESB stakeholders were unable to reach consensus, and invited comments on whether the Commission should adopt regulations governing the business practices to be followed for requests for redirects from conditional parent reservations for short-term firm transmission service and for non-firm transmission service proposed—and invited comments on this proposal. These issues are: (1) The treatment of a firm redirect for transmission service following the preemption of the conditional parent reservation; (2) the circumstances under which a firm redirect for transmission service may return to the conditional parent reservation; (3) the number of subsequent firm redirects for transmission service that can stem from the original firm redirect for transmission service; and (4) the proper treatment of requests to redirect requests for non-firm transmission service.[22]

4. Comments on Redirect Filed in Response to WEQ Version 003.1 NOPR

18. Virtually all the comments received on this subject oppose the option of extending the *Dynegy* redirect policy to either conditional parent reservations for short-term firm transmission service or non-firm transmission service.[23] As a result, most commenters express support for NAESB's proposed redirect standards for unconditional parent reservations.[24] Most commenters did not explicitly support the proposed language provided

[15] Section 22.2 states: ''[a]ny request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof, except that such Transmission Customer shall not be obligated to pay any additional deposit if the capacity reservation does not exceed the priority for service at the existing firm Receipt and Delivery Points specified.''

[16] *Dynegy,* 99 FERC ¶ 61,054 at P 9.

[17] This result could occur if the transmission customer does not wish to match the price or term of a competing request of equal or longer duration on the redirect path.

[18] Order No. 676–H, 148 FERC ¶ 61,205 at PP 47, 48.

[19] The preamble to WEQ Version 003.1 Standard 001–9 reads: ''[t]he Business Practice Standard WEQ–001–9 is defined in order to enhance consistency of the reservation process that applies to Redirects on a firm basis from Parent Reservations that are unconditional, as defined in Section 13.2(iii) of the pro forma tariff. *The Transmission Provider shall specify any reservation process that applies to Redirects on a firm basis from Parent Reservations that are conditional, as defined in Section 13.2(iii) of the pro forma tariff in its Business Practices that are posted in accordance with Business Practice Standard WEQ–001–13.1.4.*'' (Emphasis added).

Proposed cross-referenced Standard 001–13.1.4 reads: ''[t]he Transmission Provider shall post information related to (1) *any Transmission Provider specific Business Practices,* (2) any waivers or exemptions granted from any of the OASIS requirements or Business Practice Standards, and (3) any other pertinent information related to the conduct of business with the Transmission Provider.'' (Emphasis added).

[20] WEQ Version 003.1 NOPR, 156 FERC ¶ 61,055 at P 25.

[21] *Id.* P 24.

[22] *Id.* P 25.

[23] Bonneville Power Administration (Bonneville) at 5; Edison Electric Institute (Edison Institute) at 5; Idaho Power Company (Idaho Power) at 2; Southwest Power Pool, Inc. and Midwest Independent System Operator, Inc. (collectively, Joint Commenters) at 6; Open Access Technology International (OATI) at 3; Public Utility District No. 1 of Snohomish County, Washington and the City of Tacoma, Department of Public Utilities, Light Division (collectively, Snohomish/Tacoma) at 1; and Southern Company Services, Inc. (Southern) at 4. California Independent System Operator Corporation was the sole commenter who did not address this issue.

[24] NAESB's redirect standards require a reservation for service to be unconditional before it may be redirected.

within the WEQ–001–9 preamble that would also allow transmission providers the option of implementing alternative practices for redirects from conditional reservations.[25] However, some commenters state that they recommend or could support a future NAESB proposal for a separate policy to provide transmission customers with the ability to redirect from conditional parent reservations.[26]

19. Various commenters note that, under the *Dynegy* redirect policy, the transmission provider must hold Available Transfer Capability (ATC) for the original firm reservation on the original path and simultaneously hold ATC on the redirect reservation's path until the redirect reaches the conditional deadline, and, at such time, capacity on the original (parent) path may then be released.[27] Several commenters contend that this allows the transmission customer to hold priority of service options on two or more transmission paths at the same time.[28] Joint Commenters ask the Commission if there may be benefits to revisiting specifics of the *Dynegy/Entergy* orders since the requirement that a redirect's parent passes the conditional reservation deadline sacrifices system efficiency.[29]

20. Several commenters oppose the proposal to extend the *Dynegy* policy beyond an application to unconditional parent reservations. These commenters point out that prior to the conditional reservation deadline, when the parent reservation is still conditional and subject to competition, there is no guarantee that firm service will be provided to the transmission customer on either the original transmission path or the requested redirect path since the reservation remains subject to competition until the conditional period expires.[30] Commenters observe that the transmission customer's expectation as to the certainty of service is different in the conditional and unconditional cases.[31] Edison Institute references sections of the Commission's *pro forma* OATT to support its conclusion that a firm capacity reservation under which the transmission customer is already taking service must already exist, and a reservation for service must be unconditional before it may be redirected.[32] Bonneville notes that a customer with a conditional parental service has no reasonable expectation of service, since a later-queued, higher-priority request may preempt or compete with that customer's conditional parent reservation, and since this expectation of service is different from a customer's expectation of service with an unconditional firm reservation, Bonneville argues it is inappropriate to extend the protections afforded by *Dynegy* to unconditional parent reservations.[33]

21. Commenters also contend that there may be many difficulties in administering scenarios with multiple conditional, confirmed reservations consuming more transmission capacity than available, since capacity would be retained on both the parent path and all the redirected paths.[34] Some commenters advise that, if transmission customers are able to redirect from conditional parent reservations, it could result in potentially troublesome administrative, billing, and liability issues.[35]

22. Specifically, Joint Commenters and Southern argue that a transmission customer should only be permitted to redirect transmission service from unconditional parent reservations.[36] However, Edison Institute would also allow individual transmission providers the option to also permit redirects from conditional parent reservations by moving firm capacity to the redirect path upon confirmation.[37] Snohomish/Tacoma suggests that the Commission should either: (1) Allow individual transmission providers to craft specific tariff provisions for how redirects from conditional parent reservations will be addressed; or (2) explicitly not apply the *Dynegy* redirect policy, nor any other restriction on redirects from conditional parent reservations.[38] OATI comments that it is generally not in favor of adopting standards that allow for options to implement transmission provider alternative practices to the NAESB standards.[39]

23. OATI notes that, while it supports the application of *Dynegy* to redirects on a firm basis where the parent reservation is confirmed but still within the conditional reservation period (prior to the conditional reservation deadline),[40] it could also support a NAESB standard where the capacity held on the conditional firm parent reservation is released immediately and lost on the parent path upon confirmation of the redirect on a firm basis.[41] Other commenters agree and prefer such a NAESB standard for conditional parent reservations.

24. With respect to the Commission implementing a policy where a transmission customer redirects from a conditional parent reservation and the transmission customer loses the rights to the parent reservation once the redirect is confirmed, Bonneville advises that transmission providers will have a straightforward solution that is implementable and that can leverage technical capabilities that currently exist in most of the industry, and will not be burdened with accounting for capacity on multiple conditional paths.[42]

25. As to requests for redirects of requests for non-firm transmission service, all the commenters who addressed this issue oppose extending the *Dynegy* redirect policy to non-firm transmission service. Commenters note that the Commission's *pro forma* OATT only permits transmission customers taking firm point-to-point service to make modifications to points of receipt (POR) and points of delivery (POD), and the OATT does not state transmission customers may modify PORs and PODs on a non-firm basis.[43] OATI states that non-firm (secondary) redirect is the lowest priority service under the OATT and would be subject to preemption or interruption at any time to process either a request to reserve or schedule an existing reservation for either firm or non-firm transmission service.[44]

26. Commenters also believe that a request to redirect firm transmission service on a non-firm basis should not be allowed or should be limited to be from an unconditional, firm parent reservation.[45] Edison Institute advises that the potential for gaming, the impact on queue positions and processing, and the problem of undertaking ATC/AFC (Available Flowgate Capability) calculations, outweigh any potential benefits given that a customer can just as easily submit a new request for non-firm transmission service with a modified POR and/or POD.[46] Commenters also state that it is unnecessary to adopt changes to these

[25] Bonneville at 4, 7; Idaho Power at 2; Joint Commenters at 6; OATI at 3; and Southern at 4.

[26] Bonneville at 6; OATI at 4.

[27] OATI at 2–3.

[28] *See, e.g.,* Edison Institute at 7; OATI at 3.

[29] Joint Commenters at 8–9.

[30] *See, e.g.,* Edison Institute at 6; OATI at 3; and Southern at 5.

[31] *See, e.g.,* Bonneville at 5; Edison Institute at 6.

[32] Edison Institute at 5–6.

[33] Bonneville at 4–5.

[34] Southern at 5.

[35] Idaho Power at 2; Southern at 5–6.

[36] Joint Commenters at 5; Southern at 4.

[37] Edison Institute at 4.

[38] Snohomish/Tacoma at 1.

[39] OATI at 4.

[40] *Id.* at 3.

[41] *Id.* at 4.

[42] Bonneville at 6.

[43] Edison Institute at 10; Joint Commenters at 7; Southern at 7.

[44] OATI at 6.

[45] Edison Institute at 11; Idaho Power at 4; OATI at 6.

[46] Edison Institute at 11.

standards, since a customer can relinquish a capacity reservation associated with a non-firm redirect back to the parent reservation.[47]

5. Discussion

27. The changes to NAESB WEQ Version 003.1 Standards 001–9.5.4 and 001–10.5 appear consistent with the policy established in *Dynegy,* and we propose to incorporate these standards by reference. We agree with the majority of commenters that the *Dynegy* policy providing for retention of parent rights when the transmission owner confirms a redirect request (but while the request remains conditional) applies only when the parent reservation is firm and unconditional and, hence, should not apply to conditional parent reservations or non-firm transmission service. However, we propose to reject the preamble to WEQ 001–9 because it leaves the implication that a transmission operator could adopt a ''Transmission Provider specific Business Practice'' that is at odds with the reason for establishing common business practices standards under the NAESB standards development process. We therefore disagree with Edison Institute and Snohomish/Tacoma who argue that the Commission should allow redirects from a conditional parent reservation on a case-by-case basis as antithetical to the NAESB standards development process. The NAESB standards development process is designed to provide for uniform methods of doing business with different transmission providers. Business transactions can involve a number of different transmission providers and establishing a uniform set of procedures and communication protocols help make such transactions more efficient and facilitates the ability to participate in multiple markets.

IV. Notice of Use of Voluntary Consensus Standards

28. Office of Management and Budget Circular A 119 (section 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference into its regulations voluntary consensus business practice standards developed by the WEQ of NAESB.

[47] Bonneville at 7; Idaho Power at 4.

V. Incorporation by Reference

29. The Office of the Federal Register requires agencies incorporating material by reference to discuss, in the preamble of the proposed rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials.[48] The regulations also require agencies to summarize in the preamble of the proposed rule the material it incorporates by reference. The standards we are proposing to incorporate by reference in this NOPR consist of fourteen suites of business practice standards applicable to public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce and any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions. These can be summarized as follows:

30. The WEQ–000 Abbreviations, Acronyms, and Definition of Terms Business Practice Standards provide a single location for all abbreviations, acronyms, and defined terms referenced in the WEQ Business Practice Standards. These standards provide common nomenclature for terms within the wholesale electric industry, thereby reducing confusion and opportunities for misinterpretation or misunderstandings among industry participants.

31. The OASIS suite of business practice standards (WEQ–001 Open Access Same-Time Information Systems (OASIS), WEQ–002 OASIS Standards and Communication Protocols, WEQ–003 OASIS Data Dictionary, and WEQ–013 OASIS Implementation Guide) support the FERC posting and reporting requirements that provide information about each transmission provider's performance of its *pro forma* OATT. The OASIS system is used for scheduling transmission on the bulk electric power grid, comprises the computer systems and associated communications facilities that public utilities are required to provide for the purpose of making available to all transmission users comparable interactions, and provides transmission service information and any back-end supporting systems or user procedures that collectively perform the transaction processing functions for handling requests on OASIS. These standards establish business practices and communication protocols that provide for consistent implementation across OASIS sites as well as consistent methods for posting to OASIS.

[48] 1 CFR 51.5 (2018). *See Incorporation by Reference,* 79 FR 66267 (Nov. 7, 2014).

32. The WEQ–001 OASIS Business Practice Standards define the general and specific transaction processing requirements and related business processes required for OASIS. The standards detail requirements related to standard terminology for transmission and ancillary services, attribute values defining transmission service class and type, ancillary and other services definitions, OASIS registration procedures, procurement of ancillary and other services, path naming, next hour market service, identical transmission service requests, redirects, resales, transfers, OASIS postings, procedures for addressing ATC or AFC methodology questions, rollover rights, conditional curtailment option reservations, auditing usage of Capacity Benefit Margin, coordination of requests for service across multiple transmission systems, consolidation, preemption and right-of-first refusal process, and Network Integration Transmission Service (NITS) requests.

33. The WEQ–002 OASIS Standards and Communication Protocols Business Practice Standards define the technical standards for OASIS. These standards detail network architecture requirements, information access requirements, OASIS and point-to-point interface requirements, implementation, and NITS interface requirements.

34. The WEQ–003 OASIS Data Dictionary Business Practice Standards define the data element specifications for OASIS.

35. The WEQ–004 Coordinate Interchange Business Practice Standards define the commercial processes necessary to facilitate interchange transactions via Request for Interchange (RFI) and specify the arrangements and data to be communicated by the entity responsible for authorizing the implementation of such transactions (the entities responsible for balancing load and generation).

36. The WEQ–005 Area Control Error (ACE) Equation Special Cases Business Practice Standards define commercial based requirements regarding the obligations of a balancing authority to manage the difference between scheduled and actual electrical generation within its control area. Each balancing authority manages its ACE in accordance with the NERC Reliability Standards. These standards detail requirements for jointly owned utilities, supplemental regulation service, and load or generation transfer by telemetry.

37. The WEQ–006 Manual Time Error Correction Business Practice Standards

define the commercial based procedures to be used for reducing time error to within acceptable limits of true time. These standards have subsequently been marked reserved by NAESB.[49]

38. The WEQ–007 Inadvertent Interchange Payback Business Practice Standards define the methods in which inadvertent energy is paid back, mitigating the potential for financial gain through the misuse of paybacks for inadvertent interchange. Inadvertent interchange is interchange that occurs when a balancing authority cannot fully balance generation and load within its area. The standards allow for the repayment of any imbalances through bilateral in-kind payback, unilateral in-kind payback, or other methods as agreed to.

39. The WEQ–008 Transmission Loading Relief—Eastern Interconnection Business Practice Standards define the business practices for cutting transmission service during a TLR event. These standards detail requirements for the use of interconnection-wide TLR procedures, interchange transaction priorities for use with interconnection-wide TLR procedures, and the Eastern Interconnection procedure for physical curtailment of interchange transactions.

40. The WEQ–011 Gas/Electric Coordination Business Practice Standards define communication protocols intended to improve coordination between the gas and electric industries in daily operational communications between transportation service providers and gas-fired power plants. The standards include requirements for communicating anticipated power generation fuel for the upcoming day as well as any operating problems that might hinder gas-fired power plants from receiving contractual gas quantities.

41. The WEQ–012 Public Key Infrastructure (PKI) Business Practice Standards establish the cybersecurity framework for parties partaking in transactions via a transmission provider's OASIS or e-Tagging system. The NAESB PKI framework secure wholesale electric market electronic commercial communications via encryption of data and the electronic authentication of parties to a transaction through the use of a digital certificate issued by a NAESB certified certificate authority. The standards define the requirements for parties utilizing the digital certificates issued by the NAESB certificate authorities.

42. The WEQ–013 OASIS Implementation Guide Business Practice Standards detail the implementation of the OASIS Business Practice Standards. The standards detail requirements related to point-to-point OASIS transaction processing, OASIS template implementation, preemption and right-of-first-refusal processing, NITS application and modification of service processing, and secondary network transmission service.

43. The WEQ–015 Measurement and Verification of Wholesale Electricity Demand Response Business Practice Standards define a common framework for transparency, consistency, and accountability applicable to the measurement and verification of wholesale electric market demand response practices. The standards describe performance evaluation methodology and criteria for the use of equipment, technology, and procedures to quantify the demand reduction value—the measurement of reduced electrical usage by a demand resource.

44. The WEQ–021 Measurement and Verification of Energy Efficiency Products Business Practice Standards define a common framework for transparency, consistency, and accountability applicable to the measurement and verification of wholesale electric market energy efficiency practices. The standards establish energy efficiency measurement and verification criteria and define requirements for energy efficiency resource providers for the measurement and verification of energy efficiency products and services offered in the wholesale electric markets.

45. The WEQ–022 EIR Business Practice Standards define the business requirements for entities utilizing the NAESB managed EIR, a wholesale electric industry tool that serves as the central repository for information needed in the scheduling of transmission through electronic transactions. The standards describe the roles within EIR, registration requirements, and cybersecurity.

46. In addition, NAESB has adopted an additional eight suites of standards that, consistent with our past decisions, we are not proposing to incorporate by reference.[50] Additionally, as mentioned above, we are addressing NAESB's WEQ–023 ATC Modeling Standards as well NAESB's WEQ–006 Manual Time Error Correction Standards in separate rulemakings.

47. Our regulations provide that copies of the standards incorporated by reference may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Phone: (713) 356–0060. NAESB's website is located at *http://www.naesb.org/*. Copies of the standards may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, Phone: (202) 502–8371, *http://www.ferc.gov*.[51]

48. NAESB is a private consensus standards developer that develops voluntary wholesale and retail standards related to the energy industry. The procedures used by NAESB make its standards reasonably available to those affected by the Commission regulations, which generally is comprised of entities that have the means to acquire the information they need to effectively participate in Commission proceedings.[52] NAESB provides a free electronic read-only version of the standards for a three business day period or, in the case of a regulatory comment period, through the end of the comment period.[53] Participants can join NAESB, for an

[49] As explained above, in a separate proceeding (in Docket No. RM05–5–026) the Commission has proposed to retire the standards on manual time error correction. Final action on that proposal remains pending.

[50] The suites of NAESB business practice standards we are not proposing to incorporate by reference in this NOPR are: (1) The WEQ–009 Standards of Conduct for Electric Transmission Providers, which NASESB has now eliminated as they duplicate the Commission's regulations; (2) the WEQ–010 Contracts Related Business Practice Standards that establish model contracts for the wholesale electric industry, and which the Commission has not incorporated as they are not mandatory; (3) the WEQ–014 WEQ/WGQ eTariff Related Business Practice Standards, which provide an implementation guide describing the various mechanisms, data tables, code values/reference tables, and technical specifications used in the submission of electronic tariff filings to the Commission, which the Commission has not incorporated as these submittals are governed by the Commission's eTariff regulations; (4) the WEQ–023 Modeling Business Practice Standards, which the Commission is addressing in a separate rulemaking; and (5) the WEQ–016, WEQ–017, WEQ–018, WEQ–019, and WEQ–020 Business Practice Standards that were developed as part of the Smart Grid implementation and which the Commission adopted as non-mandatory guidance in 18 CFR 2.27 (2018). *See* Order No. 676–H, 148 FERC ¶ 61,205.

[51] 18 CFR 284.12 (2018).

[52] As a private, consensus standards developer, NAESB needs the funds obtained from its membership fees and sales of its standards to finance the organization. The parties affected by these Commission regulations generally are highly sophisticated and have the means to acquire the information they need to effectively participate in Commission proceedings.

[53] Procedures for non-members to evaluate work products before purchasing are available at *https://www.naesb.org/misc/NAESB_Nonmember_Evaluation.pdf*. *See* Incorporation by Reference, 79 FR at 66271, n.51 & 53 (Nov. 7, 2014) (citing to NAESB's procedure of providing ''no-cost, no-print electronic access,'' NAESB Comment at 1, *http://www.regulations.gov/#!documentDetail;D=OFR-2013-0001-0023*).

annual membership cost of $7,500, which entitles them to full participation in NAESB and enables them to obtain these standards at no additional cost.[54] Non-members may obtain a complete set of Standards Manuals, Booklets, and Contracts on CD for $2,000 and the Individual Standards Manual or Booklets for each standard by email for $250 per manual or booklet.[55] In addition, NAESB considers requests for waivers of the charges on a case by case basis based on need.

VI. Information Collection Statement

49. The collection of information contained in this proposed rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).[56] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[57] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

50. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

51. The following estimates for burden and cost [58] are based on the projected costs for the industry to implement the new and revised business practice standards adopted by NAESB and proposed to be incorporated by reference in this NOPR.

REVISIONS IN NOPR IN RM05–5–027

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden (hours) and cost ($) per response (4)	Total annual burden hours and total annual cost ($) (3) * (4) = (5)
FERC–516E [59] [60] (tariff filing)	165	1	165	6 hrs.; $474	990 hrs.; $78,210
FERC–717 (compliance with standards) [61].	165	1	165	30 hrs.;[62] $2,370	4,950 hrs.; $391,050
Total			330		5,940 hrs.; $469,260

The one-time burden for the FERC–516E information collection will be averaged over three years:

- 990 hours ÷ 3 = 330 hours/year over three years
- The number of one-time responses for the FERC–725B information collection is also averaged over three years: 165 responses ÷ 3 = 55 responses/year

Costs to Comply with Paperwork Requirements: The estimated annual costs are as follows:

- FERC–516E: 55 entities * 1 response/entity * (6 hours/response * $79/hour) = $26,070.
- FERC–717: 165 entities * 1 response/entity * (30 hours/response * $79/hour) = $391,050.

Titles: Electric Rate Schedule Filing (FERC–516E); Open Access Same Time Information System and Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717).

Action: Proposed collection.

OMB Control Nos.: 1902–0290 (FERC–516E); 1902–0173 (FERC–717).

Respondents: Business or other for profit (Public Utilities—Generally not applicable to small businesses).

Frequency of Responses: FERC–516E—One-time implementation (business procedures, capital/start-up); FERC–717—ongoing compliance filings.

52. *Necessity of the Information:* This proposed rule, if implemented would upgrade the Commission's current business practice and communication standards and protocols modifications to support compliance with requirements established by the Commission in Order Nos. 890, 890–A, 890–B, and 890–C, as well as modifications to the OASIS-related standards to support Order Nos. 676, 676–A, 676–E, and 717 and would make additional revisions for clarity and consistency.

53. *Internal Review:* The Commission has reviewed the revised business practice standards and has made a preliminary determination that the proposed revisions that we propose here to incorporate by reference are both necessary and useful. In addition, the Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

54. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First

[54] North American Energy Standards Board Membership Application, *https://www.naesb.org/pdf4/naesbapp.pdf.*

[55] NAESB Materials Order Form, *https://www.naesb.org//pdf/ordrform.pdf.*

[56] 44 U.S.C. 3507(d).

[57] 5 CFR 1320.11 (2018).

[58] The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's FY (Fiscal Year) 2018 average cost (for wages plus benefits), $79.00/hour is used.

[59] This burden category is intended for FERC–516, the Commission's identifier that corresponds to OMB Control No. 1902–0096 (Electric Rate Schedules and Tariff Filings). However, another unrelated item is pending OMB review using this OMB Control No. and only one item per OMB Control No. may be pending at a time. Therefore, to ensure timely submission, Commission staff is using FERC–516E (OMB Control No. 1902–0290), a temporary collection number.

[60] These information collection requirements are one-time burden estimates. After implementation in Year 1, the revision proposed in this NOPR would be complete.

[61] FERC–717 is the Commission's identifier that corresponds to OMB control no. 1902–0173 that identifies the information collection associated with Standards for Business Practices and Communication Protocols for Public Utilities.

[62] The 30-hour estimate was developed in Docket No. RM05–5–013, when the Commission prepared its estimate of the scope of work involved in transitioning to the NAESB Version 002.1 Business Practice Standards. *See* Order No. 676–E, 129 FERC ¶ 61,162 at P 134. We have retained the same estimate here, because the scope of the tasks involved in the transition to Version 003.2 of the Business Practice Standards is very similar to that for the transition to the Version 003 Standards.

Street NE, Washington, DC 20426 [Attn: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

55. Comments concerning the information collections proposed in this NOPR and the associated burden estimates should be sent to the Commission at this docket and by email to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please refer to the docket number of this Notice of Proposed Rulemaking (Docket No. RM05–5–27) and OMB Control Nos. 1902–0290 (FERC–516E) and 1902–0173 (FERC–717) in your submission to OMB.

VII. Environmental Analysis

56. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[63] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[64] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[65] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

VIII. Regulatory Flexibility Act Certification

57. The Regulatory Flexibility Act of 1980 (RFA)[66] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

58. The Small Business Administration (SBA) size standards for electric utilities is based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and associated size threshold: Electric bulk power transmission and control, at 500 employees.[67]

59. The Commission's estimate for small and large entities is not yet complete. The Commission preliminarily estimates that 72 of the 165 respondents (or ~44 percent) are small. The Commission estimates that the impact on each entity (large and small) is:

- Year One: $474 (one-time cost for tariff filing) + 2,370 (ongoing compliance cost) = $2,844
- Year Two and Ongoing: $2,370 (ongoing compliance cost)

These annual estimates are consistent with the paperwork burden of $2,844/entity used above.[68] The Commission does not consider $2,844 to be a significant economic impact.

60. Based on the above, the Commission certifies that implementation of the proposed Business Practice Standards will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

IX. Comment Procedures

61. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due July 23, 2019. Comments must refer to Docket No. RM05–5–027, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

62. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

63. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

64. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

X. Document Availability

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

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

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

List of Subjects in 18 CFR Part 38

Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: May 16, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 38, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 38—STANDARDS FOR PUBLIC UTILITY BUSINESS OPERATIONS AND COMMUNICATIONS

■ 1. The authority citation for part 38 continues to read as follows:

[63] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[64] 18 CFR 380.4 (2018).

[65] *See* 18 CFR 380.4(a)(2)(ii); 380.4(a)(5); 380.4(a)(27).

[66] 5 U.S.C. 601–612.

[67] 13 CFR 121.201 (2018), Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

[68] 36 hours/entity (6 hours/entity for tariff filing + 30 hours/entity for compliance with standards) at $79/hour = $2,844.

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 38.1 by revising paragraph (b) to read as follows:

§ 38.1 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

* * * * *

(b) The business practice and electronic communication standards the Commission incorporates by reference are as follows:

(1) WEQ–000, Abbreviations, Acronyms, and Definition of Terms (Version 003.2, Dec. 8, 2017);

(2) WEQ–001, Open Access Same-Time Information System (OASIS), OASIS Version 2.2 (Version 003.2, Dec. 8, 2017) with the exception of Standards 001–9 (preamble), 001–14.1.3, 001–15.1.2 and 001–106.2.5);

(3) WEQ–002, Open Access Same-Time Information System (OASIS) Business Practice Standards and Communication Protocols (S&CP), OASIS Version 2.2 (Version 003.2, Dec. 8, 2017);

(4) WEQ–003, Open Access Same-Time Information System (OASIS) Data Dictionary Business Practice Standards, OASIS Version 2.2 (Version 003.2, Dec. 8, 2017);

(5) WEQ–004, Coordinate Interchange (Version 003.2, Dec. 8, 2017);

(6) WEQ–005, Area Control Error (ACE) Equation Special Cases (Version 003.2, Dec. 8, 2017);

(7) (Reserved)

(8) WEQ–007, Inadvertent Interchange Payback (Version 003.2, Dec. 8, 2017);

(9) WEQ–008, Transmission Loading Relief (TLR)—Eastern Interconnection (Version 003.2, Dec. 8, 2017);

(10) WEQ–011, Gas/Electric Coordination (Version 003.2, Dec. 8, 2017);

(11) WEQ–012, Public Key Infrastructure (PKI) (Version 003.2, Dec. 8, 2017);

(12) WEQ–013, Open Access Same-Time Information System (OASIS) Implementation Guide, OASIS Version 2.2 (Version 003.2, Dec. 8, 2017);

(13) WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response (Version 003.2, Dec. 8, 2017);

(14) WEQ–021, Measurement and Verification of Energy Efficiency Products (Version 003.2, Dec. 8, 2017); and

(15) WEQ–022, Electric Industry Registry Business Practice Standards (Version 003.2, Dec. 8, 2017).

[FR Doc. 2019–10695 Filed 5–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0323]

RIN 1625–AA00

Safety Zone; Columbia River, Fireworks Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Columbia River near Kennewick, WA. This action is necessary to provide for the safety of life on these navigable waters during a fireworks display on July 4, 2019. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 10, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0323 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 LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *msupdxwwm@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

Western Display notified the Coast Guard that it will be conducting a fireworks display from 10 p.m. to 10:30 p.m. on July 4, 2019, to commemorate Independence Day. The fireworks will launch from a site over the Columbia River in Kennewick, WA. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Columbia River has determined that potential hazards associated with the fireworks in this display are a safety concern for anyone within a 450-yard radius of the discharge site.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 450-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Captain of the Port Columbia River proposes to establish a safety zone from 9 p.m. to 11:30 p.m. on July 4, 2019. The safety zone would cover all navigable waters of the Columbia River within 450-yards of the discharge site located at 46°13′22″ N, 119°9′17″ W, in vicinity of Kennewick, WA. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 p.m. to 10:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document. If we issue a final rule in this rulemaking, because of the closeness of the event, we may need to make it effective less than 30 days after publication in the **Federal Register**. If we do that, we would explain our good cause for doing so in the final rule, as required by 5 U.S.C. 553(d)(3).

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 which would impact a small designated area of the Columbia River for approximately two hours during the evening when vessel traffic is normally low. 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 (Public Law 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 less than two and a half hours that would prohibit entry within 450 yards of the fireworks discharge site. 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 record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T13–0323 to read as follows:

§ 165.T13–0323 Safety Zone; Columbia River, Fireworks Kennewick, WA.

(a) *Safety zone.* The following area is designated a safety zone: Waters of the Columbia River, within a 450-yard radius of the fireworks discharge site located at 46°13′22″ N, 119°9′17″ W in vicinity of Kennewick, WA.

(b) *Regulations.* Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Columbia River or his designated representative. Also in accordance with § 165.23, no person may bring into, or allow to remain in this safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port Columbia River or his designated representative.

(c) *Enforcement period.* This section will be enforced from 9 p.m. to 11:30 p.m. on July 4, 2019.

Dated: May 20, 2019.

J.C. Smith,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2019–10888 Filed 5–23–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0302]

RIN 1625–AA00

Safety Zone: Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone on the navigable waters of the Cape Fear River near Wilmington, North Carolina. This temporary safety zone is intended to restrict vessel traffic on the Cape Fear River from July 15, 2019, through October 31, 2019, while work crews replace power transmission lines crossing over the river. This proposed rulemaking would prohibit vessels or persons from being in the safety zones unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 24, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0302 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, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772–2221, email: *Matthew.I.Tyson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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

On April 23, Duke Energy provided the Coast Guard with details concerning the upgrading of towers and replacement of power transmission lines crossing over the Cape Fear River near Wilmington, North Carolina, to be conducted from July 15, 2019, through October 31, 2019. Work will be done on two steel towers located at approximate positions 34°08′52″ N, 077°57′14″ W and 34°08′59″ N, 077°56′56″ W (NAD 1983), and the power transmission lines suspended between those towers. This upgrade process will require the complete closure of the navigation channel on multiple days during the stated upgrade period. A safety zone is proposed within 100 yards of the power transmission line crossing. The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with power transmission line replacement work would be a concern for anyone transiting the Cape Fear River.

The purpose of this rule is to protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River during the replacement of power transmission lines crossing over the river. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone on a portion of the Cape Fear River from July 15, 2019, through October 31, 2019, to be enforced while Duke Energy replaces power transmission lines over the river. Duke Energy reports its work crews will need to access the navigation channel for 12, 8-hour days, 3 days at a time, over 4 separate weeks, in order to replace the power transmission lines. Due to the nature of the work and the hazards it presents to the workers and the public, the COTP has identified the need to close that Cape Fear River in the vicinity of the power line crossing while this work is ongoing. On days the safety zone will be enforced, the affected section of the river will be closed from 6:30 a.m. through 2:30 p.m. Currently, the planned enforcement dates are July 29th through 31st, August 12th through 14th, September 3rd through 5th, and September16th through 18th, 2019. These times and dates may change due to weather and equipment delivery changes. Exact dates and times will be announced by broadcast notice to mariners at least two days prior to each closure. This safety zone will include all navigable waters of the Cape Fear River within 100 yards of the power transmission line crossing, from approximate position 34°08′49″ N, 077°57′32″ W, then northeast to 34°09′07″ N, 077°56′41″ W, then south along the shoreline to 34°09′03″ N, 077°56′41″ W, then southwest to 34°08′42″ N, 077°57′28″ W, then north along the shoreline to the point of origin. No vessel or person will be permitted to enter the safety zone unless specifically authorized by the COTP or a designated representative. Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security

vessels. 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, and duration of the proposed safety zone. Vessels will not be allowed to enter or transit a portion of the Cape Fear River for 96 hours over a 4-week period from July 15, 2019, through October 31, 2019, during active power transmission line replacement as described in the text above. The closures are planned to occur on 12, 8-hour days, 3 days at a time, over 4 separate weeks. Due to the nature of the work and the hazards it presents to the workers and the public, the COTP has identified the need to close that Cape Fear River in the vicinity of the power line crossing while this work is ongoing. On days the safety zone will be enforced, the affected section of the river will be closed from 6:30 a.m. through 2:30 p.m. The specific enforcement times for channel closures will be broadcast at least 48 hours in advance and vessels will be able to transit the Cape Fear River at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the safety zone. This portion of the Cape Fear River has been determined to be a high traffic area. Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels.

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 would establish a temporary safety zone. 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:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 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.T05–0302 to read as follows:

§ 165.T05–0302 Safety Zone; Cape Fear River, Wilmington, NC.

(a) *Location.* The following areas is a safety zone: All navigable waters of the Cape Fear River within 100 yards of the power transmission line crossing, from approximate position 34°08′49″ N, 077°57′32″ W, then northeast to 34°09′07″ N, 077°56′41″ W, then south along the shoreline to 34°09′03″ N, 077°56′41″ W, then southwest to 34°08′42″ N, 077°57′28″ W (NAD 1983), then north along the shoreline to the point of origin near Wilmington, NC.

(b) *Definitions.* As used in this section—

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Work crews means persons and vessels involved in the replacement of power transmission lines.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the areas described in paragraph (a) of this section.

(2) With the exception of work crews, entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately.

(3) Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910–343–3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement Period.* This regulation will be enforced for 12, 8-hour days, 3 days at a time, over 4 separate weeks from July 15, 2019, through October 31, 2019. On days the safety zone is being enforced, the affected section of the river will be closed from 6:30 a.m. through 2:30 p.m. The enforcement dates are July 29th through 31st, August 12th through 14th, September 3rd through 5th, and September16th through 18th, 2019. These times and dates may change due to weather and equipment delivery changes.

(f) *Public Notification.* The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF–FM marine channel 16.

Dated: May 17, 2019.

Bion B. Stewart,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2019–10886 Filed 5–23–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

[EPA–HQ–ORD–2018–0280; FRL–9991–84]

Notification of Submission to the Secretary of Agriculture; Protection of Human Research Subjects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretary of Agriculture.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) a draft regulatory document concerning protection of human research subjects. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: See Unit I. under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–ORD–2018–0280, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory 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.*

FOR FURTHER INFORMATION CONTACT: Tom Sinks, Office of the Science Advisor, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington DC 20460–0001; telephone number: (202) 564–0221; email address: *staff_osa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(B) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary of USDA comments in writing regarding the draft final rule within 15 days after receiving it, the EPA Administrator shall include the comments of the Secretary of USDA, if requested by the Secretary of USDA, and the EPA Administrator's response to those comments with the final rule that publishes in the **Federal Register**. If the Secretary of USDA does not comment in writing within 15 days after receiving the draft final rule, the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15-day period.

II. Do any Statutory and Executive Order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretary of USDA. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in Part 26

Environmental protection, Administrative practice and procedures, Human research, Pesticides and pests.

Dated: May 10, 2019.

Richard Keigwin,

Director, Office of Pesticide Programs.

[FR Doc. 2019–10265 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R08–OAR–2019–0002; 9991–98-Region 8]

Federal Implementation Plan To Establish a Bank for Ozone Precursor Emission Reduction Credits From Existing Sources on Indian Country Lands Within the Uinta Basin Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this Advance Notice of Proposed Rulemaking (ANPRM) is to solicit broad feedback on different approaches to establishing a voluntary emission reduction credit (ERC) bank for ozone precursors, specifically volatile organic compounds (VOCs) and nitrogen oxides (NO_X), as part of a Clean Air Act (CAA) Federal Implementation Plan (FIP) applicable to stationary sources on Indian country lands within the Uintah and Ouray Indian Reservation (U&O Reservation) that are part of the Uinta Basin Ozone Nonattainment Area. The EPA designated portions of the ''Uinta Basin'' region nonattainment for the 2015 Ozone NAAQS, effective August 3, 2018. The ERCs described in this ANPRM could be generated and used for several air quality planning purposes: assisting in achievement of the ozone National Ambient Air Quality Standard (NAAQS), general conformity demonstrations, and nonattainment new source review (NNSR) permitting related to development of new VOC and NO_X emissions sources in Indian country portions of the Uinta Basin Ozone Nonattainment Area in Utah. We are also inviting comment on the potential for the bank to interact with sources that are outside the nonattainment area or the U&O Reservation.

DATES: Comments must be received on or before July 8, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0002, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Chris Dresser, U.S. EPA, Region 8, Air Program, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6385, *dresser.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''reviewing authority,'' ''we,'' ''us'' and ''our'' refer to the EPA.

ANPRM: Advance Notice of Proposed Rulemaking.
APA: The Administrative Procedure Act.
Act or *CAA:* Clean Air Act, unless the context indicates otherwise.
CBI: Confidential Business Information.
EIP: Economic Incentive Programs.
EPA: The United States Environmental Protection Agency.
ERC: Emission Reduction Credit.
FIP: Federal Implementation Plan.
NAAQS: National Ambient Air Quality Standards.
NAICS: North American Industry Classification System.
NESHAP: National Emission Standards for Hazardous Air Pollutants.
NO_X: Nitrogen oxides.
NPRM: Notice of Proposed Rulemaking.
NNSR: Nonattainment New Source Review.
NSR: New Source Review.
NTTAA: National Technology Transfer and Advancement Act.
OMB: Office of Management and Budget.
RACT: Reasonably Available Control Technology.
RFA: Regulatory Flexibility Act.
RFP: Reasonable Further Progress.
SIP: State Implementation Plan.
TAR: Tribal Authority Rule.
TAS: Treatment in the same manner as a state.
TIP: Tribal Implementation Plan.
TPY: Tons Per Year.
UDEQ: Utah Department of Environmental Quality's Division of Air Quality.
U&O Reservation or the Reservation: Uintah & Ouray Indian Reservation.
VOC: Volatile organic compound(s).

This preamble is organized as follows:

I. General Information
A. Would this potential action apply to me?

B. What should I consider as I prepare my comments to the EPA?
C. Where can I get a copy of this document and other related information?
II. Purpose of This Advance Notice of Proposed Rulemaking
III. What is an emission reduction credit bank?
IV. Background on the U&O Reservation
V. Areas Where the EPA Is Requesting Comment
A. Conceptual Support for an EPA-run U&O ERC Bank
B. Participation in the U&O ERC Bank
C. ERC Bank Format
D. Creditable Emission Reductions
E. Trading of ERCs
F. Use of ERCs
G. Withdrawal of ERCs From the Bank
H. Emissions Reductions Achieved Prior to the Effective Date of Final U&O ERC Banking Rule
I. Geographic Considerations and Interaction With Utah State Land CAA Planning Requirements
J. General Comments
VI. Statutory and Executive Order Reviews

I. General Information

A. Would this potential action apply to me?

Entities potentially affected by this upcoming proposed FIP consist of existing sources of emissions of ozone precursors (VOC and NO_X) on Indian country lands that are both (1) within the U&O Reservation [1] and (2) part of the Uinta Basin Ozone Nonattainment Area. All the Indian country lands within the Uinta Basin Ozone Nonattainment Area of which the EPA is aware are within the U&O Reservation. Further, all of the Ute Indian Tribe Indian country lands of which the EPA is aware are located within the Reservation.[2] To the extent that there are Ute Indian Tribe dependent Indian communities under 18 U.S.C. 1151(b) or allotted lands under 18 U.S.C. 1151(c) that are located outside the exterior boundaries of the Reservation, those lands would not be covered by this FIP unless the EPA or the Tribe demonstrates that the Tribe has jurisdiction over the area. In addition, there are parts of the Uinta Basin Ozone Nonattainment Area that are not within Indian country. Any proposed FIP will not apply to any sources on non-Indian-country lands, including any non-Indian-country lands within the exterior boundaries of the Reservation. The EPA expects that entities with operations in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector would be the primary depositors of ERCs in a U&O ERC bank, while new or modified major sources of VOC or NO_X emissions in various source categories would be the primary purchasers of banked ERCs to support Nonattainment New Source Review (NNSR) permitting. However, other source categories may choose to participate in either depositing ERCs or purchasing banked ERCs to support NNSR permitting of new or modified major or minor sources of VOC or NO_X emissions.

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS ANTICIPATED ACTION

Industry category	NAICS code	Examples of regulated entities/description of industry category
Oil and Gas Production/Operations.	21111	Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and gas up to the point of shipment from the producing property. Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and gas field gases.
Crude Petroleum and Natural Gas Extraction.	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from reservoirs in which the hydrocarbons are semisolids.
Natural Gas Liquid Extraction.	211112	Recovery of liquid hydrocarbons from oil and gas field gases; and sulfur recovery from natural gas.
Drilling Oil and Gas Wells.	213111	Drilling oil and gas wells for others on a contract or fee basis, including spudding in, drilling in, redrilling, and directional drilling.
Support Activities for Oil and Gas Operations.	213112	Performing support activities on a contract or fee basis for oil and gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and cleaning out, bailing, and swabbing wells.
Engines (Spark Ignition and Compression Ignition) for Electric Power Generation.	2211	Provision of electric power to support oil and natural gas production where access to the electric grid is unavailable.
Fossil Fuel Electric Power Generation.	221112	Operating fossil fuel powered electric power generation facilities using fossil fuels, such as coal, oil, or gas, in internal combustion or combustion turbine conventional steam process to produce electric energy. Electric energy production is provided to electric power transmission systems or to electric power distribution systems.

[1] *See* discussion at section IV below, for more information on the establishment of the Reservation.

[2] Under the CAA, lands held in trust for the use of an Indian tribe are reservation lands within the definition at 18 U.S.C. 1151(a), regardless of whether the land is formally designated as a reservation. *See* 63 FR 7254, 7258 (Feb. 12, 1998) (''Tribal Authority Rule''); *Arizona Pub. Serv. Co.* v. *EPA,* 211 F.3d 1280, 1285–86 (D.C. Cir. 2000). EPA's references in this FIP to Indian country lands within the exterior boundaries of the U&O Reservation include any such tribal trust lands that may be acquired by the Ute Indian Tribe.

In 2014, the U.S. Court of Appeals for the D.C. Circuit addressed EPA's authority to promulgate a FIP establishing certain CAA permitting programs in Indian country. *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F. 3d 185 (D.C. Cir. 2014). In that case, the court recognized EPA's authority to promulgate a FIP to directly administer CAA programs on Indian reservations but invalidated the FIP at issue as applied to non-reservation areas of Indian country in the absence of a demonstration of an Indian tribe's jurisdiction over such non-reservation area. Because the current proposed rule would apply only on Indian country lands that are within the exterior boundaries of the U&O Reservation, *i.e.,* on reservation areas, the *Oklahoma* court decision is not implicated.

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS ANTICIPATED ACTION—Continued

Industry category	NAICS code	Examples of regulated entities/description of industry category
Petroleum Bulk Stations and Terminals.	424710	Bulk liquid storage facilities primarily engaged in the merchant wholesale distribution of crude petroleum and petroleum products, including liquefied petroleum gas.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this anticipated action. If you have any questions regarding the applicability of this potential action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Purpose of This Advance Notice of Proposed Rulemaking

The EPA is issuing this ANPRM to solicit comment on how to best design and implement an ERC banking and trading program for stationary sources located on the Indian country portion of the Uinta Basin Ozone Nonattainment Area.[3] (As discussed previously, the Indian country lands within the Uinta Basin Ozone Nonattainment Area to which a U&O ERC bank would apply are on the U&O Reservation. There are, in addition, portions of the nonattainment area that are outside of Indian country; sources in those areas are subject to state law.[4]) Allowing sources to use an EPA-run bank to credit eligible emissions reductions would serve three purposes:

1. The requirement to obtain offsets (as ERCs) for permitting new or modified major sources would likely incentivize industry to voluntarily implement controls on existing operations, which would lead to emissions reductions sooner than would otherwise occur. We expect, based on the existing emissions inventory, that the primary generators of ERCs will be minor oil and natural gas production sources, while the primary users of ERCs as compensating emissions reductions will be new or modified major sources.

2. The ability to bank emissions credits would facilitate continued economic development by providing a market for compensating emissions reductions and offsets, such as those required to construct new and modified major sources in the nonattainment area. The Uinta Basin Ozone Nonattainment Area is classified as a Marginal nonattainment area for the 2015 ozone NAAQS. At the Marginal level of nonattainment, offsets for permitting new or modified major sources could be purchased and used at a ratio of 1.1 ton of emissions reductions of an ozone precursor to every 1 ton of new emissions added to the Basin.[5] This requirement for major source offsets ensures a declining emissions trend, while still allowing new major source development.[6] As discussed below, other options exist to increase the effectiveness of this program as a means of reducing emissions and improving air quality.

3. The ability to bank emissions credits for later use to satisfy CAA general conformity requirements applicable to federal actions would minimize delays in such actions.

To ensure the integrity of the program and its consistency with the CAA, to qualify as ERCs, emissions reductions are required to be quantifiable, enforceable, permanent, and surplus of CAA requirements.[7]

The CAA allows the establishment of emissions banking and trading systems to meet applicable requirements, and allows for flexibility and tailoring of the program to specific geographic areas.[8] As discussed in detail in Section V of this ANPRM, the EPA is requesting comments on a range of elements concerning whether and how an ERC banking rule should be designed and implemented for the Indian country portion of the Uinta Basin Ozone Nonattainment Area. We will take this feedback into consideration in developing a notice of proposed rulemaking (NPRM) for a FIP for crediting ozone precursor emissions reductions from existing Indian country sources within the Uinta Basin Ozone Nonattainment Area.

III. What is an emission reduction credit bank?

The following information is meant to give the reader a general overview of ERC banks. Specifics may vary depending on the design of the actual regulatory program.

Generally speaking, source owners or operators can generate emissions reductions using a number of approaches, including curtailing emissions or shutting down emissions units. These emissions reductions can

[3] Effective August 3, 2018, certain parts of the Uinta Basin were classified as a Marginal nonattainment area for the 2015 ozone NAAQS. 83 FR 25776, 25837 (June 4, 2018); *see also* information and links posted at *https://www.epa.gov/ozone-designations/additional-designations-2015-ozone-standards.*

[4] As noted previously, our expectation is that the bank will apply only to stationary sources on Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area, but we are taking comment on the potential for the bank to interact with sources that are outside the nonattainment area or the U&O Reservation.

[5] CAA section 182(a)(4), 42 U.S.C. 7511a(a)(4) (setting general offset requirement for Marginal Areas).

[6] Although minor sources are not subject to this major source individual offset requirement, the EPA believes that 1:1 compensating emissions reductions could be the simplest way to show that a new minor source does not ''cause or contribute'' to a NAAQS violation. The EPA is open to ideas about other ways to make this demonstration.

[7] For detailed discussion of the meaning of these terms (quantifiable, enforceable, permanent, and surplus) in this context, *see Improving Air Quality with Economic Incentive Programs,* EPA–452/R–01–001 (EPA Office of Air and Radiation, 2001) (''EIP Guidance,'' available at *https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf*), chapter 4 (describing these ''fundamental principles'' of all banking and trading programs). For additional authorities establishing that CAA emission reduction credits must be quantifiable, enforceable, permanent, and surplus, *see* CAA section 173(c), 42 U.S.C. 7503(c) (requiring that emissions offsets in nonattainment permitting be ''not otherwise required,'' ''in effect'' by the time a source commences operation, and ''enforceable''); 40 CFR 51.165(a)(3)(ii)(C)(1)(i) (requiring that SIPs and TIPs provide that emission reduction credits from shutdowns or operational curtailments must be surplus, quantifiable, enforceable, and permanent); 40 CFR part 51, subpart U (rules for ''mandatory'' economic incentive programs submitted as part of satisfying SIP requirements under CAA sections 182 and 187) (stating that programs must be ''state and federally enforceable,'' and that ''[p]rograms in nonattainment areas for which credit is taken in attainment and RFP demonstrations shall be designed to ensure that the effects of the program are quantifiable and permanent over the entire duration of the program, and that the credit taken is limited to that which is surplus.''); *Emissions Trading Policy Statement,* 51 FR 43814, 43831 (Dec. 4, 1986) (''To assure that emissions trades do not contravene relevant requirements of the Clean Air Act, only reductions which are surplus, enforceable, permanent, and quantifiable can qualify as ERCs and be banked or used in an emissions trade.''); *Emissions Offset Interpretive Ruling,* 44 FR 3274, 3274–76 (Jan. 16, 1979) (''Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours may be generally credited for offsets if they . . . are surplus, permanent, quantifiable, and federally enforceable. . .'').

[8] *See, e.g.,* CAA sections 110(a)(2)(A), 42 U.S.C 7410(a)(2)(A), and 172(c)(6) (state implementation plans must have ''control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights)''; *see also* EIP Guidance.

then be certified as ERCs and deposited in a bank provided they meet relevant requirements. ERCs can thus be viewed as financial incentives that can be saved for later use as emissions offsets by the depositor or sold or traded at the market price to other sources needing emissions offsets.

ERCs are generated when owners or operators of a facility or source reduce emissions of criteria pollutants [9] or their precursors below any applicable regulatory requirements, while complying with all other applicable requirements of the CAA.[10] ERCs can be generated from permanent shutdown and removal of equipment; upgrade or retrofit to more stringent emissions controls; or change of process, methods, or operating guidelines that would affect emissions. These control methods and technologies must result in real, quantifiable, enforceable, and permanent reductions in emissions, and the reductions must be surplus of CAA requirements.[11]

The overall purpose of an ERC bank is to apply market-based strategies to encourage reductions in emissions for an area, which may help meet shared air quality goals. An ERC bank promotes flexibility and innovation in complying with state and federal air emissions requirements established in a SIP/FIP/TIP and SIP/FIP/TIP-approved air permitting programs. This flexibility should allow for the achievement of air quality goals (*e.g.,* SIP/FIP/TIP requirements) more quickly and at a lower cost while still complying with all applicable requirements of the CAA.

As mentioned in Section I, we expect that a principal use of emission reduction credits will be to offset new and modified major source emissions as part of NNSR permitting. Sections 172(c)(5) and 173 of Part D of title I of the CAA and EPA's implementing regulations at 40 CFR 51.165 contain the NSR requirements for areas designated nonattainment for a NAAQS. NNSR only applies to pollutants or their precursors for which the area is designated as nonattainment for a NAAQS under the CAA. The NNSR program has specific emissions thresholds for determining which new sources or modifications of existing sources are ''major'' based on the nonattainment classification of the specific pollutant.[12] Once a stationary source is subject to the major NNSR program, the source must meet several criteria to receive a preconstruction permit. The most significant of these requirements are the application of the Lowest Achievable Emissions Rate (LAER) to the stationary source or project and the requirement to offset potential emissions increases from the project with decreases in actual emissions from the same or other stationary sources located in the same nonattainment area or a nonattainment area of equal or higher classification.

Under existing EPA regulations, source owners seeking permits for construction of new or modified minor sources in a nonattainment area of Indian country must demonstrate that the source will not cause or contribute to a NAAQS violation. 40 CFR 49.155(a)(7)(ii). The EPA's Indian Country Oil and Natural Gas True Minor Source FIP allowed streamlined permitting of new and modified minor oil and natural gas sources on Indian country lands within the U&O Reservation before the designation of the Uinta Basin Ozone Nonattainment Area, but that FIP does not currently provide for streamlined permitting of sources in the nonattainment area.[13] Instead, those sources must obtain source-specific permits before beginning construction, under the rules at 40 CFR 49.151 through 49.165.[14]

IV. Background on the U&O Reservation

The Ute Indian Tribe is a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934,[15] with its Constitution and By-Laws adopted by the Tribe on December 19, 1936, and approved by the Secretary of the Interior on January 19, 1937.[16] The Uintah and Ouray Indian Reservation was formerly the Uintah Valley and Uncompahgre Reservations, which were established in 1861 and 1882, respectively.[17] The Tribe's Constitution and By-Laws reorganized three Ute Tribes into one, and clarified that tribal jurisdiction within the U&O Reservation extends to the territory within the original Uintah and Uncompahgre Reservations, which was later enlarged through the Hill Creek Extension Act of 1948.[18] The U&O Reservation currently includes all Indian country lands within its exterior boundaries, as defined by the 1861 and 1882 Executive Orders, the Act of May 5, 1864, the Hill Creek Extension Act of 1948, and subsequent court decisions.[19]

Pursuant to CAA section 301(d),[20] the EPA is authorized to treat eligible Indian tribes in the same manner as states (''treatment as state'' or TAS) for purposes of implementing CAA provisions over their entire reservations and over any other areas within their jurisdiction.[21] The Ute Indian Tribe has not applied for TAS for the purpose of administering a TIP under the CAA. Thus, there is currently no EPA-approved plan implementing the functions and provisions of the CAA on Indian country lands within the U&O Reservation. We anticipate that the U&O ERC banking rule for which the EPA is providing this advance notice of proposed rulemaking and soliciting comment would apply to the Indian country lands within the exterior boundaries of the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area.

[9] While lead is a criteria pollutant, ERC banks should not address lead emissions. *See* EIP Guidance.

[10] An ERC must not conflict with or override other CAA requirements that may apply to an area or source(s) (*e.g.,* part D nonattainment NSR offset requirements or part C PSD requirements) regardless of the attainment classification of an area. *See* EIP Guidance at 15.

[11] *See* n. 7, above.

[12] The ''major stationary source'' threshold for a marginal and moderate nonattainment areas is 100 tpy for a pollutant or precursor. NNSR also applies to existing major stationary sources that undertake a ''major modification,'' which occurs when the change ultimately results in a ''significant net'' emissions increase of the nonattainment pollutant (significance rates are defined in 40 CFR 51.165(a)(1)(v)). The significance threshold is lower in certain nonattainment areas with higher degrees of nonattainment, with the specific level based on the area's nonattainment classification.

[13] *See* 40 CFR 49.101(b)(1)(v).

[14] On May 8, 2018, EPA proposed to amend the Indian Country Oil and Natural Gas True Minor Source FIP to allow the FIP to apply in the Uintah Basin Ozone Nonattainment Area. *See* 83 FR 20775.

[15] *See* 83 FR 34863, 34866 (July 23, 2018) (list of federally recognized tribes); 48 Stat. 984, 25 U.S.C. 5123 (Indian Reorganization Act).

[16] Constitution and By-Laws of the Ute Indian Tribe, available at *https://www.loc.gov/law/help/american-indian-consts/PDF/37026342.pdf.*

[17] The U&O Reservation was established for the Ute Indian Tribe under Executive Order in 1861, 1 Kapp. 900, as confirmed by the Act of May 5, 1864, 13 Stat. 63, and under Executive Order of January 5, 1882, then enlarged through the Hill Creek Extension Act of 1948, 62 Stat. 72. The Reservation has been addressed in multiple federal court decisions, including *Ute Indian Tribe* v. *Utah,* 521 F. Supp. 1072, 1155 (D. Utah 1981); *Ute Indian Tribe* v. *Utah,* 716 F.2d 1298 (10th Cir. 1983); *Ute Indian Tribe* v. *Utah,* 773 F.2d 1087 (10th Cir. 1985) (en banc), *cert. denied,* 479 U.S. 994 (1986); *Hagen* v. *Utah,* 510 U.S. 399 (1994); *Ute Indian Tribe* v. *Utah,* 935 F. Supp. 1473 (D. Utah 1996); *Ute Indian Tribe* v. *Utah,* 114 F.3d 1513 (10th Cir. 1997), *cert. denied,* 522 U.S. 1107 (1998); *Ute Indian Tribe* v. *Utah,* 790 F.3d 1000 (10th Cir. 2015), *cert. denied,* 136 S. Ct. 1451 (U.S. Mar. 21, 2016); and *Ute Indian Tribe* v. *Myton,* 835 F.3d 1255 (10th Cir. 2016), *cert. dismissed,* 137 S.Ct. 2328 (2017). As a result of this line of cases, there are some non-Indian-country lands within the exterior boundaries of the Uintah and Ouray Indian Reservation.

[18] 62 Stat. 72.

[19] *See* n. 16, above.

[20] *See* 42 U.S.C. 7601(d).

[21] *See* 63 FR 7254–57 (Feb. 12, 1998) (explaining that CAA section 301(d) includes a delegation of authority from Congress to eligible Indian tribes to implement CAA programs over all air resources within the exterior boundaries of their reservations).

V. Areas Where the EPA Is Requesting Comment

For purposes of formulating a Reservation-specific ERC banking rule, the EPA is seeking comment on the following issues:

A. Conceptual support for an EPA-run U&O ERC bank: Should the EPA proceed with plans to propose a rule establishing such a voluntary ERC bank? The EPA seeks comment on whether industry (and potentially others) would use an ERC bank for the Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area. Are there any reasons not to create a U&O ERC bank, or are there suggestions to handle surplus emission reduction crediting through another approach? Finally, are there existing state-run ERC banking systems that may serve as a good example for developing a U&O ERC bank?

B. Participation in the U&O ERC bank: The EPA expects that the principal clients of a U&O ERC bank would be industrial sources within the Indian country portions of the Uinta Basin Ozone Nonattainment Area depositing emission reduction credits for sale or for later use to support future development, as well as new and modified industrial sources needing offsets necessary to obtain a major NNSR permit. We seek comment on what other entities (besides companies implementing voluntary emissions controls and/or companies needing offsets to support new development) should be permitted to participate in a U&O ERC bank. Such entities might include non-governmental organizations, federal government agencies, local government, the Ute Indian Tribe and others. Are there any reasons to preclude any entities from purchasing ERC credits from such a bank?

C. ERC bank format: The EPA seeks comment on the format and features of a U&O ERC bank. It is expected that (as with most ERC banks) a database would be created to track and manage ERCs, through their deposit, trading and use, that will be publicly available online. The EPA solicits comment on this expectation. Additionally, should the owner of an ERC be required to deposit the ERC into the bank before using it as an offset, in order to centralize tracking? Or, if an emissions reduction is created for a specific project, can it be evaluated as part of the project and avoid the U&O ERC bank? The EPA seeks comments on what information should be maintained in the database for each banking action.

D. Creditable emissions reductions: The EPA intends to propose a rule that specifically outlines what emissions reductions qualify as creditable for deposit in a U&O ERC bank. Generally, qualifying ERCs are limited to emissions reductions that are real, quantifiable, enforceable, permanent, and surplus of CAA requirements. Such ERCs are typically generated by permanently shutting down equipment, modifying a process (*i.e.,* using a lower VOC/sulfur containing material), or by adding emissions controls beyond those required by any applicable regulation.

Some state-run ERC banks require that a certain percentage of reductions be removed and made ineligible for future use to ensure an environmental benefit to the banking system. For instance, if an operator achieves a 10 tpy reduction by implementing an emissions control on a given source, some percentage (such as 10%) may be retired for environmental benefit, and only 9 tpy would be deposited in the ERC bank for future offsets or compensating emissions reductions. This ensures that more accelerated progress is made towards attainment. The EPA seeks comment on whether this practice should be implemented for a U&O ERC bank, and if so, at what percentage?

Given the seasonal nature of ozone generation in the Uinta Basin, are there legally and technically supported approaches to allowing seasonal emissions reductions to be credited? Should seasonal limitations be placed on the program? For instance, should the rule prevent summertime reductions from being used to support the addition of wintertime emissions?

How should the ERC banking rule treat emissions reductions that occur from emissions unit shutdowns? What requirements should apply to shut-down equipment to ensure it meets the requirement to be a permanent reduction? There are restrictions on the use of reductions occurring from equipment shutdowns in 40 CFR 51.165(a)(3)(ii)(C)(1), such as only being eligible for use if the shutdown occurred after the last day of the baseline year for the plan. Additionally, use of reductions from equipment shutdowns must be restricted to prohibit operation of that unit elsewhere in the nonattainment area. Should the use of reductions from shut-down equipment be restricted further, such as disallowing operation in a broader area outside of the nonattainment area, or requiring destruction of the unit?

E. Trading of ERCs: A principal use of an ERC bank would be to allow companies in need of emissions offsets to construct new and modified sources to purchase those credits from companies that have permanently reduced emissions and deposited those ERCs in the bank. The EPA expects that a U&O ERC bank would allow the purchase and exchange of ERCs, and such exchanges would be publicly documented. The EPA further anticipates that the price of ERCs would be determined by the open market based on the demand for such ERCs. The EPA intends to propose to require documentation from both the company selling a credit and the company acquiring the credit in order to process that transaction and would make publicly available such information—including the number of ERCs purchased, the method of emissions reduction, and the purchase price. The EPA seeks comment on this expectation and any input on what additional information should be provided to document transactions within the anticipated U&O ERC bank database.

F. Use of ERCs: In addition to using banked ERCs as offsets for new and modified major sources, these emissions reductions may also be used to show that a new or modified minor source does not cause or contribute to an ozone NAAQS violation, or to satisfy general conformity requirements. If such reductions are not available within the existing inventory of a company's emissions sources or are needed by a federal agency to demonstrate general conformity for a specific action, the U&O ERC bank could be used to facilitate the purchase of available ERCs. In such a case, the necessary amount of ERCs would be purchased from one (or more) entities in possession of ERCs. Documentation of the transaction would be provided to the EPA, and those credits would be withdrawn from the bank when used to support a permit action. The EPA intends to propose a U&O ERC banking rule that describes the specifics of this process, consistent with the principles and requirements described in the EIP Guidance.[22] However, the EPA solicits comments on any additional considerations and flexibilities that should be made to allow this process to function efficiently for participants within the U&O Reservation. A primary goal of the program is to allow eligible ERCs to be certified for eventual use as offsets in accordance with major NNSR and general conformity requirements. Are there any other uses of an ERC that EPA

[22] All offsets used for the purpose of satisfying general conformity requirements must meet the regulatory requirements relating to offsets in 40 CFR 93.158(a)(5)(iii).

should be evaluating, such as for discretionary use in minor NNSR?

G. Withdrawal of ERCs from the bank: The EPA intends to evaluate banked credits for compliance with the ''surplus of Clean Air Act'' requirement at the time of their use as compensating offsetting emissions (*e.g.,* upon issuance of a permit). In the event of future promulgation of emissions controls as part of a federal or tribal implementation plan, or to satisfy CAA requirements such as reasonably available control technology (RACT) or RFP, the EPA does not expect sources that have already provided offsets to need to pursue additional offsetting emissions. The EPA seeks comment on this anticipated expectation and on whether any other factors should be considered. We also seek comment as to whether banked credits should be discounted or expire after some period of time, even if they remain surplus of CAA requirements.

H. Emissions reductions achieved before the effective date of final U&O ERC banking rule: The EPA expects that because the final 2015 Ozone Implementation Rule [23] defines a primary base year of 2017, that year will likely be an appropriate base year for the Uinta Basin Ozone Nonattainment Area banking and trading program. To allow for near-term surplus emissions reductions that would benefit air quality, the EPA intends to include as a component of the proposed rule that qualifying emissions reductions achieved before the final rule's effective date, but after the nonattainment baseline year, may be banked; effectively, any emissions reduction achieved after January 1, 2018. The EPA seeks comment on the inclusion of this flexibility.

I. Geographic considerations and interaction with Utah-managed CAA planning requirements: As explained previously, we anticipate that any proposed U&O ERC bank would only apply to sources on Indian country lands within the U&O Reservation that are within the Uinta Basin Ozone Nonattainment Area. There may, however, be situations where sources on land managed by Utah have a need for ERCs and wish to purchase them from a source in Indian country. Conversely, sources covered by the EPA-run bank may wish to purchase ERCs from a source managed by Utah. From a scientific standpoint, ozone precursor emissions are generally uniformly mixed across jurisdictions beneath the inversion during high-ozone events in the Uinta Basin Ozone Nonattainment Area; the original location within the nonattainment area of emissions (and emissions reductions) is irrelevant to the nonattainment area's overall ozone design values. However, as a legal matter, the EPA is limited in the scope of applying any potential U&O ERC bank rulemaking to sources in Indian country. Accordingly, we seek comment on whether, and under what criteria and constraints, an EPA-run bank for sources on the Indian country portion of the Uinta Basin Ozone Nonattainment Area should interact with any state-run bank that may be developed for sources on land under Utah CAA regulatory jurisdiction. We also seek comment on whether the EPA should pursue collaboration with Utah in allowing for cross-jurisdictional exchange of ERCs. Finally, is there any justification to allow the use, or banking of credits outside of the Uinta Basin Nonattainment Area, but within the general geographic extent of the Uinta Basin?

J. General comments: The EPA also invites the public's comment on any other questions associated with developing an emissions banking and trading program to address the goals described previously in the ''Purpose'' section of this ANPRM.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, Oct. 4, 1993), the OMB has determined that this is a not a ''significant regulatory action.'' Because this ANPRM does not propose or impose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. Should the EPA subsequently determine to pursue a rulemaking, the EPA will address the statutes and Executive Orders as applicable to that rulemaking.

The EPA seeks any comments or information that would help the Agency ultimately to assess the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note); to consider environmental health or safety effects on children pursuant to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or to consider human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, Feb. 16, 1994).

The Agency will consider such comments during the development of any subsequent proposed rule.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Indians-law, Indians-tribal government, Intergovernmental relations, reporting and recordkeeping requirements.

Dated: May 18, 2019.

Debra Thomas,

Acting Regional Administrator, EPA Region 8.

[FR Doc. 2019–10798 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

[23] Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements. 83 FR 62998 (Dec. 6, 2018). *https://www.govinfo.gov/content/pkg/FR-2018-12-06/pdf/2018-25424.pdf.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2003–0010; FRL–9993–17–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Omaha Lead Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 is issuing a Notice of Intent to Delete 500 residential parcels of the Omaha Lead Superfund site (Site or OLS) located in Omaha, Nebraska, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state of Nebraska, through the Nebraska Department of Environmental Quality, determined that all appropriate response actions under CERCLA were

completed at the identified parcels. However, this deletion does not preclude future actions under CERCLA.

This partial deletion pertains to 500 residential parcels. The remaining parcels will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received on or before June 24, 2019.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–SFUND–2003–0010, by one of the following methods: *https://www.regulations.gov* follow the online instructions for submitting comments; email *hagenmaier.elizabeth@epa.gov* or *freeman.tamara@epa.gov;* or by mail to Environmental Protection Agency Region 7, 11201 Renner Boulevard, Lenexa, KS 66219, Attention: Elizabeth Hagenmaier, SUPR Division or Tamara Freeman, ECO Office. The Omaha public libraries also have computer resources available to assist the public. The W. Dale Clark Library, located at 215 S. 15th Street, Omaha, NE 68102 is centrally located within the site boundary.

Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at: EPA Region 7 Records Center at 11201 Renner Boulevard, Lenexa, Kansas 66219, between 8:00 a.m. and 4:00 p.m. Monday–Friday, excluding Federal holidays.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. 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 rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hagenmaier, Remedial Project Manager, U.S. Environmental Protection Agency Region 7, SUPR/LMSE, 11201 Renner Boulevard, Lenexa, KS 66219, telephone (913) 551–7939, email: *hagenmaier.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to the EPA. This section provides additional information by addressing the following:

I. Written Comments
II. Introduction
III. NPL Deletion Criteria
IV. Deletion Procedures
V. Background and Basis for Intended Partial Site Deletion

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2003–0010, at *https://www.regulations.gov.* Alternatively, you may submit comments by email or mail to the persons and addresses listed in the **ADDRESSES** section of this document. 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.*

II. Introduction

The EPA Region 7 is proposing to delete 500 residential parcels of the Omaha Lead Superfund site (Site or OLS), from the National Priorities List (NPL) and is requesting public comment on this proposed action. The table of 500 Properties Proposed for the 2019 Partial Deletion of Properties from the Omaha Lead Superfund site. (EPA–HQ–SFUND–2003–0010–1966) identifies specific properties included for this proposed partial deletion. The location of the 500 properties are shown on Figure 1 ''Map for the 2019 Partial Deletion Omaha Lead Site'' (EPA–HQ–SFUND–2003–0010–1964). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Omaha Lead Superfund site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List, 60 FR 55466 (November 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

The EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section III of this document explains the criteria for deleting sites from the NPL. Section IV discusses procedures that the EPA is using for this action. Section V discusses the 500 residential parcels of the Omaha Lead Superfund site and demonstrates how they meet the deletion criteria.

III. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such five-year reviews even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

IV. Deletion Procedures

The following procedures apply to deletion of the 500 residential parcels of the Site:

(1) The EPA consulted with the state before developing this Notice of Intent for Partial Deletion.

(2) The EPA has provided the state thirty working days for review of this notice prior to publication of it in this notice.

(3) In accordance with the criteria discussed above, the EPA has determined that no further response is appropriate.

(4) The state of Nebraska, through the Nebraska Department of Environmental Quality, has concurred with the deletion of the 500 residential parcels of the Omaha Lead Superfund site, from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, the Omaha World Herald. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this document, the EPA will evaluate and respond appropriately to the comments before making a final decision to delete the 500 residential parcels. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if the EPA determines it is still appropriate to delete the 500 residential parcels of the Omaha Lead Superfund site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

V. Background and Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the 500 residential parcels of the Omaha Lead Superfund site from the NPL, as previously identified.

Site Background and History

The Omaha Lead Superfund site (Site or OLS [CERCLIS ID #NESFN0703481]) includes surface soils present at residential properties, child-care centers, and other residential-type properties in the city of Omaha, Douglas County, Nebraska. The properties were contaminated as a result of deposition of aerial emissions from historic lead smelting and refining operations. The OLS encompasses the eastern portion of the greater metropolitan area in Omaha, Nebraska. The site extends from the Douglas-Sarpy County line on the south, north to Read Street and from the Missouri River on the east to 56th Street on the west. The Site is centered around downtown Omaha, Nebraska, where two former lead-processing facilities operated. American Smelting and Refining Company, Inc. (ASARCO) operated a lead refinery at 500 Douglas Street in Omaha, Nebraska, for over 120 years. Aaron Ferer & Sons Company (Aaron Ferer), and later Gould Electronics, Inc., (Gould) operated a lead battery recycling plant located at 555 Farnam Street. Both ASARCO and Aaron Ferer/Gould facilities released lead-containing particulates into the atmosphere from their smokestacks. The lead particles were subsequently deposited on surrounding residential properties.

Beginning in 1984, the Douglas County Health Department (DCHD) monitored ambient air quality around the ASARCO facility. This air monitoring routinely measured ambient air lead concentrations in excess of the ambient air standard. Between 1972 and 1998 the DCHD measured the blood lead level in children within the county. The results of the measurements indicated a high incidence of elevated blood lead level in children. Blood lead screening of children living in zip codes located east of 45th Street consistently exceeded 10 micrograms per deciliter (μg/dl) more frequently than children living elsewhere in the county.

In 1998, the Omaha City Council requested assistance from the EPA to address the high incidence of children found with elevated blood lead levels by the DCHD. In 1999, the EPA initiated an investigation into the lead contamination under the authority of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). On February 26, 2002, the OLS was proposed for the NPL (67 FR 8836), and on April 30, 2003, the OLS was listed on the NPL (68 FR 23077).

The OLS includes those residential properties where the EPA determined through soil sampling that soil lead levels represent an unacceptable risk to human health. Residential properties where soil sampling indicates that lead concentrations in the soil are below a level that represent an unacceptable risk are not included in the Site. Residential properties include those with high accessibility to sensitive populations (children seven years of age and younger [0 to 84 months] and pregnant or nursing women). The properties include single and multi-family dwellings, apartment complexes, child daycare facilities, vacant lots in residential areas, schools, churches, community centers, parks, greenways, and any other areas where children may be exposed to site-related contaminated media. Commercial and industrial properties are excluded from the definition of the Site.

The residential properties proposed for deletion from the NPL site were cleaned up under both CERCLA removal and remedial authority. Regardless of the authority used for the remediation of yards, the cleanup levels for soils for all the properties proposed for deletion were the same.

Response Actions

The initial EPA response was conducted under CERCLA removal authority. Due to the size of the site and the very large number of individual properties, it was necessary to prioritize sites for cleanup. The prioritization was based on factors such as the elevated blood level of children at each property and the lead concentration in the soil at each property. The result was a series of action levels that reflected the priority of categories of sites. Consequently, the action level for the site soils changed over time from 2500 mg/kg to 400 mg/kg, as the highest priority sites were cleaned up first. The cleanup level was established using the Integrated Exposure Uptake Biokinetic (IEUBK) model to determine the concentration to which the lead is cleaned up at each property within the site. The cleanup level for the OLS is 400 mg/kg of lead in the soil. The cleanup level of 400 mg/

kg was selected to allow for unlimited use and unrestricted exposure. The cleanup level has not changed, and all properties, regardless of the action level, were cleaned up to 400 mg/kg.

Removal Activities

Beginning in March 1999, the EPA began collecting soil samples from properties that provided licensed child daycare services. The initial removal action dated August 2, 1999, consisted of excavation and replacement of contaminated soil where the lead concentration exceeded the action levels identified in the Action Memorandum. Response actions were implemented at properties that met either of the following criteria:

- A child seven years of age or younger (0 to 84 months) residing at the property was identified with an elevated blood level (EBL) exceeding 15 µg/dl (this EBL was reduced to 10 µg/dl in August 2001) and a soil sample collected from a non-foundation quadrant exhibited lead concentrations greater than 400 mg/kg, or
- A property was used as a child-care facility and a soil sample collected from a non-foundation quadrant exhibited a lead concentration greater than 400 mg/kg.

On August 22, 2002, the EPA initiated a second removal action. This second removal action included all other residential type properties where the maximum non-foundation soil lead concentration exceeded an action level of 2,500 mg/kg. The 2002 Action Memorandum explicitly identifies the possibility of lead-based paint as a potential contributor to lead contamination of soils within thirty inches of the foundation of a painted structure. Due to the potential contribution of deteriorating lead-based paint near the foundations of structures, a lead concentration greater than 400 mg/kg in the soil in the drip zone (areas near structure foundations) was not, in itself, sufficient to trigger soil removal. However, if a soil sample from any mid-yard quadrant exceeded the action level, soil was removed from all areas of the property exceeding the 400 mg/kg cleanup level, including the drip zone. In November 2003, the EPA amended the second removal action to reduce the action level to 1,200 mg/kg concentration of lead in soil. In March 2004, the EPA amended the second removal action to combine the two removal actions. In March 2005, the EPA amended the removal action to reduce the action level from 1200 mg/kg to 800 mg/kg.

At properties determined to be eligible for response under either of the Action Memoranda, soil with lead concentrations greater than the cleanup level was excavated and replaced with clean soil and the excavated areas were revegetated.

EPA signed an Interim Recored of Decision on December 15, 2004. Beginning with the construction season of 2005, the scope of the removal action was expanded to address the requirements of the 2004 Interim ROD to include: (1) Stabilization of deteriorating exterior lead-based paint at properties where the continued effectiveness of the soil remediation was threatened; (2) response to interior dust at properties where interior dust lead levels exceeded applicable criteria; (3) public health education; and (4) participation in a comprehensive remedy with other agencies and organizations that addresses all identified lead hazards in the Omaha community.

Remedial Investigation/Feasibility Study (RI/FS)—Human Health Risk Assessment

As part of the RI/FS, the EPA developed a Human Health Risk Assessment (HHRA) for the Site using site-specific information collected during the OLS Remedial Investigation. Lead was identified as the primary contaminant of concern. The HHRA also identified arsenic as a potential contaminant of concern, but arsenic was eliminated based on its relatively low overall risk to residents and lack of connection to the release from the industrial sources being addressed by this Superfund action.

The risk assessment for lead focused on young children under the age of seven (0 to 84 months) who are site residents. Young children are most susceptible to lead exposure because they have higher contact rates with soil or dust, absorb lead more readily than adults, and are more sensitive to the adverse effects of lead than are older children and adults. The effect of greatest concern in children is impairment of the nervous system, including learning deficits, reduced intelligence, and adverse effects on behavior. The IEUBK model for lead in children was used to evaluate the risks posed to young children (0 to 84 months) resulting from the lead contamination at the site. Because lead does not have a nationally-approved reference dose (RfD), cancer slope factor, or other accepted toxicological factor which can be used to assess risk, standard risk assessment methods cannot be used to evaluate the health risks associated with lead contamination. The modeling results determined that there was an unacceptable risk to young children from exposure to soils above 400 mg/kg.

In October 2008, the EPA released a draft Final Remedial Investigation. Based on the 2008 data set, EPA established the boundary of the Final Focus Area for the Site. The Final Focus Area is generally bounded by Read Street to the north, 56th Street to the west, Harrison Street (Sarpy County line) to the south, and the Missouri River to the east, and encompasses 17,280 acres (27.0 square miles). By the time the Final Remedial Investigation was completed, the EPA had collected soil samples from 37,076 residential properties, including 34,565 properties within the Final Focus Area's boundary. In total, 34.2 percent of properties sampled through completion of the 2008 RI had at least one mid-yard sample with a soil lead level exceeding 400 mg/kg. In addition to soil sampling, the EPA collected dust samples from the interior of 159 residences to support the OLS Human Health Risk Assessment.

Record of Decision

The EPA completed the Final Record of Decision (ROD) for the OLS in May 2009. The Remedial Action Objective is to reduce the risk of exposure of young children to lead such that an individual child, or group of similarly exposed children, have no greater than a five percent chance of having a blood-lead concentration exceeding 10 µg/dl. The selected remedy includes the following components:

- Excavation and Replacement of Soils Exceeding 400 mg/kg Lead
- Stabilization of Deteriorating Exterior Lead-Based Paint
- Response to Lead-Contaminated Interior Dust
- Health Education
- Operation of a Local Lead Hazard Registry as a type of Institutional Control

Each of these components is described below.

Remedial Actions

Excavation and Replacement of Soils Exceeding 400 mg/kg Lead

Excavation of soils was accomplished using lightweight excavation equipment and hand tools in the portions of the yard where the concentration of lead in the surface soil exceeded 400 mg/kg. Excavation continued in all quadrants, play zones, and drip zone areas exceeding 400 mg/kg lead until the residual lead concentration measured at the exposed surface of the excavation was less than 400 mg/kg in the upper foot, or less than 1,200 mg/kg at depths

greater than one foot. Typically, soil excavation depths were between six and ten inches in depth. Soils in garden areas were excavated until reaching a residual concentration of less than 400 mg/kg in the upper two feet measured from the original surface, or less than 1,200 mg/kg at depths greater than two feet.

After confirmation sampling verified that cleanup goals were achieved, the excavated areas were backfilled with clean soil to original grade and sod was placed over the remediated areas.

EPA's remediation contractors stockpiled contaminated soil in staging areas, collected samples, and subsequently transported soil to an off-site subtitle D solid waste disposal landfill for use as daily cover and/or disposal.

Stabilization of Deteriorating Exterior Lead-Based Paint

The EPA used the lead-based paint assessment protocol, presented in the Final Lead-Based Paint Recontamination Study Report prepared for the OLS, to determine eligibility for exterior lead-based paint stabilization at those properties where soil lead concentrations exceeded 400 mg/kg. At those properties where the exterior lead-based paint assessment identified a threat from deteriorating paint to the continued protectiveness of the soil remedy, the owner of the property was offered stabilization of painted surfaces on structures located on the property. Exterior lead-based paint stabilization is not mandatory and was provided to those qualifying property owners who chose to have their exterior paint stabilized. Removal of loose and flaking lead-based paint was performed using lead-safe practices as described in EPA's Renovate, Repair and Painting Rule. The practices include wet scraping, and collection of paint chips using plastic sheeting. Scraped areas were primed and all previously painted surfaces had two coats of paint applied.

Response to Lead-Contaminated Interior Dust

As part of the final remedy, residents at eligible properties are provided the opportunity to have interior dust sampled. The interior dust response is not mandatory, and the resident may choose to decline. If the property owner agrees, the EPA collects samples of dust from interior surfaces. The analytical data is provided to the resident/tenant in a letter and the letter informs them whether any HUD criteria are exceeded. The Douglas County Health Department conducts follow up activities at any residence where the concentration of lead in the interior dust levels exceed the HUD criteria. For those residences that qualify and where the resident agrees, the residents are provided with a high-efficiency household vacuum cleaner, training on the maintenance and the importance of proper usage of the vacuum, and education on mitigation of household lead hazards. The Douglas County Health Department also provides training and education regarding the need to mitigate interior dust.

Exterior lead-based paint stabilization and interior dust response were conducted retroactively at properties where soil cleanups were performed under CERCLA removal authority, as well as to properties addressed under CERCLA remedial authority.

Health Education

There are a number of identified lead hazards within the OLS, not all of which are connected to the contaminant source of the OLS. To better address all potential lead sources within the OLS, a health education program was developed and continues to be implemented to increase public awareness and mitigate exposure. An active educational program continues in cooperation with agencies and organizations that include Agency for Toxic Substances and Disease Registry (ATSDR), the Nebraska Department of Health and Human Services (NDHHS), DCHD, local non-governmental organizations, and other interested parties. The following, although not an exhaustive list, indicate the types of educational activities provided at the Site:

- Support for in-home assessments for children identified with elevated blood lead levels.
- Development and implementation of lead poisoning prevention curriculum in schools.
- Support for efforts to increase community-wide blood lead monitoring.
- Physicians' education for diagnosis, treatment, and surveillance of lead exposure.
- Operation of Public Information Centers to distribute information and respond to questions about the EPA response activities and lead hazards in the community.
- Use of mass media (television, radio, internet, print media, etc.) to distribute health education messages.
- Development and distribution of informational tools such as fact sheets, brochures, refrigerator magnets, etc., to inform the public about lead hazards and measures that can be taken to avoid or eliminate exposure.

Institutional Controls

The Omaha Lead Registry, (available at *www.omahalead.org*) is a GIS based database that provides the public with on-line access to the status of the EPA investigation and response actions. The EPA notifies residents and property owners about the information that is available through the lead hazard registry as part of the transmittal sent at the completion of soil remediation at each individual property.

Community Involvement

The EPA worked extensively with the Omaha community through a variety of communication vehicles including, but not limited to: Local speaking engagements, participation in citizens' groups and city council meetings, local public access television, public service announcements on local cable television, coverage on radio, television, in local and national newspapers, mass mailings of informational materials, public outreach by telephone, conducting public meetings, and through the EPA website.

The EPA has been performing outreach to Omaha citizens, elected officials, school officials, health officials, the media, nonprofit groups, and others since becoming involved in the project in an effort to convey information about the hazards of lead poisoning, particularly the ways that lead affects the health of children. The EPA participated in numerous formal and informal meetings to explain EPA's role and commitment in Omaha, convey information about the Superfund process, and provide general information about the site and lead contamination. The EPA responds to inquiries on a daily basis regarding the site and individual property owner's sampling results.

In January 2004, a Community Advisory Group (CAG) was formed for the OLS site. A CAG is a committee, task force, or board made up of residents affected by a Superfund site. The CAG provided a public forum where representatives with diverse community interests could present and discuss their needs and concerns related to the site and the cleanup process. The CAG was discontinued after the last meeting was held in October 2011. A new group, Child Lead Poisoning Prevention Group, formed. The first meeting of the Child Lead Poisoning Group was held at City Hall in May 2012. The Group is no longer active.

Five-Year Review

The EPA completed the first Five-Year Review for the site in September

2014. Five-Year Reviews for the site are statutory. The triggering action for the Five-Year Review is the completion of the Final Record of Decision for Operable Unit 2, completed in May 2009.

The protectiveness of the remedy was deferred in the Five-Year Review because the remedy had not been completed at all of the properties within the site boundary. However, cleanup activities at the 500 residential parcels included in this partial deletion action are complete and protective of human health. There are no issues or recommendations in the Five-Year Review related to these 500 residential parcels proposed for deletion.

The next Five-Year Review will be completed in September 2019.

Summary of EPA Work Completed

Soil Testing and Remediation

The EPA Region 7 completed the EPA lead portion of the remedial action on December 29, 2015. The city of Omaha and the Douglas County Health Department will be performing the remaining field work. As of December 29, 2015, the EPA collected soil samples from 42,047 properties. There are 489 remaining properties to be sampled. The EPA has obtained access to collect samples from 163 of the 489 properties.

Based on the soil sampling results, 14,019 properties were eligible for soil remediation. The EPA remediated lead contaminated soil at 13,090 properties (93 percent) of the properties that were eligible for remediation. There are approximately 929 remaining properties that are eligible for soil remediation. The EPA obtained access to remediate fifty-one of the remaining properties.

Lead-Based Paint Testing and Stabilization

The EPA tested 12,057 properties for the presence of lead-based paint (LBP). Six thousand seven hundred and eighty-two (6,782) properties qualify for LBP stabilization. The EPA completed LBP stabilization on 6,249, (92 percent) of the eligible properties.

Dust Sampling

The EPA collected dust samples from 3,933 properties consisting of 4,477 residences for lead contaminated dust. These numbers reflect the fact that some of the properties are multi-residence properties.

Continuing Remedial Action

The EPA completed Cooperative Agreements with the city of Omaha and the Douglas County Health Department that provide funds to allow these local government agencies to continue efforts to obtain access to the remaining properties and conduct sampling and remediation activities at those properties where they obtain access.

Determination That the Criteria for Deletion Has Been Achieved

In accordance with 40 CFR 300.425(e), Region 7 of the EPA finds that the 500 residential parcels of the Omaha Lead Superfund site (the subject of this deletion action) meet the substantive criteria for deletion from the NPL. The EPA has consulted with and has the concurrence of the state of Nebraska. All responsible parties or other persons have implemented all appropriate response actions required. All appropriate Fund-financed response under CERCLA was implemented, and no further response action by responsible parties is appropriate.

The implemented remedy at the 500 residential parcels has achieved the degree of cleanup specified in the ROD for all pathways of exposure. All selected remedial action objectives and associated cleanup levels are consistent with agency policy and guidance. No further Superfund response is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 8, 2019.

Edward H. Chu,

Acting Regional Administrator, Region 7.

[FR Doc. 2019–10568 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 101
Friday, May 24, 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 20, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (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; 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 24, 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.

Rural Utilities Service

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance telecommunications, electric, and water and waste facilities in rural areas with a loan portfolio that totals nearly $58 billion. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* as amended, (RE Act). Section 201 of the RE Act authorizes the Administrator to make loans to qualified telephone companies for the purpose of providing telephone service to the widest practicable number of rural subscribers.

Need and Use of the Information: RUS will collect information using several forms to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 37.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 9,618.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–10864 Filed 5–23–19; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Information Collection Activity; Comment Request

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Housing Service (RHS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision for a currently approved information collection in support of the program, Real Estate Title Clearance and Loan Closing.

DATES: Comments on this notice must be received by July 23, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.Dickson@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the 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 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 may be sent by any of the following methods:

• *Mail:* Thomas P. Dickson, Rural Development Innovation Center, 1400 Independence Avenue SW., STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email: *Thomas.Dickson@usda.gov.*

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

Title: Real Estate Title Clearance and Loan Closing.

OMB Number: 0575–0147.

Expiration Date: December 31, 2019.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings, and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title clearance is required to assure the Agency(s) that the loan is legally secured and has the required lien priority.

RHS will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans are made with Federal funds are legally secured. The respondents are individuals or households, businesses and non-profit institutions. The information required is used by the USDA personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to ensure the program is administered in manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secure. RHS continually strives to ensure that information collection burden is kept to a minimum.

Estimate of Burden: Public burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Individuals or Households, Businesses, Closing agents/Attorneys and the field office staff.

Estimated Number of Respondents: 22,214.

Estimated Number of Responses per Respondent: 1.

Estimate Number of Responses: 22,214.

Estimated Total Annual Burden on Respondents: 2,957 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2019–10861 Filed 5–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Solicitation of Applications for the Section 533 Housing Preservation Grants for Fiscal Year 2019

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS), an Agency within Rural Development, announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations which requires the Agency to announce the opening and closing dates for receipt of pre-applications for HPG funds from eligible applicants.

The Agency will publish the amount of funding on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.* Expenses incurred in developing applications will be at the applicant's risk.

DATES: The closing deadline for receipt of all *paper* pre-applications in response to this Notice is 5:00 P.M., local time for each Rural Development State Office on July 8, 2019. If submitting the pre-application in electronic format, the closing deadline for receipt is 5:00 p.m. Eastern Daylight Time on July 8, 2019.

Rural Development State Office locations can be found at: *http://www.rd.usda.gov/contact-us/state-offices.* RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA Rural Development, STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll-free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via email at, *bonnie.edwards@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Priority Language for Funding Opportunities

The Agency encourages applications that will help improve life in rural America. See information on the Interagency Task Force on Agriculture and Rural Prosperity found at *www.usda.gov/ruralprosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation.

Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

To leverage investments in rural property, the Agency also encourages projects located in rural Opportunity Zones where projects should provide measurable results in helping communities build robust and sustainable economies. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. Localities qualify as Opportunity Zones if they have been nominated for that designation by the state and that nomination has been certified by the Secretary of the U.S. Treasury via his delegation of authority to the Internal Revenue Service.

To combat a key threat to economic prosperity, rural workforce and quality of life, the Agency also encourages applications that will support the Administration's goal to reduce the morbidity and mortality associated with Substance Use Disorder (including opioid misuse) in high-risk rural communities by strengthening the capacity to address prevention, treatment and/or recovery at the

community, county, state, and/or regional levels:

Key strategies include:

- *Prevention:* Reducing the occurrence of Substance Use Disorder (including opioid misuse) and fatal substance-related overdoses through community and provider education and harm reduction measures such as the strategic placement of overdose reversing devices, such as naloxone;
- *Treatment:* Implementing or expanding access to evidence-based treatment practices for Substance Use Disorder (including opioid misuse) such as medication-assisted treatment (MAT); and
- *Recovery:* Expanding peer recovery and treatment options that help people start and stay in recovery.

To focus investments in areas with the largest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data by census tracts.

Overview

Federal Agency Name: USDA Rural Housing Service.

Funding Opportunity Title: Housing Preservation Grants.

Announcement Type: Notice.

Catalog of Federal Domestic Assistance Number: 10.433.

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under OMB Number 0575–0115.

A. Program Description

The HPG program is a grant program, authorized under 42 U.S.C. 1490m and implemented at 7 CFR part 1944, subpart N, which provides qualified public agencies, private non-profit organizations including, but not limited to, Faith-Based and neighborhood partnerships, and other eligible entities, grant funds to assist low- and very low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists cooperative housing complexes and rental property owners in rural areas in repairing and rehabilitating their units if they agree to make such units available to very low- and low-income persons. Rental property owners can include Section 515 rental properties if the eligibility requirements for the HPG program are met. In accordance with 7 CFR part 1944.663, rental property owners must agree to make the units repaired or rehabilitated available for occupancy to very low- or low-income persons for a period of not less than 5 years. The minimum 5-year restriction to rent the very low- and low-income tenants will only apply to the units that are repaired with the HPG funding. Any units within the property that were not repaired with HPG funding will not be subject to the 5-year restriction.

B. Federal Award Information

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. In accordance with 7 CFR 1944.652, coordination and leveraging of funding for repair and rehabilitation activities with housing and community development organizations or activities operating in the same geographic area are expected, but not required. You should contact the Rural Development State Office to determine the allocation. HPG applicants who were previously selected for HPG funds are eligible to submit new applications to apply for Fiscal Year (FY) 2019 HPG program funds. New HPG applications must be submitted for the renewal or supplementation of existing HPG repair and/or rehabilitation projects that will be completed with FY 2019 HPG funds.

The amount of funding available for the HPG program may be found at the following link: *http://www.rd.usda.gov/programs-services/housing-preservation-grants.* In addition, the Consolidated Appropriations Act, 2019 (Pub. L. 116–6) set aside for grants located in Rural Economic Area Partnership Zones (REAP Zone). The State Office will indicate on the list submitted to the National Office if the application is eligible for the REAP Zone set-aside. The National Office will then compile a national list, rank the REAP Zones applicants based on the point allocations set forth in this **Federal Register** Notice, and distribute the HPG REAP Zone set aside starting with the highest scoring eligible HPG REAP Zone applicants. Other funds will be distributed under a formula allocation to states pursuant to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' Decisions on funding will be based on pre-application scores. Anyone interested in submitting an application for funding under this program is encouraged to consult the Rural Development website periodically for updated information regarding the status of funding authorized for this program.

The commitment of program dollars will be made to selected applicants that have fulfilled the necessary requirements for obligation.

C. Eligibility Information

1. *Eligible Applicants.* Eligible entities for these competitively awarded grants include State and local Governments, non-profit corporations, which may include, but not be limited to Faith-Based and community organizations, federally recognized Indian Tribes, and consortia of eligible entities. HPG applicants who were previously selected for HPG funds are eligible to submit new applications to apply for FY 2019 HPG program funds. More eligibility requirements can be found at 7 CFR 1944.658, 1944.661, and 1944.662.

2. *Cost Sharing or Matching.* Pursuant to 7 CFR 1944.652, grantees are expected to coordinate and leverage funding for repair and rehabilitation activities, as well as replacement housing, with housing and community development organizations or activities operating in the same geographic area. While HPG funds may be leveraged with other resources, cost sharing or matching is not a requirement for the HPG applicant as the HPG applicant would not be denied an award of HPG funds if all other project selection criteria have been met.

3. *Other.* Awards made under this Notice are subject to the provisions contained in the Consolidated Appropriations Act, 2019 (Pub. L. 116–6) sections 744 and 745 regarding corporate felony convictions and corporate Federal tax delinquencies. To comply with these provisions, only applicants that are or propose to be corporations will submit this form as part of their pre-application. Form AD–3030, ''Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,'' can be found here: *http://www.ocio.usda.gov/document/ad3030.*

D. Application and Submission Information

1. *Address to Request Application Package:* Applicants wishing to submit a paper application in response to this Notice must contact the Rural Development State Office serving the State of the proposed HPG housing project in order to receive further information and copies of the paper application package. You may find the addresses and contact information for each State Office following this link, *http://www.rd.usda.gov/contact-us/*

state-offices. Rural Development will date and time stamp incoming paper applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgment of receipt. You may access the electronic grant pre-application for Housing Preservation Grants at: *http://www.grants.gov.*

2. *Content and Form of Application:* 7 CFR part 1944, subpart N provides details on what information must be contained in the pre-application package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds, and copies of the pre-application package. Unless otherwise noted, applicants wishing to apply for assistance must make its statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by the U.S. Department of Agriculture (USDA)-Rural Development. Federally recognized Indian Tribes, pursuant to 7 CFR 1944.674, are exempt from the requirement to consult with local leaders including announcing the availability of its statement of activities for review in a newspaper.

All applicants will file an original and two copies of Standard Form (SF) 424, ''Application for Federal Assistance,'' and supporting information with the appropriate Rural Development State Office. A pre-application package, including SF–424, is available in any Rural Development State Office. All pre-applications shall be accompanied by the following information which Rural Development will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the pre-application under the project selection criteria of 7 CFR 1944.679.

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program;

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(3) A description of the process for coordinating with other public and private organizations and programs that provide assistance in rehabilitation of historic properties in accordance with 7 CFR 1944.673;

(4) The development standard(s) the applicant will use for the housing preservation work; and, if not the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(5) The time schedule for completing the program;

(6) The staffing required to complete the program;

(7) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(8) The geographical area(s) to be served by the HPG program;

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.;

(10) A copy of an indirect cost proposal when the applicant has another source of Federal funding in addition to the Rural Development HPG program;

(11) A brief description of the accounting system to be used;

(l2) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with 7 CFR 1944.683(b) and the monitoring plan for rental properties and cooperatives (when applicable) according to 7 CFR 1944.689;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(14) The use of program income, if any, and the tracking system used for monitoring same;

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status;

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in 7 CFR 1944.671(b).

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, including, in the case of a private non-profit organization, which may include, but not be limited to, Faith-Based and community organizations, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of ''organization'' in 7 CFR 1944.656 must also be included.

(d) For a private non-profit entity, which may include, but not be limited to, Faith-Based and community organizations, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for

historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) A statement containing the component for alleviating any overcrowding as defined by 7 CFR 1944.656.

(g) A signed copy of the documentation in accordance with 7 CFR 1944.673 (as a companion to (a)(3) above);

(h) The applicant must submit written statements and related correspondence reflecting compliance with 7 CFR 1944.674(a) and (c) regarding consultation with local Government leaders in the preparation of its program and the consultation with local and State Government pursuant to the provisions of Executive Order 12372.

(i) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to 7 CFR 1944.674(b). The application must contain a description of how the comments (if any were received) were addressed.

(j) The applicant must submit an original and one copy of Form RD 400–1, ''Equal Opportunity Agreement,'' and Form RD 400–4, ''Assurance Agreement,'' in accordance with 7 CFR 1944.676.

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

3. *Address unique entity identifier and System for Award Management (SAM):* As part of the application, all applicants, except for individuals or agencies excepted under 2 CFR 25.110(d), must be: (1) Registered in the System for Award Management (SAM); (2) provide a valid unique entity identifier in its applications; and (3) maintain an active SAM registration with current information at all times during which it has an active Federal award or application. An award may not be made to the applicant until the applicant has complied with the unique entity identifier and SAM requirements.

4. *Intergovernmental Review:* The HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

5. *Funding Restrictions:* There are no limits on proposed direct and indirect costs. Expenses incurred in developing pre-applications will be at the applicant's risk.

6. *Other Submission Requirements:* To comply with the President's Management Agenda, USDA is participating as a partner in the Government-wide *grants.gov site.* Housing Preservation Grants [Catalog of Federal Domestic Assistance #10.433] is one of the programs included at this website. If you are an applicant under the HPG program, you may submit your pre-application to the Agency in either electronic or paper format. Please be mindful that the pre-application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Eastern Standard Time. The paper format deadline is local time for each Rural Development State Office.

Users of *Grants.gov* will be able to download a copy of the pre-application package, complete it off line, and then upload and submit the application via the *Grants.gov* site. You may not e-mail an electronic copy of a grant pre-application to USDA Rural Development; however, the Agency encourages your participation in *Grants.gov*.

The following are useful tips and instructions on how to use the website:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA-Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through *Grants.gov*. To use *Grants.gov*, applicants must have a DUNS number.
- You may submit all documents electronically through the website, including all information typically included on the Application for Housing Preservation Grants, and all necessary assurances and certifications.
- After you electronically submit your application through the website, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.
- RHS may request that you provide original signatures on forms at a later date.
- If you experience technical difficulties on the closing date and are unable to meet the 5:00 p.m. (Eastern Standard Time) deadline, print out your application and submit it to your State Office; you must meet the closing date and local time deadline.
- Please note that you must locate the downloadable application package for this program by the CFDA Number or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov.*

In addition to the electronic pre-application at the *http://www.grants.gov* website, all applicants must complete and submit the FY 2019 pre-application package, detailed later in this Notice, for the Section 533 HPG program. A copy of a suggested coversheet is included with this Notice. Applicants are encouraged to submit this pre-application coversheet electronically by accessing the website: *http://www.rd.usda.gov/programs-services/housing-preservation-grants.* Click on the Forms & Resources tab to access the ''FY 2019 Pre-application for Section 533 Housing Preservation Grants (HPG).''

Applicants are encouraged, but not required, to also provide an electronic copy of all hard copy forms and documents submitted in the pre-application/application package as requested by this Notice. The forms and documents must be submitted as read-only Adobe Acrobat PDF files on an electronic media such as CDs, DVDs or USB drives. For each electronic device that you submit, you must include a Table of Contents listing all of the documents and forms on that device. The electronic medium must be submitted to the local Rural Development State Office where the project will be located.

Please Note: If you receive a loan or grant award under this Notice, USDA reserves the right to post all information that is not protected by the Privacy Act submitted as part of the pre-application/application package on a public website with free and open access to any member of the public.

E. Application Review Information

1. *Criteria.* All paper applications for Section 533 HPG funds must be filed with the appropriate Rural Development State Office and all paper or electronic applications must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office.

2. *Review and Selection Process.* The Rural Development State Offices will utilize the following threshold project selection criteria for applicants in accordance with 7 CFR 1944.679:

(a) Providing a financially feasible program of housing preservation assistance. ''Financially feasible'' is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serving eligible rural areas with a concentration of substandard housing for households with very low- and low-income.

(c) Being an eligible applicant as defined in 7 CFR 1944.658.

(d) Meeting the requirements of consultation and public comment in accordance with 7 CFR 1944.674.

(e) Submitting a complete pre-application as outlined in 7 CFR 1944.676.

3. *Scoring.* For applicants meeting all of the requirements listed above, the Rural Development State Offices will use weighted criteria in accordance with 7 CFR part 1944, subpart N as selection for the grant recipients. Each pre-application and its accompanying statement of activities will be evaluated and, based solely on the information contained in the pre-application, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the State.

(a) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(1) More than 80%: 20 points
(2) 61% to 80%: 15 points
(3) 41% to 60%: 10 points
(4) 20% to 40%: 5 points
(5) Less than 20%: 0 points

(b) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(1) 50% or less: 20 points
(2) 51% to 65%: 15 points
(3) 66% to 80%: 10 points
(4) 81% to 95%: 5 points
(5) 96% to 100%: 0 points

(c) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(1) The organization or a member of its staff has at least one or more years' experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(2) The organization or a member of its staff has at least one or more years' experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(3) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(d) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656: 10 points.

(e) The program will use less than 20 percent of HPG funds for administration purposes:

(1) More than 20%: Not eligible
(2) 20%: 0 points
(3) 19%: 1 point
(4) 18%: 2 points
(5) 17%: 3 points
(6) 16%: 4 points
(7) 15% or less: 5 points

(f) The proposed program contains a component for alleviating overcrowding as defined in 7 CFR 1944.656: 5 points.

In the event more than one preapplication receives the same amount of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points in item (a) in the ''*Scoring*'' section of this Notice (7 CFR 1944.679 (b)(1)).

Example of 1st tie-break:
Both Applicants score 80 points
Applicant X's percentage in ''Scoring'' section *item (a) is 65%*
Applicant B's percentage in ''Scoring'' section *item (a) is 75%*
Applicant B is ranked higher than Applicant X
Applicant B will be funded before Applicant X

Further, in the event that preapplications are still tied, then those preapplications still tied will be ranked based on the percentage figures used for determining the points in item (b) in the ''*Scoring*'' section of this Notice (7 CFR 1944.679 (b)(2)).

Example of 2nd tie-break:
Both Applicants score 80 points
Both Applicants percentage in ''Scoring'' section *item (a) is 65%*
Applicant X's percentage in ''Scoring'' section *item (b) is 55%*
Applicant B's percentage in ''Scoring'' section *item (b) is 60%*
Applicant X is ranked with a lower percentage than Applicant B
Applicant X will be funded before Applicant B

Further, 7 CFR 1944.679 (c), *for applications where HPG assistance to rental properties or co-ops is proposed,* those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of 5 years is required). For this part, ranking will be based from most to least number of years.

Example of 3rd tie-break:
Both Applicants score 80 points
Both Applicants percentage in ''Scoring'' section *item (a) is 65%*
Both Applicants percentage in ''Scoring'' section *item (b) is 55%*
Applicant X's rental unit will be available for occupancy under the program for 10 years
Applicant B's rental unit will be available for occupancy under the program for 5 years
Applicant X is ranked higher than Applicant B
Applicant X will be funded before Applicant B

If any of the applicants that remain tied after the 1st and 2nd tie-breaks are offering to assist single family owners, *then the 3rd tie-break would not be applicable,* and a lottery would be used to select the applicant to be funded.

If there is still a tie after the first two [*or three, when applicable*] tie-breaks, then a lottery system will be used to select the applicant to be funded. The lottery will be conducted at the National Office. The lottery will consist of the names of each application with equal scores printed onto a same size piece of paper, which will then be placed into a receptacle that fully obstructs the view of the names. The Director of the Preservation and Direct Loan Division, in the presence of two witnesses, will draw a piece of paper from the receptacle. The name on piece of paper drawn will be the applicant to be funded.

After the award selections are made, all applicants will be notified of the status of their applications by mail with form AD–622 Form, ''Notice of Pre-Application Review Action.'' Applicants will be given their review rights or appeal rights in accordance with 7 CFR 1944.682

F. Federal Award Administration Information

1. *Federal Award Notices.* The Agency will notify, in writing, applicants whose pre-applications have been selected for funding. At the time of notification, the Agency will advise the applicant what further information and documentation is required along with a timeline for submitting the additional information. If the Agency determines it is unable to select the application for funding, the applicant will be so informed in writing. Such notification will include the reasons the applicant was not selected. The Agency will advise applicants, whose pre-applications did not meet eligibility and/or selection criteria, of

their review rights or appeal rights in accordance with 7 CFR 1944.682.

2. *Administrative and National Policy Requirements.* Rural Development is encouraging applications for projects that will support rural areas with persistent poverty and in opportunity zones. This emphasis will support Rural Development's mission of improving the quality of life for Rural Americans and commitment to directing resources to those who most need them.

3. *Reporting.* Post-award reporting requirements can be found in the Grant Agreement.

G. Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees and institutions participating in or administering USDA programs are prohibited from discrimination based on race, color, national origin, religion, sex, gender identity, (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *E-mail: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

Fiscal Year 2019 Pre-Application for Section 533 Housing Preservation Grants (HPG)

Instructions

Applicants are required to submit this pre-application form electronically by accessing the Web site: *http://www.rd.usda.gov/programs-services/housing-preservation-grants.* Click on the Forms & Resources tab to access the ''Fiscal Year 2019 Pre-Application for Section 533 Housing Preservation Grants (HPG).'' Please note that electronic submittals are not on a secured Web site. If you do not wish to submit the form electronically by clicking on the **Send Form** button, you may still fill out the form, print it and submit it with your application package to the State Office. You also have the option to save the form and submit it on an electronic media to the State Office.

Supporting documentation required by this pre-application may be attached to the e-mail generated when you click the **Send Form** button to submit the form. However, if the attachments are too numerous or large in size, the e-mail box will not be able to accept them. In that case, submit the supporting documentation for this pre-application to the State Office with your complete application package under item **IX**.

Documents Submitted, indicate the supporting documents that you are submitting either with the pre-application or to the State Office.

I. Applicant Information

a. Applicant's Name: _____

b. Applicant's Address:

Address, Line 1: _____

Address, Line 2: _____

City: _____

State: _____

Zip: _____

c. Name of Applicant's Contact Person:

_____

d. Contact Person's Telephone Number:

_____

e. Contact Person's E-Mail Address:

_____

f. Entity Type:

☐ State Government

☐ Local Government

(Check One)

☐ Non-Profit Corporation

☐ Federally Recognized Indian Tribes

☐ Faith-Based and neighborhood partnership

☐ Community Organization

☐ Other consortia of an eligible entity

II. Project Information

a. Project Name: _____

b. Project Address:

Address, Line 1: _____

Address, Line 2: _____

City: _____

State: _____

Zip: _____

c. Organization DUNS Number: _____

d. Grant Amount Requested: $ _____

e. This grant request is for one of the following types of assistance:

☐ Homeowner assistance program

☐ Rental property assistance program

☐ Cooperative assistance program

f. In response to e. above, answer one of the following:

The number of low- and very low-income persons that the grantee will assist in the Homeowner assistance program: _____ **OR**

The number of units for low- and very low-income persons in the Rental property or Cooperative assistance program:

_____

g. This proposal is for one of the following:

☐ Housing Preservation Grant (HPG) program (no set-aside)

☐ Set-Aide for grant located in a Rural Economic Area Partnership (REAP) Zone

III. Low-Income Assistance

Check the percentage of very low-income persons that this pre-application proposes to assist in relation to the total population of the project:

☐ More than 80 percent (20 points)

☐ 61 percent to 80 percent (15 points)

☐ 41 percent to 60 percent (10 points)

☐ 20 percent to 40 percent (5 points)

☐ Less than 20 percent (0 points)

Points: _____

IV. Percent of HPG Fund Use

Check the percentage of HPG fund use (excluding administrative costs) in comparison to the total cost of unit preservation. This percentage reflects maximum repair or rehabilitation results with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches.

☐ 50 percent or less of HPG funds (20 points)

☐ 51 percent to 65 percent of HPG funds (15 points)

☐ 66 percent to 80 percent of HPG funds (10 points)

☐ 81 percent to 95 percent of HPG funds (5 points)

☐ 96 percent to 100 percent of HPG funds (0 points)

Points: _____

V. Administrative Capacity

The following three criteria demonstrate your administrative capacity to assist very low- and low-income persons to obtain adequate housing (30 points maximum).

a. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a rehabilitation or weatherization type of program? (10 points) Yes __ No __ **Points:** _____

b. Does this organization or a member of its staff have at least one or more years of experience successfully managing and operating a program assisting very low- or low-income persons obtain housing assistance? (10 points) Yes __ No __ **Points:** _____

c. If this organization has administered grant programs, are there any outstanding or unresolved audit or investigative findings which might impair carrying out the proposal? (10 points for No) No __ Yes __ **Points:** _____

If Yes, please explain:

_____

_____

_____

VI. Area Served

Will this proposal be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, and identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with a population of less than 5,000) as defined in 7CFR 1944.656? (10 points)

Yes __ No __ **Points:** _____

VII. Percent of HPG Funds for Administration

Check the percentage of HPG funds that will be used for Administration purposes:

☐ More than 20 percent (Not eligible)
☐ 20 percent (0 points)
☐ 19 percent (1 point)
☐ 18 percent (2 points)
☐ 17 percent (3 points)
☐ 16 percent (4 points)
☐ 15 percent or less (5 points)

Points: _____

VIII. Alleviating Overcrowding

Does the proposed program contain a component for alleviating overcrowding as defined in 7 CFR 1944.656? (5 points)

Yes __ No __ **Points:** _____

IX. Documents Submitted

Check if the following documents are being submitted electronically with this pre-application or will be mailed to the State Office with your complete pre-application package.

NOTE: You are only required to submit supporting documents for programs in which you will be participating as indicated in this pre-application. Points will be assigned for the items that you checked based on a review of the supporting documents. Please refer to the NOSA for the complete list of documents that you are required to submit with your complete pre-application package.

Reference	Item	Submitted with this pre-application	Submitted to State Office
I.	Applicant Information.		
II.	Project Information.		
III.	Low-Income Assistance.		
IV.	Percent of HPG Fund Use.		
V.	Administrative Capacity.		
VI.	Area Served.		
VII.	Percent of HPG Funds for Administration.		
VIII.	Alleviating Overcrowding.		

B. HPG 2018 Scoring

PLEASE NOTE: The scoring below is based on the responses that you have provided on this pre-application form and may not accord with the final score that the Agency assigns upon evaluating the supporting documentation that you submit. Your score may change from what you see here if the supporting documentation does not adequately support your answer or, if required documentation is missing.

Scoring Items for HPG 2018	Points earned
1. Low-Income Assistance (5, 10, 15, 20).	
2. Percent of HPG Fund Use (5, 10, 15, 20).	
3. Administrative Capacity (10, 20, 30).	
4. Area Served (10).	
5. Percent of HPG Funds for Administration (1, 2, 3, 4, 5).	
6. Alleviating Overcrowding (5).	
Total Score:.	

Important

By submitting this electronic pre-application form and its supporting documents, you have completed one step of the application process.

You **must** also complete the electronic application at:*http://www.grants.gov.*

[FR Doc. 2019–10860 Filed 5–23–19; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. 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 California Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Pacific Time) Wednesday, June 5, 2019. The purpose of the meeting is for the Committee to continue discussion of project proposal on immigration enforcement.

DATES: The meeting will be held on Wednesday, June 5, 2019, at 12:00 p.m. PT.

Public Call Information: Dial: 877–264–2842. *Conference ID:* 6062459.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 877–264–2842, conference ID number: 6062459. Any interested member of the public may call this number and listen to the meeting. 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Approval of May 10, 2019 Meeting Minutes
III. Discussion on project proposal on immigration enforcement
IV. Public Comment
V. Next Steps
VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: May 20, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–10841 Filed 5–23–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold Rolled Steel Flat Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Hyundai Steel Company (Hyundai) and POSCO/POSCO Daewoo Co., Ltd. (POSCO/PDW), producers/exporters of certain cold rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea), sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) March 7, 2016, through August 31, 2017.

DATES: Applicable May 24, 2019.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Daniel Deku, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on October 12, 2018.[1] For a history of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a

[1] *See Certain Cold Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2016–2017,* 83 FR 51661 (October 12, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Issues and Decision Memorandum for the Final Results of the 2016–2017 Antidumping Duty Administrative Review,'' dated concurrently with 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.

non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Between March 19, 2019, and April 18, 2019, Commerce extended the deadline for the final results of this administrative review. The revised deadline for the final results is now May 17, 2019.[4]

Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is certain cold-rolled steel flat products. For a complete description of the scope of the order, *see* the Issues and Decision Memorandum.[5]

Analysis of Comments Received

All issues raised in interested parties' case briefs 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 electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we made certain changes to the *Preliminary Results.* For a discussion of these issues, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

For these final results, we calculated a weighted-average dumping margin that is not zero, *de minimis,* or determined entirely on the basis of facts available for Hyundai and POSCO/PDW. Accordingly, Commerce has continued to assign companies not individually examined a margin of 11.60 percent, which is the weighted average of Hyundai's and POSCO/PDW's calculated weighted-average dumping margins.

Final Results of Administrative Review

We determine that, for the period of March 7, 2016, through August 31, 2017, the following dumping margins exist:

Producer or exporter	Final dumping margin (percent)
Hyundai Steel Company	36.59
POSCO/POSCO Daewoo Co., Ltd	2.68
Non-examined companies	11.60

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. We intend to calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).

For entries of subject merchandise during the POR produced by each respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction. We intend to issue liquidation instructions to CBP 15 days after the date of publication of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed in these final results will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.33 percent,[6] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice 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 POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties

[4] *See* Memorandum, ''Certain Cold Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated March 19, 2019; *see also* Memorandum, ''Certain Cold Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated April 18, 2019.

[5] *See* Memorandum, ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Issues and Decision Memorandum for the Final Results of the 2016–2017 Antidumping Duty Administrative Review,'' dated concurrently with this notice (Issues and Decision Memorandum).

[6] *See Certain Cold Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016) (*Order*).

occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: May 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Margin Calculation
V. Rates for Non-Examined Companies
VI. Discussion of the Issues
  Comment 1: POSCO/PDW's CONNUM-Specific Costs
  Comment 2: Adverse Facts Available for Hyundai
  Comment 3: POSCO/PDW's Cost Methodology
  Comment 4: POSCO/PDW's CEP Offset
  Comment 5: POSCO/PDW's Freight Revenue Cap
  Comment 6: POSCO/PDW's Prime Product Matching
  Comment 7: POSCO/PDW's Importer Specific Duty Assessment Rate Calculation
  Comment 8: Treatment of Hyundai's Affiliated Freight Company
VII. Recommendation

[FR Doc. 2019–10934 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that SeAH Steel Corporation (SeAH) and NEXTEEL Co., Ltd. (NEXTEEL), producers/exporters of certain oil country tubular goods (OCTG) from the Republic of Korea (Korea), sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) September 1, 2016, through August 31, 2017.

DATES: Applicable May 24, 2019.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann or Julie Geiger, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698 or (202) 482–2057, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2018, Commerce published the *Preliminary Results* of this administrative review.[1] We invited interested parties to comment on the *Preliminary Results.* Between February 12 and February 19, 2019, Commerce received timely filed briefs and rebuttal briefs from various interested parties.[2]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On March 11, 2019, we extended the deadline for the final results.[4] The revised deadline for the final results is now May 17, 2019.

These final results cover 33 companies.[5] Based on an analysis of the comments received, we have made changes to the weighted-average dumping margins determined for the respondents. The weighted-average dumping margins are listed in the ''Final Results of Review'' section, below. Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the *Order*[6]

The merchandise covered by the *Order* is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 51442 (October 11, 2019) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).

[2] *See,* respectively, Letter from Maverick, ''Certain Oil Country Tubular Goods from the Republic of Korea: Case Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.,'' dated February 12, 2019; Letter from U.S. Steel, ''Oil Country Tubular Goods from the Republic of Korea: Case Brief of United States Steel Corporation,'' dated February 12, 2019; Letter from SeAH, ''Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea—Case Brief of SeAH Steel Corporation,'' dated February 12, 2019; Letter from NEXTEEL, ''Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Case Brief,'' dated February 12, 2019; and Letter from AJU Besteel, ''Certain Oil Country Tubular Goods from the Republic of Korea—Case Brief,'' dated February 12, 2019; Letter from ILJIN, ''Oil Country Tubular Goods from the Republic of Korea: Case Brief,'' dated February 12, 2019; Letter from Husteel, ''Oil Country Tubular Goods from the Republic of Korea, 9/1/2016–8/31/2016 Administrative Review, Case No. A–580–870: Case Brief,'' dated February 12, 2019; and Letter from Hyundai Steel, ''Oil Country Tubular Goods from the Republic of Korea: Hyundai Steel's Case Brief,'' dated February 12, 2019; *see also* respectively, Letter from Maverick, ''Certain Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.,'' dated February 19, 2019; Letter from U.S. Steel, ''Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of United States Steel Corporation,'' dated February 19, 2019; Letter from SeAH, ''Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea—Rebuttal Brief of SeAH Steel Corporation,'' dated February 19, 2019; Letter from NEXTEEL, ''Oil Country Tubular Goods from the Republic of Korea: NEXTEEL's Rebuttal Brief,'' dated February 19, 2019.

[3] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive 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* Memorandum, ''Certain Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Final Results of the 2016/17 Antidumping Duty Administrative Review,'' dated March 11, 2019.

[5] The 33 companies consist of two mandatory respondents, three companies for which we made a final determination of no shipments, and 28 companies not individually examined.

[6] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) (*Order*).

steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Order* also covers OCTG coupling stock. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted with this notice. The issues are identified in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for SeAH and NEXTEEL. For a discussion of these changes, see the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce preliminarily determined that Samsung, Samsung C&T Corporation (Samsung C&T), and SeAH Besteel Corporation (SeAH Besteel) had no shipments during the POR.[8] Following publication of the *Preliminary Results,* we received no comments from interested parties regarding these companies. As a result, and because the record contains no evidence to the contrary, we continue to find that Samsung, Samsung C&T, and SeAH Besteel made no shipments during the POR. Accordingly, consistent with Commerce's practice, we will instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by these three companies, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[9]

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

For these final results, we calculated a weighted-average dumping margin that is not zero, *de minimis,* or determined entirely on the basis of facts available for SeAH and NEXTEEL. Accordingly, Commerce has assigned to the companies not individually examined (see Appendix II for a full list of these companies) a margin of 24.49 percent, which is the weighted average of NEXTEEL's and SeAH's calculated weighted-average dumping margins for these final results.

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period September 1, 2016 through August 31, 2017:

Exporter or producer	Weighted-average dumping margins (percent)
NEXTEEL Co., Ltd	32.24
SeAH Steel Corporation	16.73
Non-examined companies [10]	24.49

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this administrative review in the **Federal Register**.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[11] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[12] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[13] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[14]

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the ''Rates for

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2015–2016–2017 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea,'' dated concurrently with this notice (Issues and Decision Memorandum).

[8] *See Preliminary Results,* 83 FR at 51442.

[9] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[10] *See* Appendix II for a full list of these companies.

[11] *See* 19 CFR 351.212(b)(1).

[12] *Id.*

[13] *Id.*

[14] *See* 19 CFR 351.106(c)(2).

Non-Examined Companies'' section, above.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by SeAH, NEXTEEL, or the non-examined companies for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

As noted in the ''Final Determination of No Shipments'' section, above, Commerce will instruct CBP to liquidate any existing entries of merchandise produced by but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.24 percent,[16] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[16] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination,* 81 FR 59603 (August 30, 2016).

Notification to Importers

This notice 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 POR. 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.

Notification to Interested Parties Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: May 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Margin Calculations
V. Rate for Non-Examined Companies
VI. Discussion of the Issues

General Issues

Comment 1: Particular Market Situation
Comment 2: Calculation of Constructed Value Profit
Comment 3: Differential Pricing

SeAH-Specific Issues

Comment 4: Freight Revenue Cap
Comment 5: Interest Income Offset
Comment 6: Calculation of General and Administrative Expenses Incurred by SeAH's U.S. Affiliate
Comment 7: Treatment of Cost Variances for a Single Production Order Produced During POR and Non-POR Periods
Comment 8: Inventory Valuation Loss
Comment 9: Penalties Expense

NEXTEEL-Specific Issues

Comment 10: NEXTEEL–POSCO Affiliation
Comment 11: Resales of Subject Merchandise
Comment 12: Non-Prime Products
Comment 13: Warranty Expense Calculation
Comment 14: Reported Grade
Comment 15: Suspended Production Losses
Comment 16: Coil Scrap Offset
Comment 17: Pipe Scrap Offset
VIII. Recommendation

Appendix II—List of Companies Not Individually Examined

AJU Besteel Co., Ltd.
BDP International
Daewoo International Corporation
Daewoo America
Dong-A Steel Co. Ltd.
Dong Yang Steel Pipe
Dongbu Incheon Steel
DSEC
Erndtebruecker Eisenwerk and Company
Hansol Metal
Husteel Co., Ltd.
HYSCO
Hyundai RB
Hyundai Steel Co., Ltd.
Hyundai Steel Company [17]
ILJIN Steel Corporation
Jim And Freight Co., Ltd.
Kia Steel Co. Ltd.
KSP Steel Company
Kukje Steel
Kurvers
POSCO Daewoo Corporation
POSCO Daewoo America
Steel Canada
Sumitomo Corporation
TGS Pipe
Yonghyun Base Materials
ZEECO Asia

[FR Doc. 2019–10935 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO, producers and/or exporters of certain cold-rolled steel flat products

[17] On September 21, 2016, Commerce published the final results of a changed circumstances review with respect to OCTG from Korea, finding that Hyundai Steel Corporation is the successor-in-interest to Hyundai HYSCO for purposes of determining antidumping duty cash deposits and liabilities. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods from the Republic of Korea,* 81 FR 64873 (September 21, 2016). Hyundai Steel Corporation is also known as Hyundai Steel Company and Hyundai Steel Co. Ltd.

(cold-rolled steel) from the Republic of Korea (Korea), received countervailable subsidies during the period of review (POR), July 29, 2016, through December 31, 2016.

DATES: Applicable May 24, 2019.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3813 and (202) 482–1121, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the preliminary results of this administrative review of cold-rolled steel from Korea on March 12, 2018.[1] For a history of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] On March 13, 2019, Commerce extended the deadline for the final results of this administrative review. The revised deadline for the final results of this administrative review is now May 17, 2019.[4]

Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is certain cold-rolled steel flat products. For a complete description of the scope of the order, *see* attachment to the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs 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 electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties and information received from Hyundai Steel after the *Preliminary Results,* we made changes to the net subsidy rates calculated for the mandatory respondents. For a discussion of these issues, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Hyundai Steel and POSCO were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Hyundai Steel and POSCO using publicly ranged sales data submitted by the respondents. This is consistent with the methodology that we would use in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Act.

Final Results of Administrative Review

We determine that, for the period of July 29, 2016, through December 31, 2016, the following total estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
POSCO	0.55
Hyundai Steel Co., Ltd	0.58
Dongbu Steel Co., Ltd	0.57
Dongbu Incheon Steel Co., Ltd	0.57
Dongkuk Steel Mill Co., Ltd	0.57
Dongkuk Industries Co., Ltd	0.57
Hyuk San Profile Co., Ltd	0.57
Taihan Electric Wire Co., Ltd	0.57
Union Steel Co., Ltd	0.57

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to 19 CFR 351.212(b)(2), Commerce intends to issue appropriate instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of the final results of this review. We will instruct CBP to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered, or withdrawn from warehouse for consumption, from July 29, 2016, through December 31, 2016, at the *ad valorem* rates listed above.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed in these final results will be equal to the subsidy rates established in the final results of this review; (2) for all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016,* 83 FR 51446 (October 11, 2018) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review, 2016: Certain Cold-Rolled Steel Flat Products from the Republic of Korea,'' dated concurrently with this determination and 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* Memorandum, ''Certain Cold Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated March 13, 2019.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: May 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Period of Review
V. Subsidies Valuation Information
VI. Use of Facts Otherwise Available
VII. Analysis of Programs
VIII. Discussion of Comments
- Comment 1: Whether Commerce Should Apply AFA for POSCO and Hyundai Steel's Failure to Retain AUL Records for Acquired Companies
- Comment 2: Whether POSCO Energy is POSCO's Cross-Owned Input Supplier
- Comment 3: Whether to Treat POSCO Chemtech's Deferred Tax Liabilities Under Restriction of Special Taxation Act (RSTA) Article 9 as an Interest-Free Contingent Liability Loan
- Comment 4: Which of POSCO's Reported Benchmark Loans to Use as Benchmarks for POSCO's KEXIM Loans
- Comment 5: Whether POSCO's Equipment Loans from the KDB are Covered by the Previously Countervailed Program ''Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables''
- Comment 6: Whether to Use the GOK Short-Term Bond Interest Rate or IMF Statistic as a Short-Term Interest Rate Benchmark for POSCO's Short-Term KDB Loans
- Comment 7: Various Alleged Errors in the Preliminary Calculations for POSCO
- Comment 8: Whether Hyundai Green Power is Hyundai Steel's Cross-Owned Input Supplier
- Comment 9: Whether Commerce Should Countervail Benefits Received by SPP Yulchon Energy
- Comment 10: Whether Suncheon Harbor Usage Fee Exemptions Under the Harbor Act Are Countervailable

IX. Recommendation

[FR Doc. 2019–10933 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–111]

Vertical Metal File Cabinets From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 20, 2019.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang at (202) 482–5484, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On April 30, 2019, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition (Petition) concerning imports of vertical metal file cabinets (file cabinets) from the People's Republic of China (China) filed in proper form on behalf of Hirsh Industries LLC (the petitioner).[1] The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of file cabinets from China.

Between May 2 and 15, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed responses to this request on May 6 and 16, 2019.[3]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of file cabinets in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing file cabinets in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[4]

Period of Investigation

Because the Petition was filed on April 30, 2019, the period of investigation (POI) is January 1, 2018, through December 31, 2018.

Scope of the Investigation

The merchandise covered by this investigation is file cabinets from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[5] As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to

[1] *See* Petitioner's Letter, ''Vertical Metal File Cabinets from the People's Republic of China—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated April 30, 2019 (the Petition).

[2] *See* Commerce's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Vertical Metal File Cabinets from the People's Republic of China: Supplemental Questions,'' dated May 2, 2019 (General Issues Supplemental Questionnaire); Petitioner's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Vertical Metal File Cabinets from the People's Republic of China: Supplemental Questions,'' dated May 2, 2019 (CVD Supplemental Questionnaire); *see also* Memoranda, ''Phone Call with Counsel to the Petitioner,'' dated May 8, 2019 (May 8, 2019 Memorandum); and, ''Phone Calls with Counsel to the Petitioner,'' dated May 15, 2019 (May 15, 2019 Memorandum)..

[3] *See* Petitioner's Letters, ''Vertical Metal File Cabinets from the People's Republic of China—Petitioner's Supplement to Volume I Relating to General Issues,'' dated May 6, 2019 (General Issues Supplement); ''Vertical Metal File Cabinets from the People's Republic of China: Petitioner's Supplement to Volume III Relating to China Countervailing Duties,'' dated May 6, 2019 (CVD Supplement); ''Vertical Metal File Cabinets from the People's Republic of China—Petitioner's 2nd Supplement to Volume I Relating to General Issues,'' dated May 9, 2019 (Second General Issues Supplement); and, ''Vertical Metal File Cabinets from the People's Republic of China—Petitioner's 3rd Supplement to Volume I Relating to General Issues,'' dated May 16, 2019 (Third General Issues Supplement).

[4] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[5] *See* General Issues Supplement; *see also* May 8, 2019 Memorandum; Second General Issues Supplement; May 15, 2019 Memorandum; Third General Issues Supplement.

raise issues regarding product coverage (scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on June 10, 2019, which is 20 calendar days from the signature date of this notice.[8] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 20, 2019, which is 10 calendar days from the initial comment deadline.[9]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified China of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.[11] China did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[14] Based on our analysis of the information submitted on the record, we have determined that file cabinets, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided its own 2018 production of the domestic like product, as well as the 2018 production of the supporters of the Petition.[16] The petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] Because the deadline falls on a Sunday (*i.e.,* June 9, 2019), the deadline becomes the next business day (*i.e.,* June 10, 2019).

[9] *See* 19 CFR 351.303(b).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] *See* Commerce's Letter, ''Countervailing Duty Petition on Vertical Metal File Cabinets from the People's Republic of China,'' dated May 15, 2019.

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Volume I of the Petitions at 11–13; *see also* General Issues Supplement at 11–13 and Exhibits GEN-Supp-1 through GEN-Supp-4.

[15] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Initiation Checklist: Vertical Metal File Cabinets from the People's Republic of China (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering File Cabinets from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[16] *See* Volume I of the Petition at 2–3 and Exhibit GEN–3.

[17] *See id.; see also* General Issues Supplement, 14–15 and Exhibit GEN-Supp-5.

[18] *See* Volume I of the Petition at 2–3 and Exhibit GEN–3; *see also* General Issues Supplement at 14–

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[19] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a decline in the domestic industry's production, capacity utilization, domestic shipments, employment variables, and financial performance.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Initiation of CVD Investigation

Based on the examination of the Petition on file cabinets from China, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of file cabinets from China benefit from countervailable subsidies conferred by the Government of China. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on each of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 62 companies in China as producers/exporters of file cabinets.[26] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of file cabinets from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix.

On May 16, 2019, Commerce released CBP data for imports of file cabinets from China under APO to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[27] We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China via ACCESS.

Furthermore, to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of file cabinets from China are materially injuring or threatening material injury to a U.S. industry.[28] A negative ITC determination will result in the investigation being terminated.[29] Otherwise, this investigation will

15 and Exhibit GEN-Supp-5. For further discussion, *see* CVD Initiation Checklist at Attachment II.

[19] *See* CVD Initiation Checklist at Attachment II.

[20] *See id.; see also* section 702(c)(4)(D) of the Act.

[21] *See* CVD Initiation Checklist at Attachment II.

[22] *Id.*

[23] *See* Volume I of the Petition at 13–14 and Exhibits GEN–7 and GEN–10.

[24] *Id.* at 10, 13–23 and Exhibits GEN–1, GEN–7, and GEN–10 through GEN–14; *see also* General Issues Supplement at 15–16 and Exhibit GEN-Supp-5.

[25] *See* CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vertical Metal File Cabinets from the People's Republic of China (Attachment III).

[26] *See* Petition Volume I at Exhibit GEN–8.

[27] *See* Memorandum, ''Countervailing Duty Investigation of File Cabinets from: Release of U.S. Customs and Border Protection Data,'' dated May 16, 2019.

[28] *See* section 733(a) of the Act.

[29] *Id.*

proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [30] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[31] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[32] Parties must use the certification formats provided in 19 CFR 351.303(g).[33] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: May 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers freestanding vertical metal file cabinets containing two or more extendable file storage elements and having an actual width of 25 inches or less. The subject vertical metal file cabinets have bodies made of carbon and/or alloy steel and or other metals, regardless of whether painted, powder coated, or galvanized or otherwise coated for corrosion protection or aesthetic appearance. The subject vertical metal file cabinets must have two or more extendable elements for file storage (*e.g.,* file drawers) of a height that permits hanging files of either letter (8.5″ x 11″) or legal (8.5″ x 14″) sized documents.

An ''extendable element'' is defined as a movable load-bearing storage component including, but not limited to, drawers and filing frames. Extendable elements typically have suspension systems, consisting of glide blocks or ball bearing glides, to facilitate opening and closing. The subject vertical metal file cabinets typically come in models with two, three, four, or five-file drawers. The inclusion of one or more additional non-file-sized extendable storage elements, not sized for storage files (*e.g.,* box or pencil drawers), does not remove an otherwise in-scope product from the scope as long as the combined height of the non-file-sized extendable storage elements does not exceed six inches. The inclusion of an integrated storage area that is not extendable (*e.g.,* a cubby) and has an actual height of six inches or less, also does not remove a subject vertical metal file cabinet from the scope. Accessories packaged with a subject vertical file cabinet, such as separate printer stands or shelf kits that sit on top of the in-scope vertical file cabinet are not considered integrated storage.

''Freestanding'' means the unit has a solid top and does not have an open top or a top with holes punched in it that would permit the unit to be attached to, hung from, or otherwise used to support a desktop or other work surface. The ability to anchor a vertical file cabinet to a wall for stability or to prevent it from tipping over does not exclude the unit from the scope.

The addition of mobility elements such as casters, wheels, or a dolly does not remove the product from the scope. Packaging a subject vertical metal file cabinet with other accessories, including, but not limited to, locks, leveling glides, caster kits, drawer accessories (*e.g.,* including but not limited to follower wires, follower blocks, file compressors, hanger rails, pencil trays, and hanging file folders), printer stand, shelf kit and magnetic hooks, also does not remove the product from the scope. Vertical metal file cabinets are also in scope whether they are imported assembled or unassembled with all essential parts and components included.

Excluded from the scope are lateral metal file cabinets. Lateral metal file cabinets have a width that is greater than the body depth, and have a body with an actual width that is more than 25 inches wide.

Also excluded from the scope are pedestal file cabinets. Pedestal file cabinets are metal file cabinets with body depths that are greater than or equal to their width, are under 31 inches in actual height, and have the following characteristics: (1) An open top or other the means for the cabinet to be attached to or hung from a desktop or other work surface such as holes punched in the top (*i.e.,* not freestanding); or (2) freestanding file cabinets that have all of the following: (a) At least a 90 percent drawer extension for all extendable file storage elements; (b) a central locking system; (c) a minimum weight density of 9.5 lbs./cubic foot; and (d) casters or leveling glides.

''Percentage drawer extension'' is defined as the drawer travel distance divided by the inside depth dimension of the drawer. Inside depth of drawer is measured from the inside of the drawer face to the inside face of the drawer back. Drawer extension is the distance the drawer travels from the closed position to the maximum travel position which is limited by the out stops. In situations where drawers do not include an

[30] *See* 19 CFR 351.301(b).

[31] *See* 19 CFR 351.301(b)(2).

[32] *See* section 782(b) of the Act.

[33] *See 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.*

outstop, the drawer is extended until the drawer back is 3 ½ inches from the closed position of inside face of the drawer front. The ''weight density'' is calculated by dividing the cabinet's actual weight by its volume in cubic feet (the multiple of the product's actual width, depth, and height). A ''central locking system'' locks all drawers in a unit.

Also excluded from the scope are fire proof or fire-resistant file cabinets that meet Underwriters Laboratories (UL) fire protection standard 72, class 350, which covers the test procedures applicable to fire-resistant equipment intended to protect paper records.

The merchandise subject to the investigation is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.10.0020. The subject merchandise may also enter under HTSUS subheadings 9403.10.0040, 9403.20.0080, and 9403.20.0090. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2019–10936 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–110]

Vertical Metal File Cabinets From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 20, 2019.

FOR FURTHER INFORMATION CONTACT: Kathryn Wallace at (202) 482–6251, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On April 30, 2019, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition (Petition) concerning imports of vertical metal file cabinets (file cabinets) from the People's Republic of China (China), filed in proper form on behalf of Hirsh Industries LLC (the petitioner).[1] The AD Petition was accompanied by a countervailing duty (CVD) Petition concerning imports of file cabinets from China.

Between May 2 and 15, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed responses to these requests between May 6 and 16, 2019.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of file cabinets from China are being, or are likely to be, sold in the United States at less-than-fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing file cabinets and in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.[4]

Period of Investigation

Because the Petition was filed on April 30, 2019, the period of investigation (POI) is October 1, 2018, through March 31, 2019.

Scope of the Investigation

The merchandise covered by this investigation is file cabinets from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[5] As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on June 10, 2019, which is 20 calendar days from the signature date of this notice.[8] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 20, 2019, which is 10 calendar days from the initial comment deadline.[9]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must

[1] *See* Petitioner's Letter, ''Vertical Metal File Cabinets from the People's Republic of China—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated April 30, 2019 (the Petition).

[2] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Vertical Metal File Cabinets from the People's Republic of China: Supplemental Questions,'' dated May 2, 2019 (General Issues Supplemental Questionnaire); and, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Vertical Metal File Cabinets from the People's Republic of China: Supplemental Questions,'' dated May 2, 2019 (AD Supplemental Questionnaire); *see also* Memoranda, ''Phone Call with Counsel to the Petitioner,'' dated May 8, 2019 (May 8, 2019 Memorandum); and, ''Phone Calls with Counsel to the Petitioner,'' dated May 15, 2019 (May 15, 2019 Memorandum).

[3] *See* Petitioner's Letters, ''Vertical Metal File Cabinets from the People's Republic of China—Petitioner's Supplement to Volume I Relating to General Issues,'' dated May 6, 2019 (General Issues Supplement); ''Vertical Metal Cabinets from the People's Republic of China—Petitioner's Supplement to Volume II Relating to China Antidumping Duties,'' dated May 6, 2019 (AD Supplement); ''Vertical Metal File Cabinets from the People's Republic of China—Petitioner's 2nd Supplement to Volume I Relating to General Issues,'' dated May 9, 2019 (Second General Issues Supplement); and, ''Vertical Metal File Cabinets from the People's Republic of China—Petitioner's 3rd Supplement to Volume I Relating to General Issues,'' dated May 16, 2019 (Third General Issues Supplement).

[4] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[5] *See* General Issues Supplement; *see also* May 8, 2019 Memorandum; Second General Issues Supplement; May 15, 2019 Memorandum; Third General Issues Supplement.

[6] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] Because the deadline falls on a Sunday (*i.e.,* June 9, 2019), the deadline becomes the next business day (*i.e.,* June 10, 2019).

[9] *See* 19 CFR 351.303(b).

also be filed on the record of the concurrent CVD investigation.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[10] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of file cabinets to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on June 10, 2019, which is 20 calendar days from the signature date of this notice.[11] Any rebuttal comments must be filed by 5:00 p.m. ET on June 20, 2019. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of this AD investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[12] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[13]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the Petition.[14] Based on our analysis of the information submitted on the record, we have determined that file cabinets, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[15]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided its own 2018 production of the domestic like product, as well as the 2018 production of companies that support the Petition.[16] The petitioner compared the total production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.[17] We relied on data provided by the petitioner for purposes of measuring industry support.[18]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[19] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,*

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[11] *See* 19 CFR 351.303(b). Because the deadline falls on a Sunday (*i.e.,* June 9, 2019), the deadline becomes the next business day (*i.e.,* June 10, 2019).

[12] *See* section 771(10) of the Act.

[13] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[14] *See* Volume I of the Petition at 11–13; *see also* General Issues Supplement at 11–13 and Exhibits GEN-Supp-1 through GEN-Supp-4.

[15] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Initiation Checklist: Vertical Metal File Cabinets from the People's Republic of China (AD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Vertical Metal File Cabinets from the People's Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[16] *See* Volume I of the Petition at 2–3 and Exhibit GEN–3.

[17] *See id.; see also* General Issues Supplement, 14–15 and Exhibit GEN-Supp-5.

[18] *See* Volume I of the Petition at 2–3 and Exhibit GEN–3; *see also* General Issues Supplement at 14–15 and Exhibit GEN-Supp-5. For further discussion, *see* AD Initiation Checklist at Attachment II.

[19] *See* AD Initiation Checklist at Attachment II.

polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a decline in the domestic industry's production, capacity utilization, domestic shipments, employment variables, and financial performance.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of file cabinets from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

Export Price

The petitioner based export price (EP) on the retail price of a vertical metal file cabinet produced in China and sold at a major office supply retailer in the U.S. market during the POI.[26] The petitioner made deductions from U.S. price for movement and other expenses, consistent with the terms of sale.[27]

Normal Value

Commerce considers China to be a non-market economy (NME) country.[28] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[29]

The petitioner claims that Mexico is an appropriate surrogate country for China, because it is a market economy that is at a level of economic development comparable to that of China and it is a significant producer of comparable merchandise.[30] The petitioner provided publicly available information from Mexico to value all FOPs. Based on the information provided by the petitioner, we determine that it is appropriate to use Mexico as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by the Chinese producer/exporter was not reasonably available, the petitioner used the product-specific consumption rates of a U.S. file cabinet producer as a surrogate to estimate the Chinese manufacturer's FOPs.[31] The petitioner valued the estimated FOPs using surrogate values from Mexico, as noted above.[32] The petitioner calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of a Mexican producer of comparable merchandise.[33]

Fair Value Comparisons

Based on the data provided in the Petition, there is reason to believe that imports of file cabinets from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for file cabinets from China range from 121.75 to 198.50 percent.[34]

Initiation of LTFV Investigation

Based upon the examination of the Petition on file cabinets from China, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of file cabinets from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The petitioner named 62 companies in China as producers/exporters of file

[20] *See* section 732(c)(4)(D) of the Act; *see also* AD Initiation Checklist at Attachment II.

[21] *See* AD Initiation Checklist at Attachment II.

[22] *Id.*

[23] *See* Volume I of the Petition at 13–14 and Exhibits GEN–7 and GEN–10.

[24] *See id.* at 10, 13–23 and Exhibits GEN–1, GEN–7, and GEN–10 through GEN–14; *see also* General Issues Supplement at 15–16 and Exhibit GEN-Supp-5.

[25] *See* AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Vertical Metal File Cabinets from the People's Republic of China (Attachment III).

[26] *See* Volume II of the Petition at Exhibit AD–1 attachments 1–2.

[27] *See id.* at 3, Exhibit AD–1 attachment 1; *see also* AD Supplement at 2–3.

[28] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy,* unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

[29] *See* AD Initiation Checklist.

[30] *See* Volume II of the Petition at 5 and Exhibits AD–3–1 and AD–3–2.

[31] *Id.* at 5 and Exhibits AD–2, AD–3 and AD–4.

[32] *See id.* at Exhibit AD–3; *see also* AD Supplement at Exhibit AD–S3.

[33] *See* Volume II of the Petition at 15–17 and Exhibit AD–2 attachment 10; *see also* AD Supplement at 5–8.

[34] *See* AD Supplement at Exhibit AD–S5.

cabinets.[35] After considering our resources, Commerce has determined that we do not have sufficient administrative resources to issue quantity and value (Q&V) questionnaires to all 62 identified producers and exporters. Therefore, Commerce has determined to limit the number of Q&V questionnaires we will send out to exporters and producers identified in U.S. Customs and Border Protection (CBP) data for U.S. imports of file cabinets during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the Appendix. Accordingly, Commerce will send Q&V questionnaires to the largest producers and exporters that are identified in the CBP data for which there is address information on the record.

On May 15, 2019, Commerce released CBP data on imports of file cabinets from China under (administrative protective order) APO to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.[36] We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance website at *http://www.trade.gov/enforcement/news.asp.* In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to base respondent selection on the responses to the Q&V questionnaire that we receive.

Producers/exporters of file cabinets from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance website. The Q&V response must be submitted by the relevant China exporters/producers no later than June 10, 2019.[37] All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[38] The specific requirements for submitting a separate-rate application in the China investigation are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[39] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[40]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China via ACCESS.

Furthermore, to the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of file cabinets from China are materially injuring or threatening material injury to a U.S. industry.[41] A negative ITC determination will result in the investigation being terminated.[42] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[43] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual

[35] *See* Volume I of the Petition at Exhibit GEN–8.

[36] *See* Memorandum, ''Less-Than-Fair-Value Investigation of File Cabinets from China: Release of U.S. Customs and Border Protection Data;'' dated May 15, 2019.

[37] Because the deadline falls on a Sunday (*i.e.,* June 9, 2019), the deadline becomes the next business day (*i.e.,* June 10, 2019).

[38] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[39] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[40] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[41] *See* section 733(a) of the Act.

[42] *Id.*

[43] *See* 19 CFR 351.301(b).

information seeks to rebut, clarify, or correct.[44] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[45] Parties must use the certification formats provided in 19 CFR 351.303(g).[46] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of this investigation covers freestanding vertical metal file cabinets containing two or more extendable file storage elements and having an actual width of 25 inches or less. The subject vertical metal file cabinets have bodies made of carbon and/or alloy steel and or other metals, regardless of whether painted, powder coated, or galvanized or otherwise coated for corrosion protection or aesthetic appearance. The subject vertical metal file cabinets must have two or more extendable elements for file storage (*e.g.,* file drawers) of a height that permits hanging files of either letter (8.5″ x 11″) or legal (8.5″ x 14″) sized documents.

An ''extendable element'' is defined as a movable load-bearing storage component including, but not limited to, drawers and filing frames. Extendable elements typically have suspension systems, consisting of glide blocks or ball bearing glides, to facilitate opening and closing.

The subject vertical metal file cabinets typically come in models with two, three, four, or five-file drawers. The inclusion of one or more additional non-file-sized extendable storage elements, not sized for storage files (*e.g.,* box or pencil drawers), does not remove an otherwise in-scope product from the scope as long as the combined height of the non-file-sized extendable storage elements does not exceed six inches. The inclusion of an integrated storage area that is not extendable (*e.g.,* a cubby) and has an actual height of six inches or less, also does not remove a subject vertical metal file cabinet from the scope. Accessories packaged with a subject vertical file cabinet, such as separate printer stands or shelf kits that sit on top of the in-scope vertical file cabinet are not considered integrated storage.

''Freestanding'' means the unit has a solid top and does not have an open top or a top with holes punched in it that would permit the unit to be attached to, hung from, or otherwise used to support a desktop or other work surface. The ability to anchor a vertical file cabinet to a wall for stability or to prevent it from tipping over does not exclude the unit from the scope.

The addition of mobility elements such as casters, wheels, or a dolly does not remove the product from the scope. Packaging a subject vertical metal file cabinet with other accessories, including, but not limited to, locks, leveling glides, caster kits, drawer accessories (*e.g.,* including but not limited to follower wires, follower blocks, file compressors, hanger rails, pencil trays, and hanging file folders), printer stand, shelf kit and magnetic hooks, also does not remove the product from the scope. Vertical metal file cabinets are also in scope whether they are imported assembled or unassembled with all essential parts and components included.

Excluded from the scope are lateral metal file cabinets. Lateral metal file cabinets have a width that is greater than the body depth, and have a body with an actual width that is more than 25 inches wide.

Also excluded from the scope are pedestal file cabinets. Pedestal file cabinets are metal file cabinets with body depths that are greater than or equal to their width, are under 31 inches in actual height, and have the following characteristics: (1) An open top or other the means for the cabinet to be attached to or hung from a desktop or other work surface such as holes punched in the top (*i.e.,* not freestanding); or (2) freestanding file cabinets that have all of the following: (a) At least a 90 percent drawer extension for all extendable file storage elements; (b) a central locking system; (c) a minimum weight density of 9.5 lbs./cubic foot; and (d) casters or leveling glides.

''Percentage drawer extension'' is defined as the drawer travel distance divided by the inside depth dimension of the drawer. Inside depth of drawer is measured from the inside of the drawer face to the inside face of the drawer back. Drawer extension is the distance the drawer travels from the closed position to the maximum travel position which is limited by the out stops. In situations where drawers do not include an outstop, the drawer is extended until the drawer back is 3-½ inches from the closed position of inside face of the drawer front. The ''weight density'' is calculated by dividing the cabinet's actual weight by its volume in cubic feet (the multiple of the product's actual width, depth, and height). A ''central locking system'' locks all drawers in a unit.

Also excluded from the scope are fire proof or fire-resistant file cabinets that meet Underwriters Laboratories (UL) fire protection standard 72, class 350, which covers the test procedures applicable to fire-resistant equipment intended to protect paper records.

The merchandise subject to the investigation is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.10.0020. The subject merchandise may also enter under HTSUS subheadings 9403.10.0040, 9403.20.0080, and 9403.20.0090. While HTSUS subheadings are provided for convenience and customs purposes, the written

[44] *See* 19 CFR 351.301(b)(2).

[45] *See* section 782(b) of the Act.

[46] *See 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.*

description of the scope of the investigation is dispositive.

[FR Doc. 2019–10937 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–082, C–570–083]

Certain Steel Wheels From the People's Republic of China: Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing the antidumping duty (AD) and countervailing duty (CVD) orders on certain steel wheels (steel wheels) from the People's Republic of China (China).

DATES: Applicable May 24, 2019.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang at (202) 482–2316 (AD), Chien-Min Yang at 202–482–5484 (CVD), and Myrna Lobo at 202–482–2371 (CVD), AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on March 28, 2019, Commerce published its affirmative final determination of sales at less-than-fair-value (LTFV) [1] and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of steel wheels from China.[2]

On May 13, 2019, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of steel wheels from China, within the meaning of section 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[3] On May 17, 2019, ITC published its final determination in the **Federal Register**.[4] Further, the ITC determined that critical circumstances do not exist with respect to LTFV imports and subsidized imports of steel wheels from China.[5]

Scope of the Orders

The products covered by these orders are steel wheels from China. For a complete description of the scope of the orders, *see* the Appendix to this notice.

AD Order

On May 13, 2019, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of imports of steel wheels from China that are sold in the United States at LTFV.[6] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this AD order. Because the ITC determined that imports of steel wheels from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of antidumping duties, as described below.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the subject merchandise, for all relevant entries of steel wheels from China. Antidumping duties will be assessed on unliquidated entries of steel wheels from China entered, or withdrawn from warehouse, for consumption on or after October 30, 2018, the date of publication of the *LTFV Preliminary Determination,*[7] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination as further described below.

Suspension of Liquidation—AD

In accordance with section 736 of the Act, we will instruct CBP to reinstitute suspension of liquidation on all relevant entries of steel wheels from China, effective on the date of publication of the *ITC Final Determination* in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount that normal value exceeds export price or constructed export price for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. For each producer and exporter combination, Commerce will also instruct CBP to require cash deposits for estimated antidumping duties equal to the cash deposit rates listed below.

Accordingly, effective on the date of publication of the *ITC Final Determination,* CBP will require, at the same time as an importer of record would normally deposit estimated duties on the subject merchandise, a cash deposit based on the rates listed below.[8] As stated in the *LTFV Final Determination,* Commerce made certain adjustments for export subsidies from the *CVD Final Determination* to the estimated weighted-average dumping margin to determine each of the cash deposit rates.

Producer	Exporter	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (percent)
China-Wide Entity	China-Wide Entity	231.70	231.08

[1] *See Certain Steel Wheels from the People's Republic of China: Final Determination of Sales at Less-Than-Fair Value,* 84 FR 11746 (March 28, 2019) (*LTFV Final Determination*).

[2] *See Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 84 FR 11744 (March 28, 2019) (*CVD Final Determination*).

[3] *See* ITC May 13, 2019 letter regarding notification of final determination (ITC Notification).

[4] *See Steel Wheels from China,* 84 FR 22518 (May 17, 2019) (*ITC Final Determination*).

[5] *See ITC Final Determination* at footnote 2 and USITC Publication 4892 (May 2019) at 3.

[6] *See* ITC Notification.

[7] *See Certain Steel Wheels from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value,* 83 FR 54568 (October 30, 2018) (*LTFV Preliminary Determination*).

[8] *See* section 736(a)(3) of the Act.

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At a request of Xiamen Sunrise Wheel Group Co., Ltd., the exporter that accounts for a significant proportion of steel wheels from China, we extended the four-month period to six months.[9] Commerce published its *LTFV Preliminary Determination* on October 30, 2018. Therefore, the extended period, beginning on the date of publication of the *LTFV Preliminary Determination,* ended on April 28, 2019. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rate listed above will begin on May 17, 2019, the date of publication of the *ITC Final Determination.*

Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of steel wheels from China entered, or withdrawn from warehouse, for consumption after April 28, 2019, the date on which the provisional measures expired, through May 16, 2019, the day preceding the date of publication of the *ITC Final Determinations* in the **Federal Register**. Suspension of liquidation will resume on May 17, 2019, the date of publication of the *ITC Final Determination* in the **Federal Register**.

Critical Circumstances—AD

With regard to the ITC's negative critical circumstances determination on LTFV imports of steel wheels from China, we will instruct CBP to lift suspension and to refund all cash deposits made to secure the payment of estimated antidumping duties with respect to entries of steel wheels from China, entered, or withdrawn from warehouse, for consumption on or after August 1, 2018 (*i.e.,* 90 days prior to the date of publication of the *LTFV Preliminary Determination*), but before October 30, 2018 (*i.e.,* the date of publication of the *LTFV Preliminary Determination*).

[9] *See Steel Wheels From the People's Republic of China: Postponement of Final Determination of Sales at Less-Than-Fair-Value,* 84 FR 1063 (February 1, 2019).

CVD Order

On May 13, 2019, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of subsidized imports of steel wheels from China.[10] Therefore, in accordance with section 705(c)(2) of the Act, we are issuing this CVD order. Because the ITC determined that imports of steel wheels from China are materially injuring a U.S. industry, unliquidated entries of such merchandise from China entered, or withdrawn from warehouse, for consumption are subject to the assessment of countervailing duties, as described below.

As a result of the ITC's final determination, in accordance with section 706(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on all relevant entries of steel wheels from China. Countervailing duties will be assessed on unliquidated entries of steel wheels from China entered, or withdrawn from warehouse, for consumption on or after August 31, 2018, the date of publication of the *CVD Preliminary Determination,*[11] but will not be assessed on entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determination as further described below.

Suspension of Liquidation—CVD

In accordance with section 706 of the Act, we will instruct CBP to reinstitute suspension of liquidation on all relevant entries of steel wheels from China, effective on the date of publication of the ITC's notice of final affirmative injury determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise. These instructions suspending liquidation will remain in effect until further notice. Commerce will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on the subject merchandise, a cash deposit for each entry of subject merchandise equal to the subsidy rates listed below.[12] The all-others rate applies to all producers or exporters not specifically listed below, as appropriate.

Companies	Subsidy rate (percent)
Xiamen Sunrise Wheel Group Co., Ltd [13]	457.10
Zhejiang Jingu Company Limited [14]	457.10
All-Others	457.10

[10] *See* ITC Notification.

[11] *See Certain Steel Wheels from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 44573 (August 31, 2018) (*CVD Preliminary Determination*).

Provisional Measures—CVD

Section 703(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published its *CVD Preliminary Determination* on August 31, 2018. Therefore, the provisional measures period, beginning on the date of publication of the *CVD Preliminary Determination,* ended on December 29, 2018. Pursuant to section 707(b) of the Act, the collection of cash deposits at the rate listed above will begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of steel wheels from China entered, or withdrawn from warehouse, for consumption after December 29, 2018, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

[12] *See* section 706(a)(3) of the Act.

[13] Commerce assigned Xiamen Sunrise Wheel Group Co., Ltd.'s rate to each of the entities named as cross-owned in its affiliation questionnaire response: Xiamen Sunrise Wheel Co., Ltd., Xiamen Sunrise Metal Co., Ltd., Xiamen Topu Import & Export Co., Ltd. and Sichuan Sunrise Metal Industry Co., Ltd.

[14] Commerce assigned Zhejiang Jingu Company Limited's rate to each of the entities named as cross-owned in its affiliation questionnaire response: Shanghai Yata Industry Company Limited; Shangdong Jingu Auto Parts Co., Ltd.; Chengdu Jingu Wheel Co., Ltd.; and An'Gang Jingu (Hangzhou) Metal Materials Co., Ltd.

Critical Circumstances—CVD

With regard to the ITC's negative critical circumstances determination on imports of steel wheels from China, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of steel wheels from China, entered, or withdrawn from warehouse, for consumption on or after June 2, 2018 (*i.e.,* 90 days prior to the date of publication of the *CVD Preliminary Determination*), but before August 31, 2018 (*i.e.,* the date of publication of the *CVD Preliminary Determination*).

Notifications to Interested Parties

This notice constitutes the AD and CVD orders with respect to steel wheels from China pursuant to sections 705(a) and 736(a) of the Act. Interested parties can find a list of orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: May 21, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The scope of the orders covers certain on-the-road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width. Certain on-the-road steel wheels with a nominal wheel diameter of 22.5 inches and 24.5 inches are generally for Class 6, 7, and 8 commercial vehicles (as classified by the Federal Highway Administration Gross Vehicle Weight Rating system), including tractors, semi-trailers, dump trucks, garbage trucks, concrete mixers, and buses, and are the current standard wheel diameters for such applications. The standard widths of certain on-the-road steel wheels are 7.5 inches, 8.25 inches, and 9.0 inches, but all certain on-the-road steel wheels, regardless of width, are covered by the scope. While 22.5 inches and 24.5 inches are standard wheel sizes used by Class 6, 7, and 8 commercial vehicles, the scope covers sizes that may be adopted in the future for Class 6, 7, and 8 commercial vehicles.

The scope includes certain on-the-road steel wheels with either a ''hub-piloted'' or ''stud- piloted'' mounting configuration, and includes rims and discs for such wheels, whether imported as an assembly or separately. The scope includes certain on-the-road steel wheels, discs, and rims, of carbon and/or alloy steel composition, whether cladded or not cladded, whether finished or not finished, and whether coated or uncoated. All on-the-road wheels sold in the United States are subject to the requirements of the National Highway Traffic Safety Administration and bear markings, such as the ''DOT'' symbol, indicating compliance with applicable motor vehicle standards. *See* 49 CFR 571.120. The scope includes certain on-the-road steel wheels imported with or without the required markings. Certain on-the-road steel wheels imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached are included. However, if the certain on-the-road steel wheel is imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached, the certain on-the-road steel wheel is covered by the scope, but the tire and/or valve stem is not covered by the scope.

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China.

Excluded from the scope are:

(1) Steel wheels for tube-type tires that require a removable side ring;

(2) Aluminum wheels;

(3) Wheels where steel represents less than fifty percent of the product by weight; and

(4) Steel wheels that do not meet National Highway Traffic Safety Administration requirements, other than the rim marking requirements found in 49 CFR 571.120S5.2.

Imports of the subject merchandise are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8708.70.4530, 8708.70.4560, 8708.70.6030, 8708.70.6060, 8716.90.5045, and 8716.90.5059. Merchandise meeting the scope description may also enter under the following HTSUS subheadings: 4011.20.1015, 4011.20.5020, and 8708.99.4850. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

[FR Doc. 2019–11015 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH041

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a webinar, which is open to the public.

DATES: The webinar meeting will be held on Thursday, June 6, 2019, from 1:30 p.m. until 4:30 p.m. The webinar time is an estimate; the meeting will adjourn when business for the day is completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar (1) join the meeting by visiting this link *https://www.gotomeeting.com/webinar,* (2) enter the Webinar ID: 544–381–883, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–562–247–8321 (not a toll-free number), (2) enter the attendee phone audio access code 835–605–745, and (3) enter the provided audio PIN after joining the webinar. You must enter this PIN for audio access. *Note:* We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps.*) You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at 503–820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The primary purpose of this HMSMT webinar is to prepare for the June 2019 Council meeting. The HMS topics on the Council's June agenda are: (1) National Marine Fisheries Report, (2) International Management Recommendations, (3) Yellowfin Tuna Overfishing Response, (4) Drift Gillnet Fishery Performance Metrics Review, (5) Review and Recommendations on Exempted Fishing Permit Applications, and (6) Review of Deep-Set Buoy Gear Authorization Analyses. The HMSMT may also discuss other items related to HMS management and administrative Pacific Council agenda items. A detailed agenda for the webinar will be available on the Pacific Council's website prior to

the meeting. No management actions will be decided by the HMSMT.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, (503) 820–2411, at least 10 business days prior to the meeting date.

Dated: May 21, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–10961 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH045

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem-Based Fishery Management (EBFM) Committee on to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, June 10, 2019 at 10:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the DoubleTree by Hilton Portland, 363 Maine Mall Road, South Portland, ME 04106; telephone: (207) 775–6161.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will receive reports from the Plan Development Team (PDT) and develop the following components of the Georges Bank example Fishery Ecosystem Plan (eFEP). This document is being developed for presentation to the Council in September. They will discuss catch monitoring, ecosystem data collection, and research as well as Incentive-based management approaches—PDT progress report only. The committee will also discuss Jurisdiction, Cooperation, Coordination amongst management authorities. Other business may be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 21, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–10962 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Elkhorn Slough National Estuarine Research Reserve; Public Meeting

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting: notice of public comment period.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments for the performance evaluation of the Elkhorn Slough National Estuarine Research Reserve. NOAA will also accept written comments.

DATES: *Elkhorn Slough National Estuarine Research Reserve Evaluation:* The public meeting will be held on Wednesday July 17, 2019, and written comments must be received on or before Friday, July 26, 2019.

For the specific date, time, and location of the public meetings, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit comments on the reserve by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in Castroville, California for the Elkhorn Slough Reserve. For the specific location, see **SUPPLEMENTARY INFORMATION**.

Written Comments: Please direct written comments to Jean Tanimoto, Evaluator, NOAA Office for Coastal Management, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, or via email to *Jean.Tanimoto@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jean Tanimoto, Evaluator, NOAA Office for Coastal Management, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, by phone at (808) 725–5253, or via email to *Jean.Tanimoto@noaa.gov.* Copies of the previous evaluation findings, Management Plan, and Site Profile may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent performance report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Sections 312 and 315 of the Coastal Zone Management Act (CZMA) 116 U.S.C. 1458, 1461, AND 15 CFR 921.40, require NOAA to conduct ongoing evaluations of federally-approved National Estuarine Research Reserves. The process includes a public meeting, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. For the evaluation of National Estuarine Research Reserves, NOAA will consider the extent to which the state has met the

national objectives, adhered to its management plan approved by the Secretary of Commerce, and adhered to and implemented the terms of financial assistance under the Coastal Zone Management Act. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate and submit oral comments at the public meeting scheduled as follows:

Date: Wednesday, July 17, 2019.

Time: 6:00 p.m., local time.

Location: Castroville Branch Library, 11160 Speegle Street, Castroville, CA 95012.

Written comments must be received on or before Friday, July 26, 2019.

Authority: 16 U.S.C. § 1458, 15 CFR 921.40, 15 CFR 923.134.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 16, 2019.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–10855 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG990

Draft Cook Inlet & Kodiak Marine Mammal Disaster Response Guidelines

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

ACTION: Notice of availability.

SUMMARY: NMFS, in an effort to increase preparedness for wildlife response under the Oil Pollution Act of 1990, has drafted guidelines for marine mammal response in disaster situations in Cook Inlet and Kodiak, Alaska entitled ''Cook Inlet & Kodiak Marine Mammal Disaster Response Guidelines'' (Guidelines). NMFS invites the public to comment on and/or provide additional information for NMFS to consider in finalizing the guidelines.

DATES: Comments must be submitted on or before June 24, 2019.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2019–0038, by any one 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-2019-0038,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments;
- *Mail:* Submit written comments to Sadie Wright, attention Ellen Sebastian, National Marine Fisheries Service, Protected Resources Division, Alaska Region, 709 West 9th Street, P.O. Box 21668, Juneau, AK 99802.

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).

Electronic copies of the draft Guidelines and associated Appendices may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/alaska/marine-life-distress/alaska-marine-mammal-stranding-network.*

FOR FURTHER INFORMATION CONTACT: Sadie Wright, (907) 586–7630 or *Sadie.Wright@noaa.gov.*

SUPPLEMENTARY INFORMATION: Marine mammal oil spill response and preparedness in the Cook Inlet and Kodiak region of Alaska presents many challenges including remote conditions; lack of infrastructure, equipment, and trained personnel; and large populations of marine mammals that may be impacted. Additionally, marine mammals are important subsistence and cultural resources for Alaska Native coastal communities, and response efforts must be cooperative with and sensitive to local communities. NMFS developed the Guidelines through stakeholder engagement to develop regionally specific and culturally sensitive response strategies during disasters that impact marine mammals.

NMFS sought input on communication and response protocols for carcass collection, de-oiling, tissue sampling, necropsies, and subsistence food issues through meetings with local leaders and responders in Kenai, Seward, Ninilchik, Seldovia, Port Graham, Homer, Anchorage, Nanwalek, Kodiak, Ouzinkie, Port Lions, Larsen Bay, and teleconferences and email correspondence with outlying communities. These stakeholder meetings resulted in three key recommendations for the Guidelines:

(1) Include a communication structure that is locally based and efficient;

(2) prioritize response to address impacts to fish and associated public health and economy; and

(3) address the lack of infrastructure, equipment, and trained personnel for response efforts.

These recommendations are addressed by the Guidelines in the following ways:

(1) The local marine mammal stranding agreement holder or community-appointed organization(s) is the local lead, and communication protocols outline cooperative approaches between stakeholders;

(2) All response protocols are congruent with food safety testing, and the Alaska state public health representative is part of the communication loop; and

(3) Caches of equipment should be developed and stored in hub communities with smaller caches in outlying villages, to include modular and adaptive infrastructure for response activities.

Finally, the Guidelines provide decision-making tools regarding Cook Inlet beluga whale deterrence that will be useful to NMFS protocols, and to other responders to gain a better understanding of potential concerns in deterring this endangered population.

The draft Guidelines focus on marine mammal species under NMFS jurisdiction that occur in Cook Inlet and within the Kodiak archipelago. Different approaches may be appropriate for sea otters, which are managed by the U.S. Fish and Wildlife Service. Any response to marine mammals per these Guidelines should occur in coordination with NMFS through the Incident Command Structure, if put in place for an oil spill or other major incident. The draft Guidelines also focus primarily on marine mammal response during oil spills, but include considerations for response in a non-spill disaster situation such as a natural disaster (response typically under the Stafford Act) or a marine mammal Unusual Mortality Event.

Comments are invited on any aspect of the draft Guidelines. We are particularly interested in maintaining an efficient communication strategy for marine mammal disaster response in the Cook Inlet and Kodiak region, and seek suggestions to ensure the final

Guidelines provide that framework. In addition, NMFS appreciates specific suggestions on how to improve the clarity of the draft Guidelines.

Dated: May 21, 2019.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–10905 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF801

Endangered Species; File No. 20610

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

ACTION: Notice; receipt of application for permit modification.

SUMMARY: Notice is hereby given that David Portnoy, Ph.D., Texas A&M University, Corpus Christi, TX 78412, has requested a modification to scientific research Permit No. 20610.

DATES: Written, telefaxed, or email comments must be received on or before June 24, 2019.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20610–01 from the list of available applications. These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1 Comments@noaa.gov.* Please include the File No. 20610 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on the application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Erin Markin (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 20610 is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 20610, issued on February 27, 2018 (83 FR 13731; March 30, 2018), authorizes the permit holder to import scalloped hammerhead (*Sphyrna lewini*) tissues for genetic analysis at Texas A&M University in Corpus Christi. The permit holder is requesting the permit be modified to add three additional countries from which to import samples: Honduras, Panama, and Cabo Verde. The permit holder is requesting to import samples from up to 50 animals per country. All other aspects of the permitted activities would not change. The permit would expire on February 28, 2023.

Dated: May 16, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–10960 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG988

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States, Dolphin and Wahoo Fishery Off the Atlantic States, and Coral and Coral Reefs Fishery in the South Atlantic; Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Julie Johnson, on behalf of the North Carolina Aquariums at Roanoke Island, Pine Knoll Shores, Fort Fisher, and Jennette's Pier, North Carolina. If granted, the EFP would authorize North Carolina Aquariums to collect, with certain conditions, various species of snapper-grouper, dolphin, and live rock in Federal waters along the North Carolina coast. The specimens would be used in educational exhibits displaying North Carolina native species at the aquariums.

DATES: Written comments must be received on or before June 24, 2019.

ADDRESSES: You may submit comments, identified by ''NOAA–NMFS–2019–0051'', 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-2019-0051,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

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, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Frank Helies, 727–824–5305; email *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The North Carolina Aquariums have completed identical work under a previous EFP that was issued by NMFS on April 30, 2014, and recently expired on April 30, 2019. NMFS did not receive any public comments on the previous EFP notice of receipt of an application (79 FR 16301; March 25, 2014).

This action involves activities covered by regulations implementing the Fishery Management Plans (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, the Dolphin and Wahoo Fishery of the Atlantic Region, and the FMP for Coral, Coral Reefs and

Live/Hardbottom Habitat of the South Atlantic Region. The applicant requests authorization to collect a variety of species in the snapper-grouper complex, dolphin, and live rock. Specific species and quantities of each species, listed by common name, to be collected each year of a 5-year period include a maximum of 16 red hind, 16 rock hind, 16 graysby, 24 red porgy, 24 black sea bass, 16 coney, 16 scamp, 3 snowy grouper, 16 red grouper, 16 gag grouper, 9 yellowedge grouper, 9 yellowfin grouper, 16 yellowmouth grouper, 36 vermilion snapper, 20 red snapper, 36 yellowtail snapper, 24 amberjack (lesser and greater amberjack combined), 24 almaco jack, 100 bar jack, 24 dolphin, and 50 lb (22.7 kg) of live rock.

Specimens would be collected in Federal waters from 3 miles (4.8 km) offshore out to 100 fathoms (182 m), from 33°10′ N lat. to 36°30′ N lat. along the coast of North Carolina. The EFP would authorize sampling operations to be conducted on vessels to be named by the North Carolina Aquariums and designated in the EFP. The project proposes to use hook-and-line gear, no more than 5 black sea bass pots and 10 minnow traps to collect fish, and SCUBA to collect live rock by hand. Most collections would be conducted year-round for a period of 5 years, commencing on the date of issuance of the EFP. Black sea bass pots and minnow traps would be deployed from the months of May through October each year of the EFP. The soak time for both pots and traps would vary from 4 to 8 hours up to 2 days. The majority of the pots and traps would be set in the morning and retrieved at the end of the same day; however, if the weather is suitable, the pots and traps may be left overnight for no more than one night at a time. Pots and traps would be retrieved by hand to reduce barotrauma, and would be deployed in hard bottom and ledge habitats offshore.

The intent of the request is to incorporate North Carolina native species into the educational exhibits at four state aquariums located on Roanoke Island, Pine Knoll Shores, Fort Fisher, and Jennette's Pier, North Carolina. The aquariums use these displays of native North Carolina habitats and species to teach the public about conservation of these resources.

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, special management zones, or artificial reefs without additional authorization. Additionally, NMFS will require any sea turtles taken incidentally during the course of fishing or scientific research activities to be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water. To acquire live rock for the aquariums, the applicant has the option to either purchase aquacultured live rock from a commercial source, or if the EFP is issued, the applicant may collect up to 50 lb (22.7 kg) of live rock from the Federal waters off North Carolina, but immediately replace it with an equal weight of substrate suitable to support the culture of live rock. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the affected state, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws.

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

Dated: May 21, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–10920 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Louisiana Coastal Management Program.

DATES: *Louisiana Coastal Management Program Evaluation:* The public meeting will be held on July 23, 2019, and written comments must be received on or before August 2, 2019.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit comments on the coastal program NOAA intends to evaluate by any of the following methods:

Public Meeting and Oral Comments: A public meeting will be held in Baton Rouge, Louisiana. For the specific location, see **SUPPLEMENTARY INFORMATION.**

Written Comments: Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or email comments *Carrie.Hall@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, by phone at (240) 533–0730 or email comments *Carrie.Hall@noaa.gov.* Copies of the previous evaluation findings and 2016–2020 Assessment and Strategy may be viewed and downloaded on the internet at *http://coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state and territorial coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate or submit oral comments at the public meeting scheduled as follows:

Date: July 23, 2019.

Time: 6:00 p.m., local time.

Location: Louisiana Department of Natural Resources, LaSalle Building, Labelle Room, 617 North Third Street, Baton Rouge, LA 70802–5428.

Written public comments must be received on or before August 2, 2019.

Dated: May 16, 2019.

Keelin Kuipers,

Acting Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–10854 Filed 5–23–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* June 23, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 4/19/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN—Product Name: 7045–01–554–7680—CD/DVD Case, Clamshell, Multi-Color
Mandatory Source of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSNs—Product Names:
8415–00–NIB–0123—Band, Helmet
8415–00–NIB–0124—Band, Helmet
Mandatory Source of Supply: Lions Services, Inc., Charlotte, NC
Contracting Activity: W6QK ACC–APG NATICK, NATICK, MA

NSN—Product Name: 8030–00–260–1053—Compound, Corrosion Preventative, Food Equipment, Clear, 55 Gallons
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSNs—Product Names:
7510–00–205–0806—Fastener, Paper, 3″ Capacity with Compressor, 8.5″ Center
7510–00–235–6046—Fastener, Paper 8.5″ Nominal Distance Between Prongs
7510–00–235–6049—Fastener, Paper, 3″ Capacity with Compressor and Base
7510–00–244–1169—Fastener, Paper 2.75″ Nominal Distance Between Prongs
7510–01–442–1471—Fastener, Paper, Brown Coated, 2″ Capacity
7510–01–442–1479—Fastener, Paper, 2″ Capacity
7510–01–442–1480—Fastener, Paper, Brown Coated, 1″ Capacity
7510–01–442–1483—Fastener, Paper, 1″ Capacity
Mandatory Source of Supply: Delaware County Chapter, NYSARC, Inc., Walton, NY
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Services

Service Type: Administrative Services
Mandatory for: Chicago Cooperative Adm Support Unit (CASU): Philadelphia Operations Center, Philadelphia, PA
Mandatory Source of Supply: Horizon House, Inc., Philadelphia, PA
Contracting Activity: HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF, DEPT OF HOUSING AND URBAN DEVELOPMENT

Service Type: Operation of Postal Service Center
Mandatory for: Kirtland Air Force Base: Buildings 20204 and 926, Kirtland AFB, NM
Mandatory Source of Supply: LifeROOTS, Inc., Albuquerque, NM
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Janitorial/Custodial
Mandatory for: U.S. Federal Building and Courthouse, 500 Fannin Street, Shreveport, LA
Mandatory Source of Supply: Goodwill Industries of North Louisiana, Inc., Shreveport, LA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Custodial Services
Mandatory for: Cereal Crops Research Unit: USDA Agricultural Research Service, 502 Walnut Street, Madison, WI
Mandatory Source of Supply: Madison Area Rehabilitation Centers, Inc., Madison, WI
Contracting Activity: AGRICULTURAL RESEARCH SERVICE, USDA ARS MWA 5114

Service Type: Switchboard Operation
Mandatory for: Defense Supply Center Richmond: 8000 Jefferson Davis Highway, Richmond, VA
Mandatory Source of Supply: Goodwill Services, Inc, Richmond, VA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA AVIATION

Service Type: Administrative Services
Mandatory for: U.S. Attorney's Office-Atlanta, DOJ, Atlanta, GA
Mandatory Source of Supply: Bobby Dodd Institute, Inc., Atlanta, GA
Contracting Activity: FEDERAL PRISON SYSTEM, TERMINAL ISLAND, FCI

Service Type: Microfilm Reproduction
Mandatory for: United States Marine Corps: Headquarters (Navy Annex), Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Laundry Service
Mandatory for: Everett Naval Station, Everett, WA
Mandatory for: Everett Naval Station: Bachelor Enlisted Quarters (BEQ), Everett, WA
Mandatory for: Bangor Naval Subase BOQ & BEQ, Bremerton, WA
Mandatory for: Whidbey Island Naval Air Station
Mandatory Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Catering Service
Mandatory for: Salt Lake City Military Entrance Processing Station, Fort Douglas, UT
Mandatory Source of Supply: UNKNOWN
Contracting Activity: DEPT OF THE AIR FORCE, FA7014 AFDW PK

Service Type: Grounds Maintenance
Mandatory for: USDA, Agriculture Research Service: Weslaco Center, Weslaco, TX
Mandatory Source of Supply: Mavagi Enterprises, Inc., San Antonio, TX
Contracting Activity: AGRICULTURAL RESEARCH SERVICE, USDA ARS SPA 7D79

Service Type: Administrative Services

Mandatory for: Social Security Administration, 6400 Old Branch Avenue, Camp Springs, MD
Mandatory Source of Supply: Anchor Mental Health Association, Washington, DC
Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, DEPT OF HHS

Service Type: Mailroom Service
Mandatory for: US Coast Guard, Integrated Support Command, Alameda Mail Center, Alameda, CA
Mandatory Source of Supply: Pacific Coast Community Services, Richmond, CA
Contracting Activity: U.S. COAST GUARD, SILC BSS

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–10896 Filed 5–23–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product and a service previously furnished by such agencies.

DATES: *Comments must be received on or before:* June 23, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSNs—Product Names:
9530–00–NIB–0001—Stanchion, Crowd Control, Single Retractable Belt
9530–00–NIB–0002—Stanchion, Crowd Control, Double Retractable Belts
Mandatory Source of Supply: Wiscraft, Inc., Milwaukee, WI
Mandatory Purchase For: 100% of requirement for the Transportation Security Administration
Contracting Activity: CSI—Transportation Security Administration (TSA)

Service

Service Type: Facility Support Investment
Mandatory for: US Navy, Naval Facilities Engineering Command Northwest, Multiple Locations, Silverdale, WA
Mandatory Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: Dept of the Navy, NAVFAC Northwest

Deletions

The following product and service are proposed for deletion from the Procurement List:

Products

NSN—Product Name: 7210–00–492–8381—Tablecloth, Momie
Mandatory Source of Supply: Cambria County Association for the Blind and Handicapped, Johnstown, PA
Contracting Activity: GSA/FSS Greater Southwest Acquisiti, Fort Worth, TX

Service

Service Type: Custodial Services
Mandatory for: J. Allen Frear Federal Building, Dover, DE
Mandatory Source of Supply: Opportunity Center, Incorporated, Wilmington, DE
Contracting Activity: Public Buildings Service, GSA/PBS/R03 Delaware Valley FO

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–10895 Filed 5–23–19; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee; Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on June 12, 2019, from 9:30 a.m. to 4:00 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting in the Conference Center at the CFTC's Washington, DC, headquarters. At this meeting, the MRAC will discuss the management and mitigation of climate-related financial risks. In addition, the MRAC will have a presentation on EMIR 2.2, central counterparty stress testing, and Brexit from Steven Maijoor, Chair, European Securities and Markets Authority (''ESMA'').

DATES: The meeting will be held on June 12, 2019, from 9:30 a.m. to 4:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by June 19, 2019.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. You may submit public comments, identified by ''Market Risk Advisory Committee,'' by any of the following methods:

- *CFTC Website: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia L. Lewis, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5862.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

- *Domestic Toll Free:* 1–877–951–7311.
- *International Toll and Toll Free:* Will be posted on the CFTC's website,

http://www.cftc.gov, on the page for the meeting, under Related Links.

• *Pass Code/Pin Code:* 2665194.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: *https://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.html.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. app. 2 section 10(a)(2)).

Dated: May 21, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–10912 Filed 5–23–19; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0029]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Aid Internet Gateway (SAIG) Enrollment Document

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 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–0029. 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 Beth Grebeldinger, 202–377–4018.

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: Student Aid Internet Gateway (SAIG) Enrollment Document.

OMB Control Number: 1845–0002.

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: 48,013.

Total Estimated Number of Annual Burden Hours: 10,942.

Abstract: This is a request for an extension of the approval of the Student Aid internet Gateway (SAIG) Enrollment forms. These forms allow various Department program partners to apply to participate with the Department in electronically transmitting and receiving data regarding federal student aid programs. These documents are updated annually. This request includes updates to award year dates, language clarifications and updated disclosures. No new information is being requested.

Dated: May 21, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–10915 Filed 5–23–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0030]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Loan Cancellation in the Federal Perkins Loan Program

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 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–0030. 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 Beth Grebeldinger, 202–377–4018.

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: Loan Cancellation in the Federal Perkins Loan Program.

OMB Control Number: 1845–0100.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 116,872.

Total Estimated Number of Annual Burden Hours: 43,832.

Abstract: This is a request for an extension of the OMB approval for the record-keeping requirements contained in 34 CFR 674.53, 674.56, 674.57, 674.58 and 674.59. The information collections in these regulations are necessary to determine Federal Perkins Loan (Perkins Loan) Program borrower's eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Dated: May 21, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–10916 Filed 5–23–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Interdisciplinary Preparation in Special Education, Early Intervention, and Related Services for Personnel Serving Children With Disabilities Who Have High-Intensity Needs

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2019 for Personnel Development to Improve Services and Results for Children with Disabilities—Interdisciplinary Preparation in Special Education, Early Intervention, and Related Services for Personnel Serving Children with Disabilities who have High-Intensity Needs, Catalog of Federal Domestic Assistance (CFDA) number 84.325K. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: May 24, 2019.

Deadline for Transmittal of Applications: July 8, 2019.

Pre-Application Webinar Information: No later than May 29, 2019, OSERS will post pre-recorded informational webinars designed to provide technical assistance to interested applicants. The webinars may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

Pre-Application Q & A Blog: No later than May 29, 2019, OSERS will open a blog where interested applicants may post questions about the application requirements for this competition and where OSERS will post answers to the questions received. OSERS will not respond to questions unrelated to the application requirements for this competition. The blog may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html* and will remain open until June 12, 2019. After the blog closes, applicants should direct questions to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Deadline for Intergovernmental Review: September 6, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Maryann McDermott, U.S. Department of Education, 400 Maryland Avenue SW, Room 5144, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–7439. Email: *Maryann.McDermott@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants and toddlers, and youth with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research, to be successful in serving those children.

Priorities: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this absolute priority is from allowable activities specified in sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1462 and 1481).

Absolute Priority: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Interdisciplinary Preparation in Special Education, Early Intervention,

and Related Services for Personnel Serving Children with Disabilities who have High-Intensity Needs.

Background: The purpose of this priority is to increase the number and improve the quality of personnel who are fully credentialed to serve children, including infants and toddlers, and youth with disabilities who have high-intensity needs,[1] especially in areas of chronic personnel shortage. It will fund high-quality interdisciplinary [2] projects that prepare special education, early intervention, and related services [3] personnel at the master's degree, educational specialist degree, or clinical doctoral degree levels for professional practice in a variety of education settings, including natural environments (the home and community settings in which children with and without disabilities participate), early learning programs, classrooms, and school settings. The competition will also prepare personnel who have the knowledge and skills to support each child with a disability in meeting high expectations and to partner with other providers, families, and administrators in meaningful and effective collaborations.

State demand for fully credentialed special education, early intervention, and related services personnel to serve children, including infants and toddlers, and youth with disabilities exceeds the available supply, particularly in high-need schools [4] (Boe, deBettencourt, Dewey, Rosenberg, Sindelar, & Leko, 2013). These shortages can negatively affect the quality of services provided to children, including infants and toddlers, and youth with disabilities and their families (Boe et al., 2013). These shortages limit the field's ability to ensure that each child has the opportunity to meet challenging objectives and receive an individualized education program that is both meaningful and appropriately ambitious, which is essential for preparing them for the future.

The need for personnel with the knowledge and skills to serve children, including infants and toddlers, and youth with disabilities who have high-intensity needs is even greater because specialized or advanced preparation is required to collaboratively design and deliver evidence-based [5] instruction and intensive individualized intervention(s) in natural environments, classrooms, and schools that address the needs of these individuals (Boe et al., 2013; Browder, Wood, Thompson, & Ribuffo, 2014; McLeskey & Brownell, 2015). Although children, including infants and toddlers, and youth with disabilities who have high-intensity needs may require the combined expertise of numerous professionals (including special education, early intervention, and related services providers), it is often difficult for personnel from varied professional backgrounds to work together because they lack shared information, understanding, and experience.

Interdisciplinary approaches to personnel preparation provide scholars with experience working and learning in team environments similar to those in which they are likely to work once employed (Smith, 2010). That is, when providing early intervention or special education services under the IDEA, personnel serving children, including infants and toddlers, and youth with disabilities work on interdisciplinary teams with parents, general and special education teachers, early interventionists, and related service providers with the expertise to design, implement, and evaluate instruction, intervention plans, individualized family service plans, and individualized education programs based on the unique learning and developmental needs of each individual child. To enable personnel to provide efficient, high-quality integrated services, personnel preparation programs need to embed content, practices, and field experience into preservice training that are aligned with the interdisciplinary team-based approaches in which graduates are likely to work. This priority aims to fund interdisciplinary projects that will provide such preparation.

Priority: The purpose of this priority is to increase the number and improve the quality of personnel who are fully credentialed to serve children, including infants and toddlers, and youth with disabilities who have high-intensity needs—especially in areas of chronic personnel shortage. The priority will fund high-quality interdisciplinary projects that prepare special education, early intervention, and related services personnel at the master's degree, educational specialist degree, or clinical doctoral degree levels for professional practice in natural environments, early learning programs, classrooms, and school settings serving children, including infants and toddlers, and youth with disabilities.

Specifically, an applicant must propose an interdisciplinary project supporting scholars [6] from two or more

[1] For the purposes of this priority, ''high-intensity needs'' refers to a complex array of disabilities (*e.g.,* multiple disabilities, significant cognitive disabilities, significant physical disabilities, significant sensory disabilities, significant autism, significant emotional disabilities, or significant learning disabilities, including dyslexia) or the needs of children with these disabilities requiring intensive, individualized intervention(s) (*i.e.,* that are specifically designed to address persistent learning or behavior difficulties, implemented with greater frequency and for an extended duration than is commonly available in a typical classroom or early intervention setting, or which require personnel to have knowledge and skills in identifying and implementing multiple evidence-based interventions).

[2] For the purposes of this priority, ''interdisciplinary'' refers to preparing scholars from two or more graduate degree programs in either (a) special education or early intervention and one or more related services through shared coursework, group assignments, and coordinated field experiences; or (b) two or more related services through shared coursework, group assignments, and coordinated field experiences. Different graduate degree programs across more than one institution of higher education may partner to develop an interdisciplinary project.

For the purpose of this priority, ''interdisciplinary'' does not include: (a) Individual scholars who receive two or more graduate degrees; (b) one graduate degree program that prepares scholars with different areas of focus; (c) one graduate degree program that offers interdisciplinary content but does not prepare scholars from two or more degree programs together; or (d) one graduate degree program in special education, early intervention, and related services partnering with a graduate degree program other than special education, early intervention, or related services. Programs in which scholars receive only a certificate or endorsement without a graduate degree are not eligible.

[3] For the purposes of this priority, ''related services'' includes the following: Speech-language pathology and audiology services; interpreting services; psychological services; applied behavior analysis; physical therapy and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services, including rehabilitation counseling; and orientation and mobility services.

[4] For the purposes of this priority, ''high-need school'' refers to a public elementary or secondary school that is a ''high-need local educational agency (LEA),'' ''high-poverty,'' ''implementing a comprehensive support and improvement plan,'' or ''implementing a targeted support and improvement plan'' as defined in footnotes 8, 9, 10, and 11, respectively.

[5] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[6] For the purposes of this priority, ''scholar'' is limited to an individual who (a) is pursuing a master's, educational specialist degree, or clinical doctoral graduate degree in special education, early intervention, or related services (as defined in this notice); (b) receives scholarship assistance as authorized under section 662 of IDEA (34 CFR 304.3(g)); (c) will be eligible for a license, endorsement, or certification from a State or national credentialing authority following completion of the graduate degree program identified in the application; and (d) will be able to be employed in a position that serves children with disabilities for either 51 percent of their time or case load. See *https://pdp.ed.gov/OSEP/Home/Regulation* for more information.

Scholars from each graduate degree program participating in the proposed interdisciplinary project must receive scholar support and be eligible

Continued

graduate degree programs in either (a) special education or early intervention and one or more related services; or (b) two or more related services.

An interdisciplinary project is a project that delivers core content through shared coursework, group assignments, and coordinated field experiences as part of two or more master's degree, educational specialist degree, or clinical doctoral degree programs for scholars. Not all requirements (*e.g.,* courses and field experiences) of each participating graduate degree program must be shared across all degree programs participating in the interdisciplinary project, but the interdisciplinary project must: (a) Identify the competencies needed to promote high expectations and address the individualized needs of children with disabilities who have high-intensity needs using an interdisciplinary approach to service delivery; (b) outline how the project will build capacity in those areas through shared coursework, group assignments, and coordinated field experiences for scholars supported by the proposed project; and (c) identify the aspects of each graduate degree program that are shared across all participating degree programs and those that remain unique to each.

Projects may include individuals who are in degree programs (*e.g.,* general education, early childhood education, administration) and who are cooperating with, but not funded as scholars by, the applicant's proposed interdisciplinary project. These individuals may participate in the shared coursework, group assignments, coordinated field experiences, and other opportunities required of scholars and funded by the project (*e.g.,* speaker series, monthly seminars) if doing so does not diminish the benefit for project-funded scholars (*e.g.,* by reducing funds available for scholar support or limiting opportunities for scholars to participate in project activities).

Personnel preparation degree programs that prepare all scholars to be dually certified can qualify under this priority by partnering with at least one additional graduate degree program in related services.

Personnel preparation programs that prepare individuals to be educational interpreters for the deaf at the bachelor's degree level can qualify under this priority, and are exempted from (a) the interdisciplinary requirement; and (b) the requirement for two or more graduate degree programs. All other priority requirements specified for graduate programs will apply to the bachelor's program. While interdisciplinary projects are not required for educational interpreters, they are encouraged.

Focus Areas: Within this absolute priority, the Secretary intends to support interdisciplinary projects under the following two focus areas: (A) Preparing Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities who have High-Intensity Needs; and (B) Preparing Personnel to Serve School-Age Children with Disabilities who have High-Intensity Needs.

Applicants must identify the specific focus area (*i.e.,* A or B) under which they are applying as part of the competition title on the application cover sheet (SF form 424, line 4). Applicants may not submit the same proposal under more than one focus area.

Focus Area A: Preparing Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities who have High-Intensity Needs. This focus area is for interdisciplinary projects that deliver core content through shared coursework, group assignments, and coordinated field experiences for scholars across two or more graduate degree programs in either: (a) Early intervention or early childhood special education and related services for infants, toddlers, and preschool-age children with disabilities who have high-intensity needs; or (b) two or more related services to serve infants, toddlers, and preschool-age children with disabilities who have high-intensity needs.

Early intervention personnel are those who are prepared to provide services to infants and toddlers with disabilities ages birth to three, and early childhood personnel are those who are prepared to provide services to children with disabilities ages three through five (and in States where the age range is other than ages three through five, we defer to the State's certification for early childhood special education). In States where certification in early intervention is combined with certification in early childhood special education, applicants may propose a combined early intervention and early childhood special education personnel preparation project under this focus area.

Note: In Focus Area A, OSEP intends to fund approximately 10 awards. OSEP may fund out of rank order high-quality applications from Historically Black Colleges and Universities (HBCUs).[7]

Focus Area B: Preparing Personnel to Serve School-Age Children with Disabilities who have High-Intensity Needs. This focus area is for interdisciplinary projects that deliver core content through shared coursework, group assignments, and coordinated field experiences to scholars across two or more graduate degree programs in either: (a) Special education and related services for school-age children with disabilities who have high-intensity needs; or (b) two or more related services to serve school-age children with disabilities who have high-intensity needs.

Note: In Focus Area B, OSEP intends to fund approximately 30 awards. OSEP may fund out of rank order high-quality applications from HBCUs.

Focus Areas A and B: Applicants may use up to the first 12 months of the performance period and up to $100,000 of the first budget period for planning without enrolling scholars. Applicants must clearly provide sufficient justification for requesting program planning time and include the goals, objectives, and intended outcomes of program planning in Year 1, a description of the proposed strategies and activities to be supported, and a timeline for the work; such as—

(1) Outlining or updating coursework, group assignments, or coordinated field experience needed to support interdisciplinary preparation for special education, early intervention, or related services personnel serving children with disabilities who have high-intensity needs;

(2) Building capacity (*e.g.,* hiring of a field supervisor, providing professional development for field supervisors, and training for faculty);

(3) Purchasing needed resources (*e.g.,* additional teaching supplies or specialized equipment to enhance instruction); or

(4) Negotiating agreements with programs or schools to serve as sites for coordinated field experience needed to support delivery of the proposed interdisciplinary project.

Remaining Year 1 Federal funds up to the maximum award available for one budget period of 12 months (*i.e.,*

to fulfill service obligation requirements following graduate degree program completion. Scholars from each graduate degree program participating in this project must complete the requirements of their unique graduate degree program and receive different graduate degrees. Individuals pursuing degrees in general education or early childhood education do not qualify as ''scholars'' eligible for scholarship assistance.

[7] For the purposes of this priority, ''Historically Black College or University'' is as defined under section 322 of the Higher Education Act of 1965, as amended.

$250,000) may be requested for scholar support and other grant activities if included in the Year 1 budget request.

Note: Applicants proposing projects to develop, expand, or add a new area of emphasis to special education, early intervention, or related services programs must provide, in their applications, information on how these new areas will be sustained once Federal funding ends.

To be considered for funding under this absolute priority, all program applicants must meet the application requirements contained in the priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

To meet the requirements of this priority an applicant must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how—

(1) The project addresses national, State, regional, or district shortages of personnel who are fully qualified to serve children with disabilities, ages birth through 21, who have high-intensity needs. To address this requirement, the applicant must—

(i) Present data on the quality of each special education, early intervention, or related services personnel preparation degree program participating in the project in areas such as: The average amount of time it takes for scholars to complete the program; the percentage of program graduates who receive a license, endorsement, or certification related to special education, related services, or early intervention services; the percentage of program graduates finding employment related to their preparation after graduation; the effectiveness of program graduates in providing special education, early intervention, or related services, which could include data on the learning and developmental outcomes of children with disabilities they serve; the percentage of program graduates who maintain employment for two or more years in the area for which they were prepared; and the percentage of employers who rate the preparation of scholars who complete their degree program as adequate or higher; and

(ii) If available for the degree programs participating in the proposed project, present data on the quality of their interdisciplinary approaches to the preparation of special education, early intervention, or related services personnel.

Note: Data on the quality of a personnel preparation program should be no older than five years prior to the start date of the project proposed in the application. When reporting percentages, the denominator (*i.e.,* total number of scholars or program graduates) must be provided.

(2) The project will increase the number of personnel who demonstrate the competencies needed to—

(i) Promote high-expectations;

(ii) Differentiate instruction;

(iii) Provide intensive individualized instruction and intervention(s); and

(iv) Collaborate with diverse stakeholders using an interdisciplinary team-based approach to address the individualized needs of children with disabilities who have high-intensity needs, ages birth through 21, that result in improvements in learning or developmental outcomes (*e.g.,* academic, social, emotional, behavioral), or successful transition to postsecondary education and the workforce. To address this requirement, the applicant must—

(A) Identify the competencies [8] that special education, early intervention, or related services personnel need to—

(*1*) Promote high expectations;

(*2*) Differentiate instruction;

(*3*) Provide intensive individualized instruction and intervention(s); and

(*4*) Collaborate with parents, families, and diverse stakeholders using an interdisciplinary team-based approach that will lead to improved learning and developmental outcomes; ensure access to and progress in academic achievement standards or alternate academic achievement standards, as appropriate; lead to successful transition to college and career for children with disabilities, including children with disabilities who have high-intensity needs; and maximize the use of effective technology, including assistive technology, to deliver instruction, interventions, and services;

(B) Identify the competencies needed by members of interdisciplinary teams to promote high expectations and improve early childhood, educational, and employment outcomes for children with disabilities who have high-intensity needs;

(C) Identify the competencies that personnel need to support inclusion of children with disabilities who have high-intensity needs in the least restrictive and natural environments to the maximum extent appropriate by intentionally promoting high expectations and participation in learning and social activities to foster development, learning, academic achievement, friendships with peers, and sense of belonging;

(D) Identify how scholars will be prepared to develop, implement, and evaluate evidence-based instruction and evidence-based interventions that improve outcomes for children with disabilities who have high-intensity needs in a variety of settings (*e.g.,* natural environments; public schools, including charter schools; private schools, including parochial schools; and other nonpublic education settings, including home education); and

(E) Provide a conceptual framework for the proposed interdisciplinary personnel preparation project, including any empirical support for project activities designed to promote the acquisition of the identified competencies (see paragraph (a)(2) of the requirements for this priority) needed by special education, early intervention, or related services personnel, and how these competencies relate to the proposed project;

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the project—

(1) Will conduct its planning activities, if up to the first 12 months of the project period will be used for planning;

(2) Will recruit and retain high-quality scholars into each of the graduate degree programs participating in the project and ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe—

(i) Criteria the applicant will use to identify high-quality applicants for admission into each of the graduate degree programs participating in the project;

(ii) Recruitment strategies the applicant will use to attract high-quality applicants and any specific recruitment strategies targeting high-quality applicants from traditionally underrepresented groups, including individuals with disabilities; and

(iii) The approach, including mentoring, monitoring, and accommodations, the applicant will use to support scholars to complete their respective degree programs;

[8] For the purposes of this priority, ''competencies'' means what a person knows and can do—the knowledge, skills, and dispositions necessary to effectively function in a role (National Professional Development Center on Inclusion, 2011). These competencies should ensure that personnel are able to use challenging academic standards, child achievement and functional standards, and assessments to improve instructional practices, services, learning and developmental outcomes (*e.g.,* academic, social, emotional, behavioral), and college- and career-readiness of children with disabilities.

(3) Reflects current evidence-based practices, including practices in the areas of literacy and numeracy development, assessment, behavior, instructional practices, and inclusive strategies, as appropriate, and is designed to prepare scholars in the identified competencies. To address this requirement, the applicant must describe how the project will—

(i) Incorporate current evidence-based practices (including relevant research citations) that improve outcomes for children with disabilities who have high-intensity needs into (a) the required coursework and field experiences for each graduate degree program participating in the project; and (b) the shared coursework, group assignments, and coordinated field experiences required for the interdisciplinary portions of the project; and

(ii) Use evidence-based professional development practices for adult learners to instruct scholars;

(4) Is of sufficient quality, intensity, and duration to prepare scholars in the identified competencies. To address this requirement, the applicant must describe how—

(i) The components of (a) each graduate degree program participating in the project; and (b) the shared coursework, group assignments, and coordinated field experiences required for the interdisciplinary portions of the proposed project will support scholars' acquisition and enhancement of the identified competencies;

(ii) The components of (a) each graduate degree program participating in the project; and (b) the shared coursework, group assignments, and coordinated field experiences required for the interdisciplinary portions of the proposed project will be integrated to allow scholars, in collaboration with other team members, to use their knowledge and skills in designing, implementing, and evaluating practices supported by evidence to address the learning and developmental needs of children with disabilities who have high-intensity needs;

(iii) Scholars will be provided with ongoing guidance and feedback during training; and

(iv) The proposed project will provide ongoing induction opportunities and mentoring support to graduates of each graduate degree program participating in the project;

(5) Will engage in meaningful and effective collaboration with appropriate partners representing diverse stakeholders, including—

(i) High-need schools, which may include high-need local educational agencies(LEAs),[9] high-poverty schools,[10] schools identified for comprehensive support and improvement,[11] and schools implementing a targeted support and improvement plan [12] for children with disabilities; early childhood and early intervention programs located within the geographic boundaries of a high-need LEA; and early childhood and early intervention programs located within the geographical boundaries of an LEA serving the highest percentage of schools identified for comprehensive support and improvement or implementing targeted support and improvement plans in the State. The purpose of these partnerships is to provide field practice for scholars aimed at developing the identified competencies as members of interdisciplinary teams; and

(ii) Other personnel preparation programs on campus or at partnering universities for the purpose of sharing resources, supporting program development and delivery, and addressing personnel shortages;

(6) Will use technology, as appropriate, to promote scholar learning and professional practice, enhance the efficiency of the project, collaborate with partners, and facilitate ongoing mentoring and support for scholars;

(7) Will ensure that scholars understand how to use technology to support student learning and students' use of educational and assistive technology; and

(8) Will align with and use resources, as appropriate, available through technical assistance centers, which may include centers funded by the Department;

Note: Use the ''Find a Center'' link at *https://osepideasthatwork.org* for information about OSEP-funded technical assistance centers.

(c) Demonstrate, in the narrative section of the application under ''Quality of the project evaluation,'' how—

(1) The applicant will use comprehensive and appropriate methodologies to evaluate how well the goals or objectives of the proposed project have been met, including the project processes and outcomes;

(2) The applicant will collect, analyze, and use data related to specific and measurable goals, objectives, and outcomes of the project. To address this requirement, the applicant must describe how—

(i) Scholar competencies and other project processes and outcomes will be measured for formative evaluation purposes, including proposed instruments, data collection methods, and possible analyses; and

(ii) It will collect and analyze data on the quality of services provided by scholars who complete the graduate degree programs involved in this interdisciplinary project and are employed in the field for which they were trained, including data on the learning and developmental outcomes (*e.g.,* academic, social, emotional, behavioral, meeting college- and career-ready standards), and on growth toward these outcomes, of the children with disabilities who have high-intensity needs;

Note: Following the completion of the project period, grantees are encouraged to engage in ongoing data collection activities.

(3) The methods of evaluation will produce quantitative and qualitative data for objective performance measures that are related to the outcomes of the proposed project; and

(4) The methods of evaluation will provide performance feedback and allow for periodic assessment of progress towards meeting the project outcomes. To address this requirement, the applicant must describe how—

(i) Results of the evaluation will be used as a basis for improving the proposed project to prepare special education, early intervention, or related services personnel to provide (a) focused instruction, and (b) intensive individualized intervention(s) in an

[9] For the purposes of this priority, ''high-need LEA'' means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children are from families with incomes below the poverty line.

[10] For the purposes of this priority, ''high-poverty school'' means a school in which at least 50 percent of students are from low-income families as determined using one of the measures of poverty specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

[11] For the purposes of this priority, ''school implementing a comprehensive support and improvement plan'' means a school identified for comprehensive support and improvement by a State under section 1111(c)(4)(D) of the ESEA that includes (a) not less than the lowest performing 5 percent of all schools in the State receiving funds under Title I, Part A of the ESEA; (b) all public high schools in the State failing to graduate one third or more of their students; and (c) public schools in the State described under section 1111(d)(3)(A)(i)(II) of the ESEA.

[12] For the purposes of this priority, ''school implementing a targeted support and improvement plan'' means a school identified for targeted support and improvement by a State that has developed and is implementing a school-level targeted support and improvement plan to improve student outcomes based on the indicators in the statewide accountability system as defined in section 1111(d)(2) of the ESEA.

interdisciplinary team-based approach to improve outcomes of children with disabilities who have high-intensity needs; and

(ii) The grantee will report the evaluation results to OSEP in its annual and final performance reports;

(d) Demonstrate, in the narrative under ''Project Assurances'' or in the applicable appendices, that the following program requirements are met. The applicant must—

(1) Provide scholar support for participants from two or more graduate degree programs partnering in the proposed interdisciplinary personnel preparation project. Consistent with 34 CFR 304.30, each scholar must (a) receive support for no less than one academic year, and (b) be eligible to fulfill service obligation requirements following degree program completion. Funding across degree programs may be applied differently;

(2) Include in Appendix B of the application—

(i) Table(s) that summarize the required program of study for each degree program and that clearly delineate the shared coursework, group assignments, and coordinated field experiences required of all project scholars to support interdisciplinary practice;

(ii) Course syllabi for all coursework in the major of each degree program and all shared courses, group assignments, and coordinated field experiences required of project scholars; and

(iii) Learning outcomes for proposed coursework;

(3) Ensure that a comprehensive set of completed syllabi, including syllabi created or revised as part of a project planning year, are submitted to OSEP by the end of Year 1 of the grant;

(4) Ensure scholars will not be selected based on race, ethnicity, or national origin. Per the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200 (1995), the Department does not allow the selection of individuals on the basis of race, ethnicity, or national origin. For this reason, grantees must ensure that any discussion of the recruitment of scholars based on race, ethnicity, or national origin distinguishes between increasing the pool of applicants and actually selecting scholars;

(5) Ensure that the project will meet all requirements in 34 CFR 304.23, particularly those related to (a) informing all scholarship recipients of their service obligation commitment; and (b) disbursing scholar support. Failure by a grantee to properly meet these requirements would be a violation of the grant award that could result in sanctions, including the grantee being liable for returning any misused funds to the Department;

(6) Ensure that prior approval from the OSEP project officer will be obtained before admitting additional scholars beyond the number of scholars proposed in the application and before transferring a scholar to another OSEP-funded grant;

(7) Ensure that the project will meet the statutory requirements in section 662(e) through (h) of IDEA;

(8) Ensure that at least 65 percent of the total budget over the project period (*i.e.,* up to 5 years) will be used for scholar support. Applicants proposing to use Year 1 for program development may budget for less than 65 percent of the total requested budget over the 5 years for scholar support; such applicants must ensure that 65 percent of the total award minus funds allocated for program development will be used for scholar support;

(9) Ensure that the institution of higher education (IHE) will not require scholars enrolled in the program to work (*e.g.,* as graduate assistants) as a condition of receiving support (*e.g.,* tuition, stipends) from the proposed project, unless the work is specifically related to the acquisition of scholars' competencies or the requirements for completion of their personnel preparation program. This prohibition on work as a condition of receiving support does not apply to the service obligation requirements in section 662(h) of IDEA;

(10) Ensure that the project will be operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws;

(11) Ensure that the budget includes attendance of the project director at a three-day project directors' meeting in Washington, DC, during each year of the project;

(12) Ensure that the project director, key personnel, and, as appropriate, scholars will actively participate in the cross-project collaboration, advanced trainings, and cross-site learning opportunities (*e.g.,* webinars, briefings) organized by OSEP. This partnership will be used to build capacity of participants, increase the impact of funding, and promote innovative and interdisciplinary service delivery models across projects;

(13) Ensure that if the project maintains a website, relevant information and documents are in a format that meets government or industry-recognized standards for accessibility; and

(14) Ensure that annual data will be submitted on each scholar who receives grant support (OMB Control Number 1820–0686). The primary purposes of the data collection are to track the service obligation fulfillment of scholars who receive funds from OSEP grants and to collect data for program performance measure reporting under the Government Performance and Results Act of 1993 (GPRA). Applicants are encouraged to visit the Personnel Development Program Data Collection System (DCS) website at *https://pdp.ed.gov/osep* for further information about this data collection requirement. Typically, data collection begins in January of each year, and grantees are notified by email about the data collection period for their grant, although grantees may submit data as needed, year round. This data collection must be submitted electronically by the grantee and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590). Data collection includes the submission of a signed, completed Pre-Scholarship Agreement and Exit Certification for each scholar funded under an OSEP grant (see paragraph (5) of this section).

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priorities.

In accordance with 34 CFR 75.105(b)(2)(v), these competitive preference priorities are from allowable activities specified in sections 662 and 681 of the IDEA (20 U.S.C. 1462 and 1481).

Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points to an application, depending on how well the application meets Competitive Preference Priority 1, and an additional 5 points to an application that meets Competitive Preference Priority 2. Applicants should indicate in the abstract which, if any, competitive preference priorities are addressed. These priorities are:

Competitive Preference Priority 1 (0 to 5 points).

Applicants that demonstrate matching support [13] for the proposed project at:

[13] For the purposes of this priority, matching support can be either cash or in-kind donations. According to 2 CFR 200.306, a cash expenditure or an outlay of cash with respect to the matching budget by the grantee is considered a cash contribution. Certain cash contributions that the organization normally considers an indirect cost should not be counted as a direct cost for the purposes of meeting matching support. According to 2 CFR 200.434, third-party in-kind contributions are services or property (*e.g.,* land, buildings,

Continued

(i) 10 percent of the total amount of the grant (1 point);

(ii) 20 percent of the total amount of the grant (2 points);

(iii) 30 percent of the total amount of the grant (3 points);

(iv) 40 percent of the total amount of the grant (4 points); or

(v) 50 percent of the total amount of the grant (5 points).

Note: Under 34 CFR 75.562, educational training grants under this program have an 8 percent limit on indirect costs. The difference between an applicant's negotiated indirect cost rate (*e.g.,* 40 percent) and the 8 percent limit cannot be used to meet any portion of the competitive preference priority.

Note: Applicants must address this competitive preference priority, if applicable, in the budget information (ED Form 524, Section B) and the budget narrative. The applicant must propose the amount of cash or in-kind resources to be contributed for each year of the grant.

Competitive Preference Priority 2 (0 or 5 points).

Projects proposed by applicants that have not had an active grant award under the 84.325K program at any point in the preceding 5 fiscal years (*i.e.,* FY 2014–FY 2018).

Note: If an applicant has previously received a grant under the 84.325K program, the performance period for that grant must have ended on or before September 30, 2013 in order to receive points under this priority.

References

Boe, E.E., deBettencourt, L., Dewey, J.F., Rosenberg, M.S., Sindelar, P.T., & Leko, C.D. (2013). Variability in demand for special education teachers: Indicators, explanations, and impacts. *Exceptionality, 21,* 103–125.

Browder, D.M., Wood, L., Thompson, J., & Ribuffo, C. (2014). *Evidence-based practices for students with severe disabilities* (Document No. IC–3). Retrieved from University of Florida, Collaboration for Effective Educator, Development, Accountability, and Reform Center website: *http://ceedar.education.ufl.edu/tool/innovation-configurations/.*

Individuals with Disabilities Education Act, 20 U.S.C. 1400, *et seq.* (2004).

McLeskey, J., & Brownell, M. (2015*). High-leverage practices and teacher preparation in special education* (Document No. PR–1). Retrieved from University of Florida, Collaboration for Effective Educator, Development, Accountability, and Reform Center website: *http://ceedar.education.ufl.edu/wp-content/uploads/2016/05/High-Leverage-Practices-and-Teacher-Preparation-in-Special-Education.pdf.*

National Professional Development Center on Inclusion. (August, 2011). *Competencies for early childhood educators in the context of inclusion: Issues and guidance for States.* Chapel Hill, NC: The University of North Carolina, FPG Child Development Institute.

Smith, J. (2010). An interdisciplinary approach to preparing early intervention professionals: A university and community collaborative initiative. *Teacher Education and Special Education,* 33(2), 131–142.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 304.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 from the list of unfunded applications from this competition.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES (84.325K) APPLICATION NOTICE FOR FISCAL YEAR 2019

CFDA No. and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Maximum award for each budget period of 12 months	Estimated number of awards	Project period	Contact person
84.325K Interdisciplinary Preparation in Special Education, Early Intervention, and Related Services for Personnel Serving Children with Disabilities who have High-Intensity Needs.	May 24, 2019	July 8, 2019	September 6, 2019.						
Focus Area A: Preparing Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities who have High-Intensity Needs.	.....	.....	.....	$200,000–$250,000	$225,000	* $250,000	10	Up to 60 mos	*Focus Area A:* Dawn Ellis, 202–245–6417, *dawn.ellis@ed.gov*, Potomac Center Plaza, Room 5137.
Focus Area B: Preparing Personnel to Serve School-Age Children with Disabilities who have High-Intensity Needs.	.....	.....	.....	200,000–$250,000	225,000	* 250,000	30	Up to 60 mos	*Focus Area B:* Maryann McDermott, 202–245–7439, *maryann.mcdermott@ed.gov*, Potomac Center Plaza, Room 5144.

equipment, materials, supplies) that are contributed by a non-Federal third-party at no charge to the grantee.

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES (84.325K) APPLICATION NOTICE FOR FISCAL YEAR 2019—Continued

CFDA No. and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Maximum award for each budget period of 12 months	Estimated number of awards	Project period	Contact person
									Focus Area A or B HBCU applicants: Dawn Ellis, 202–245–6417, *dawn.ellis@ed.gov*, Potomac Center Plaza, Room 5137.

*We will not make an award exceeding $250,000 for a single budget period of 12 months.
Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* IHEs and private nonprofit organizations.

2. *Cost Sharing or Matching:* Cost sharing or matching is not required for this competition.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated; and

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of project services (45 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In determining the quality of the project services, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services; and

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(c) *Quality of the project evaluation (25 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measureable;

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible; and

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(d) *Quality of project personnel, quality of the management plan, and adequacy of resources (20 points).*

(1) The Secretary considers the quality of the project personnel, the quality of the management plan, and the adequacy of resources for the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iv) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(v) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the

terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* Under GPRA, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include: (1) The percentage of preparation programs that incorporate scientifically or evidence-based practices into their curricula; (2) the percentage of scholars completing preparation programs who are knowledgeable and skilled in evidence-based practices that improve outcomes for children with disabilities; (3) the percentage of scholars who exit preparation programs prior to completion due to poor academic performance; (4) the percentage of scholars completing preparation programs who are working in the area(s) in which they were prepared upon program completion; and (5) the Federal cost per scholar who completed the preparation program.

In addition, the Department will gather information on the following outcome measures: (1) The percentage of scholars who completed the preparation program and are employed in high-need districts; (2) the percentage of scholars who completed the preparation program and are employed in the field of special education for at least two years; and (3) the percentage of scholars who completed the preparation program and who are rated effective by their employers.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW, Room 5074A, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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

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

Johnny W. Collett,

Assistant Secretary for Special, Education and Rehabilitative Services.

[FR Doc. 2019–10903 Filed 5–23–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0031]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Foreign Graduate Medical School Consumer Information Reporting Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 24, 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–0031. 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 Beth Grebeldinger, 202–377–4018.

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: Foreign Graduate Medical School Consumer Information Reporting Form.

OMB Control Number: 1845–0117.

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: 24.

Total Estimated Number of Annual Burden Hours: 384.

Abstract: This is a request for an extension of the information collection to obtain consumer information from foreign graduate medical institutions that participate in the Federal Direct Loan Program. The form is used for reporting specific graduation information to the Department of Education in accordance with 34 CFR 668.14(b)(7). This is done to improve consumer information available to prospective U.S. medical student interested in foreign medical institutions.

Dated: May 21, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–10917 Filed 5–23–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA®) Information To Be Verified for the 2020–2021 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

[CFDA Numbers: 84.007, 84.033, 84.063, and 84.268.]

ACTION: Notice.

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying FAFSA information. This is the notice for the 2020–2021 award year.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, U.S. Department of Education, 400 Maryland Avenue SW, Room 294–10, Washington, DC 20202. Telephone: (202) 453–6088.

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

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

SUPPLEMENTARY INFORMATION: If the Secretary selects an applicant for verification, the applicant's Institutional Student Information Record (ISIR) includes flags that indicate (1) that the applicant has been selected by the Secretary for verification and (2) the Verification Tracking Group in which the applicant has been placed. The Verification Tracking Group indicates which FAFSA information needs to be verified for the applicant and, if appropriate, for the applicant's parent(s) or spouse. The Student Aid Report (SAR) provided to the applicant will indicate that the applicant's FAFSA information has been selected for verification and direct the applicant to contact the institution for further instructions for completing the verification process.

The following chart lists, for the 2020–2021 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must, under § 668.57, be provided to an institution for that information to be verified.

FAFSA information	Acceptable documentation
Income information for tax filers a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) 2018 tax account information of the tax filer that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) through the IRS Data Retrieval Tool and that has not been changed after the information was obtained from the IRS; (2) A transcript [1] obtained at no cost from the IRS or other relevant tax authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign government that lists 2018 tax account information of the tax filer; or (3) A copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS or other relevant tax authority of a U.S. territory, or a foreign government that lists 2018 tax account information of the tax filer.

FAFSA information	Acceptable documentation
Income information for tax filers with special circumstances a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) For a student, or the parent(s) of a dependent student, who filed a 2018 joint income tax return and whose income is used in the calculation of the applicant's expected family contribution and who at the time the FAFSA was completed was separated, divorced, widowed, or married to someone other than the individual included on the 2018 joint income tax return— (a) A transcript obtained from the IRS or other relevant tax authority that lists 2018 tax account information of the tax filer(s); or (b) A copy of the income tax return and the applicable schedules that were filed with the IRS or other relevant tax authority that lists 2018 tax account information of the tax filer(s); and (c) A copy of IRS Form W–2 [2] for each source of 2018 employment income received or an equivalent document.[2] (2) For an individual who is required to file a 2018 IRS income tax return and has been granted a filing extension by the IRS beyond the automatic six-month extension for tax year 2018— (a) A copy of the IRS's approval of an extension beyond the automatic six-month extension for tax year 2018 [3]; (b) Verification of nonfiling [4] from the IRS dated on or after October 1, 2019; (c) A copy of IRS Form W–2 [2] for each source of 2018 employment income received or an equivalent document [2]; and (d) If self-employed, a signed statement certifying the amount of AGI and U.S. income tax paid for tax year 2018. **Note:** An institution may require that, after the income tax return is filed, an individual granted a filing extension beyond the automatic six-month extension submit tax information using the IRS Data Retrieval Tool, by obtaining a transcript from the IRS, or by submitting a copy of the income tax return and the applicable schedules that were filed with the IRS that lists 2018 tax account information. When an institution receives such information, it must be used to reverify the income and tax information reported on the FAFSA. (3) For an individual who was the victim of IRS tax-related identity theft— (a) A Tax Return DataBase View (TRDBV) transcript [1] obtained from the IRS; and (b) A statement signed and dated by the tax filer indicating that he or she was a victim of IRS tax-related identity theft and that the IRS has been made aware of the tax-related identity theft. **Note:** Tax filers may inform the IRS of the tax-related identity theft and obtain a TRDBV transcript by calling the IRS's Identity Protection Specialized Unit (IPSU) at 1–800–908–4490. Unless the institution has reason to suspect the authenticity of the TRDBV transcript provided by the IRS, a signature or stamp or any other validation from the IRS is not needed. (4) For an individual who filed an amended income tax return with the IRS, a signed copy of the IRS Form 1040X that was filed with the IRS for tax year 2018 or documentation from the IRS that include the change(s) made to the tax filer's 2018 tax information, in addition to one of the following— (a) IRS Data Retrieval Tool information on an ISIR record with all tax information from the original 2018 income tax return; (b) A transcript obtained from the IRS that lists 2018 tax account information of the tax filer(s); or (c) A signed copy of the 2018 IRS Form 1040 and the applicable schedules that were filed with the IRS.
Income information for nontax filers Income earned from work.	For an individual who has not filed and, under IRS or other relevant tax authority rules (*e.g.,* the Republic of the Marshall Islands, the Republic of Palau, the Federated States of Micronesia, a U.S. territory or commonwealth or a foreign government), is not required to file a 2018 income tax return— (1) A signed statement certifying— (a) That the individual has not filed and is not required to file a 2018 income tax return; and (b) The sources of 2018 income earned from work and the amount of income from each source; (2) A copy of IRS Form W–2 [2] for each source of 2018 employment income received or an equivalent document [2]; and (3) Except for dependent students, verification of nonfiling [4] from the IRS or other relevant tax authority dated on or after October 1, 2019.
Number of Household Members	A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each household member for the 2020–2021 award year and the relationship of that household member to the applicant. **Note:** Verification of number of household members is not required if— • For a dependent student, the household size indicated on the ISIR is two and the parent is single, separated, divorced, or widowed, or the household size indicated on the ISIR is three if the parents are married or unmarried and living together; or • For an independent student, the household size indicated on the ISIR is one and the applicant is single, separated, divorced, or widowed, or the household size indicated on the ISIR is two if the applicant is married.

FAFSA information	Acceptable documentation
Number in College	(1) A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents listing the name and age of each household member, excluding the parents, who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2020–2021 award year in a program that leads to a degree or certificate and the name of that educational institution. (2) If an institution has reason to believe that the signed statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain documentation from each institution named by the applicant that the household member in question is, or will be, attending on at least a half-time basis unless— (a) The applicant's institution determines that such documentation is not available because the household member in question has not yet registered at the institution the household member plans to attend; or (b) The institution has documentation indicating that the household member in question will be attending the same institution as the applicant. **Note:** Verification of the number of household members in college is not required if the number in college indicated on the ISIR is "1."
High School Completion Status	The applicant's high school completion status when the applicant attends the institution in 2020–2021. (1) *High School Diploma* (a) A copy of the applicant's high school diploma; (b) A copy of the applicant's final official high school transcript that shows the date when the diploma was awarded; or (c) A copy of the "secondary school leaving certificate" (or other similar document) for students who completed secondary education in a foreign country and are unable to obtain a copy of their high school diploma or transcript. **Note:** Institutions that have the expertise may evaluate foreign secondary school credentials to determine their equivalence to U.S. high school diplomas. Institutions may also use a foreign diploma evaluation service for this purpose. (2) *Recognized Equivalent of a High School Diploma* (a) General Educational Development (GED) Certificate or GED transcript; (b) A State certificate or transcript received by a student after the student has passed a State-authorized examination (HiSET, TASC, or other State-authorized examination) that the State recognizes as the equivalent of a high school diploma; (c) An academic transcript that indicates the student successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree at any participating institution; or (d) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who excelled academically in high school but did not complete high school, documentation from the high school that the student excelled academically and documentation from the postsecondary institution that the student has met its written policies for admitting such students. (3) *Homeschool* (a) If the State where the student was homeschooled requires by law that such students obtain a secondary school completion credential for homeschool (other than a high school diploma or its recognized equivalent), a copy of that credential; or (b) If such State law does not require the credential noted in 3(a), a transcript or the equivalent signed by the student's parent or guardian that lists the secondary school courses the student completed and documents the successful completion of a secondary school education in a homeschool setting. **Note:** In cases where documentation of an applicant's completion of a secondary school education is unavailable, *e.g.,* the secondary school is closed and information is not available from another source, such as the local school district or a State Department of Education, or in the case of homeschooling, the parent(s)/guardian(s) who provided the homeschooling is deceased, an institution may accept alternative documentation to verify the applicant's high school completion status (*e.g.,* DD Form 214 Certificate of Release or Discharge From Active Duty that indicates the individual is a high school graduate or equivalent). When documenting an applicant's high school completion status, an institution may rely on documentation it has already collected for purposes other than the Title IV verification requirements (*e.g.,* high school transcripts maintained in the admissions office) if the documentation meets the criteria outlined above. Verification of high school completion status is not required if the institution successfully verified and documented the applicant's high school completion status for a prior award year.

FAFSA information	Acceptable documentation
Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity: (a) An unexpired valid government-issued photo identification[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport. The institution must maintain an annotated copy of the unexpired valid government-issued photo identification that includes— i. The date the identification was presented; and ii. The name of the institutionally authorized individual who reviewed the identification; and (b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____for 2020–2021. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date) _____ (Student's ID Number) (2) If an institution determines that an applicant is unable to appear in person to present an unexpired valid government-issued photo identification and execute the Statement of Educational Purpose, the applicant must provide the institution with— (a) A copy of an unexpired valid government-issued photo identification[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport that is acknowledged in a notary statement or that is presented to a notary; and (b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____for 2020–2021. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date) _____ (Student's ID Number)

[1] This footnote applies, where applicable, whenever an income tax return, the applicable schedules, or transcript is mentioned in the above chart.

The copy of the 2018 income tax return must include the signature of the tax filer, or one of the filers of a joint income tax return, or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security Number, Employer Identification Number, or Preparer Tax Identification Number.

For a tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, the institution must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

An individual who did not retain a copy of his or her 2018 tax account information, and for whom that information cannot be located by the IRS or other relevant tax authority, must submit to the institution—

(a) Copies of all IRS Form W–2s for each source of 2018 employment income or equivalent documents; or

(b) If the individual is self-employed or filed an income tax return with a government of a U.S. territory or commonwealth or a foreign government, a signed statement certifying the amount of AGI and income taxes paid for tax year 2018; and

(c) Documentation from the IRS or other relevant tax authority that indicates the individual's 2018 tax account information cannot be located; and

(d) A signed statement that indicates that the individual did not retain a copy of his or her 2018 tax account information.

If an individual who was the victim of IRS tax-related identity theft is unable to obtain a TRDBV, the institution may accept an equivalent document provided by the IRS or a copy of the signed 2018 income tax return the individual filed with the IRS.

[2] An individual who is required to submit an IRS Form W–2 or an equivalent document but did not maintain a copy should request a duplicate from the employer who issued the original or from the government agency that issued the equivalent document. If the individual is unable to obtain a duplicate W–2 or an equivalent document in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

(a) The amount of income earned from work;

(b) The source of that income; and

(c) The reason why the IRS Form W–2, or an equivalent document, is not available in a timely manner.

[3] For an individual who was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency, an institution must accept a statement from the individual certifying that he or she has not filed an income tax return or a request for a filing extension because of that service.

[4] If an individual is unable to obtain verification of nonfiling from the IRS or other relevant tax authority and, based upon the institution's determination, it has no reason to question the student's or family's good-faith effort to obtain the required documentation, the institution may accept a signed statement certifying that the individual attempted to obtain the verification of nonfiling from the IRS or other relevant tax authority and was unable to obtain the required documentation.

For IRS extension filers, the signed statement must also indicate that the individual has not filed a 2018 income tax return and list the sources of any 2018 income, and the amount of income from each source.

Since individuals without a Social Security Number, an Individual Taxpayer Identification Number, or an Employer Identification Number are unable to obtain a verification of nonfiling from the IRS, these individuals whose income is below the IRS filing threshold must submit to the institution a signed and dated statement—

(a) Certifying that the individual(s) does not have a Social Security Number, an Individual Taxpayer Identification Number, or an Employer Identification Number; and

(b) Listing the sources and amounts of earnings, other income, and resources that supported the individual(s) for the 2018 tax year.

[5] An unexpired valid government-issued photo identification is one issued by the U.S. government, any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized American Indian and Alaska Native Tribe, American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

Verification Requirements for Individuals Who Are Eligible for an Auto Zero Expected Family Contribution (EFC)

Only the following FAFSA/ISIR information must be verified:

For dependent students—

- The parents' AGI if the parents were tax filers;
- The parents' income earned from work if the parents were nontax filers; and
- The student's high school completion status and identity/statement of educational purpose, if selected.

For independent students—

- The student's and spouse's AGI if they were tax filers;
- The student's and spouse's income earned from work if they were nontax filers;
- The student's high school completion status and identity/statement of educational purpose, if selected; and
- The number of household members to determine if the independent student has one or more dependents other than a spouse.

Note: Verification of nonfiling[4] from the IRS (or other relevant tax authority, if applicable) dated on or after October 1, 2019, must be provided for (1) independent students (and spouses, if applicable) and parents of dependent students who did not file and are not required to file a 2018 income tax return, and (2) individuals who are required to file a 2018 IRS income tax return but have not filed because they have been granted a tax filing extension by the IRS beyond the automatic six-month extension for the 2018 tax year.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources:

- *2020–2021 Application and Verification Guide.*
- *2020–2021 ISIR Guide.*
- *2020–2021 SAR Comment Codes and Text.*
- *2020–2021 COD Technical Reference.*
- Program Integrity Information—Questions and Answers on Verification at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

These publications are on the Information for Financial Aid Professionals website at www.*ifap.ed.gov.*

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

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

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1087a–1087j, and 42 U.S.C. 2751–2756b.

Dated: May 17, 2019.

Diane Auer Jones,

Principal Deputy Under Secretary Delegated to Perform the Duties of the Under Secretary and Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2019–10959 Filed 5–23–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 6, 2019, 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Approval of April 2019 Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting

and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signed in Washington, DC, on May 20, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019–10926 Filed 5–23–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford; Meeting

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, June 12, 2019, 8:30 a.m.–4:00 p.m.; Thursday, June 13, 2019, 8:30 a.m.–4:00 p.m.

ADDRESSES: Red Lion Hotel Richland Hanford House, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: JoLynn Garcia, Federal Coordinator, Department of Energy, Office of River Protection, P.O. Box 450, H6–60, Richland, WA 99354; Phone: (509) 376–6244; or Email: *jolynn_m_garcia@orp.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Potential EM SSAB Draft Advice
  - Recommendation #1—EM's Review of Cleanup Milestones
  - Recommendation #2—Improving EM's Science and Technology Program
- Discussion Topics
  - Tri-Party Agreement Agencies' Updates
  - Hanford Advisory Board Proposed Work Plan for Fiscal Year 2020
  - Hanford Advisory Board Committee Reports
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact JoLynn Garcia at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact JoLynn Garcia at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling JoLynn Garcia's office at the address or phone number listed above. Minutes will also be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signed in Washington, DC, on May 20, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019–10928 Filed 5–23–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge; Meeting

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, June 12, 2019, 6:00 p.m.

ADDRESSES: DOE Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management (OREM), P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; Email: *Melyssa.Noe@orem.doe.gov.* Or visit the website at *https://energy.gov/orem/services/community-engagement/oak-ridge-site-specific-advisory-board.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer (DDFO)
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Presentation: OREM's Budget and Priorities
- Public Comment Period
- Motions/Approval of April 10, 2019 Meeting Minutes
- Status of Outstanding Recommendations
- Alternate DDFO Report
- Committee Reports
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five

days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following website: *https://energy.gov/orem/listings/oak-ridge-site-specific-advisory-board-meetings.*

Signed in Washington, DC, on May 21, 2019.

Antionette M. Watkins,

Acting Deputy Committee Management Officer.

[FR Doc. 2019–10927 Filed 5–23–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee, Notice of Open Meeting

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Wednesday, June 19, 2019; 12:00 p.m.–6:00 p.m. EST

Thursday, June 20, 2019; 8:00 a.m.–12:00 p.m. EST

ADDRESSES: National Rural Electric Cooperative Association, First Floor Conference Room, 4301 Wilson Blvd., Arlington, Virginia 22203 (Ballston Metro Stop).

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence, Office of Electricity, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (202) 586–5260 or Email: *Christopher.lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of 2005, executing the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Tentative Agenda

June 19, 2019

12:00 p.m.–1:00 p.m. Registration
1:00 p.m.–1:20 p.m. Welcome, Introductions, Developments since the March 2019 Meeting
1:20 p.m.–1:40 p.m. Update on Office of Electricity Programs and Initiatives
1:40 p.m.–2:00 p.m. Update of Office of Energy Efficiency and Renewable Energy Programs and Initiatives
2:00 p.m.–2:30 p.m. Presentation on Electric Power Research Institute Report on Electromagnetic Pulse and Geomagnetic Disturbance
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–3:15 p.m. Introduction to Bulk Power Operating Reserves
3:15 p.m.–5:00 p.m. Panel Session: Optimizing Bulk Power Operating Reserves
5:00 p.m.–5:15 p.m. Break
5:15 p.m.–5:45 p.m. Energy Storage Subcommittee Update
5:45 p.m.–6:00 p.m. Wrap-up and Adjourn Day 1

June 20, 2019

8:00 a.m.–8:10 a.m. Day 2 Opening Remarks
8:10 a.m.–8:30 a.m. Discussion of Energy Storage Deployment Risks
8:30 a.m.–10:30 a.m. Panel Session: Risk Mitigation for Energy Storage Deployment
10:30 a.m.–10:45 a.m. Break
11:45 a.m.–11:05 a.m. Discussion of Office of Electricity Transmission Permitting and Technical Assistance division State Assistance Activities
11:05 a.m.–11:30 a.m. Smart Grid Subcommittee Update
11:30 a.m.–11:40 a.m. Public Comments
11:40 a.m.–12:00 p.m. Wrap-up and Adjourn

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC website at: *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

Public Participation: The EAC welcomes the attendance of the public at its meetings, no advanced registration is required. Individuals who wish to offer public comments at the EAC meeting may do so on Thursday, June 20, 2019, but must register at the registration table in advance. Approximately 10 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement identified by ''Electricity Advisory Committee Open Meeting,'' to Mr. Christopher Lawrence at 202–586–1472 (Fax) or email: *Christopher.lawrence@hq.doe.gov.*

Minutes: The minutes of the EAC meeting will be posted on the EAC web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Christopher Lawrence at the address above.

Signed in Washington, DC, on May 20, 2019.

Antionette M. Watkins,

Deputy Committee Management Officer.

[FR Doc. 2019–10894 Filed 5–23–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–137–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Buckeye XPpress Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Buckeye XPress Project, proposed by Columbia Gas Transmission, LLC (Columbia) in the above-referenced docket. Columbia requests authorization to construct and operate facilities in Vinton, Jackson, Gallia, and Lawrence Counties, Ohio and Wayne County, West Virginia. The Buckeye XPress Project would increase the firm natural gas transportation capacity on Columbia's system by 275 million cubic feet per day.

The EA assesses the potential environmental effects of the construction and operation of the Buckeye XPress Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate

mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers and the U.S. Forest Service participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Forest Service and the U.S. Army Corps of Engineers will adopt the EA to fulfill their agency's NEPA obligations. The USFS will use the EA, as well as other supporting documentation, to consider the issuance of a special use permit authorization for the portion of the project on National Forest System lands. The U.S. Army Corps of Engineers will use the EA and supporting documentation to consider the issuance of Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permits. Although the cooperating agencies provided input to the conclusions and recommendations presented in the EA, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The proposed Buckeye XPress Project includes the following facilities:

- 66.1 miles of new, 36-inch-diameter natural gas pipeline and various associated facilities, including four new tie-ins, four new mainline valves, various other appurtenant facilities, and installation of over-pressure protection at three locations (together resulting in a new R–801 system);
- 0.2 mile of new 4-inch-diameter pipeline for the Wellston Lateral;
- a new regulation run at the existing Ceredo Compressor Station;
- abandonment of 58.7 miles of existing 20-inch-diameter pipeline and associated facilities on Columbia's R–501 system;
- abandonment of 1.1 miles of 2- to 3-inch-diameter distribution pipeline on Columbia's R–530 system; and
- abandonment of 2.1 miles of existing 20- and 24-inch-diameter pipeline and associated facilities on Columbia's R–500 system.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP18–137–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on June 19, 2019.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–137–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (Title 18 of the Code of Federal Regulations, Part 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription 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 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10877 Filed 5–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14634–002]

New England Hydropower Company, LLC; Notice of Application Tendered for Filing With the Commission, Accepted for Filing, Ready for Environmental Analysis, and Soliciting Motions To Intervene and Protests, Comments, Terms and Conditions, Recommendations, and Prescriptions

May 17, 2019.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 14634–002.

c. *Date filed:* May 6, 2019.

d. *Applicant:* New England Hydropower Company, LLC (NEHC).

e. *Name of Project:* Ashton Dam Hydroelectric Project (Ashton Project).

f. *Location:* On the Blackstone River, near the Towns of Cumberland and Lincoln, Providence County, Rhode Island. No federal or tribal lands would be occupied by project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Michael C. Kerr, 100 Cummings Center, Suite 451C, Beverly, MA 01915; phone (978) 360–2547 or email at *Michael@nehydropower.com.*

i. *FERC Contact:* Patrick Crile, (202) 502–8042 or *Patrick.Crile@ferc.gov.*

j. In response to Commission staff's March 7, 2019 letter rejecting NEHC's October 1, 2018 application for a small hydropower exemption from licensing for the Ashton Dam Project No. 14634–001, NEHC informed the Commission on March 19, 2019 of its intent to convert its exemption application to a license application. Pursuant to Commission staff's March 7, 2019 letter, NEHC submitted additional information necessary to augment the exemption application and convert it to a license application, including information filed on April 26, 2019, May 2, 2019, and May 6, 2019 in Docket Number P–14634–002.

k. As proposed, the Ashton Project would consist of: (1) An existing concrete gravity dam that includes: (a) An approximately 193-foot-long western spillway section; (b) an approximately 57-foot-long middle spillway section with a crest gate proposed to be repaired; and (c) a proposed new 58-foot-long eastern section with three proposed 12-foot-wide, 8.8-foot-high steel sluice gates; (2) an existing 25-acre impoundment with a normal storage capacity of 200 acre-feet at an operating elevation of approximately 73.6 feet North American Vertical Datum of 1988; (3) a new 58-foot-wide intake canal; (4) a 39-foot-wide, 11-foot-high steel trashrack with 9-inch clear bar spacing; (5) a new 30-foot-long, 49-foot-wide, 14-foot-high concrete penstock; (6) a new 53-foot-long, 24-foot-wide, 18-foot-high concrete powerhouse containing three new 20.4-foot-long, 13.5-foot-diameter Archimedes Screw turbine-generator units, with a total installed capacity of 507 kilowatts, each contained in a new 15-foot-wide steel trough; (7) a new 120-foot-long tailrace; (8) a new step-up transformer and 800-foot-long above-ground transmission line connecting the project to the distribution system owned by Narragansett Electric Company; (9) a new access road; and (10) appurtenant facilities.

NEHC proposes to operate the project in a run-of-river mode with an estimated annual energy production of approximately 2,130 megawatt-hours.

l. A copy of the license application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–14634). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* toll free at 1–866–208–3676, or TTY at (202) 502–8659. A copy is also available for inspection and reproduction at the Cumberland Town Hall, 45 Broad Street, Cumberland, RI 02864.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. The license application has been accepted for filing and is now ready for environmental analysis.

n. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

o. Deadline for filing requests for cooperating agency status, motions to intervene, protests, comments, terms and conditions, recommendations, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file requests for cooperating agency status, motions to intervene, and protests, comments, terms and conditions, recommendations, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14634–002.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

p. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR

385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. *Waiver of Pre-filing Consultation:* Based on a review of the application, resource agency consultation letters, and comments filed to date, we accept the consultation that has occurred on this project as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38, and are waiving the requirement to conduct second stage consultation pursuant to section 4.38(c)(4) of the regulations, as requested by NEHC.

r. *Waiver of Additional Study Requests:* On October 11, 2018, Commission staff provided public notice of NEHC's exemption application for the Ashton Project and solicited additional study requests from resource agencies, Indian Tribes, and the public pursuant to section 4.32(b)(7) of the Commission's regulations. No study requests were filed in response to Commission staff's notice, and the additional information filed by NEHC to convert the exemption application to a license application does not materially change NEHC's proposed project. Accordingly, there is no indication that additional studies are needed to form an adequate factual basis for an analysis of the application. Therefore, the opportunity to submit additional study requests for the project pursuant to section 4.32(b)(7) of the Commission's regulations is waived.

s. Based on the presence of an existing dam, the applicant's coordination with federal and state agencies during the preparation of the application, and studies completed during pre-filing consultation, we accept the consultation that has occurred on this project during the pre-filing period as satisfying National Environmental Policy Act (NEPA) scoping. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA) for the proposed project. Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation and land use, and cultural and historic resources.

t. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Rhode Island State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

u. The license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

v. *Procedural Schedule and Final Amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Filing of interventions, protests, comments, recommendations, terms and conditions, and fishway prescriptions	July 2019.
Commission issues Environmental Assessment	December 2019.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: May 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10883 Filed 5–23–19; 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 rate filings:

Docket Numbers: ER15–760–012.

Applicants: Western Antelope Blue Sky Ranch A LLC.

Description: Compliance filing: Western Antelope Blue Sky Ranch A, LLC MBR Tariff to be effective 5/18/2019.

Filed Date: 5/17/19.

Accession Number: 20190517–5049.

Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER15–1579–011.

Applicants: 67RK 8me LLC.

Description: Compliance filing: 67RK 8me LLC MBR Tariff to be effective 5/18/2019.

Filed Date: 5/17/19.

Accession Number: 20190517–5068.

Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER15–1582–012.
Applicants: 65HK 8me LLC.
Description: Compliance filing: 65HK 8me LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5055.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER15–1914–013.
Applicants: 87RL 8me LLC.
Description: Compliance filing: 87RL 8me LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5074.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER15–2679–009.
Applicants: Latigo Wind Park, LLC.
Description: Compliance filing: Latigo Wind Park, LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5120.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–468–007.
Applicants: FTS Master Tenant 1, LLC.
Description: Compliance filing: FTS Master Tenant 1 MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5110.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–474–008.
Applicants: Central Antelope Dry Ranch C LLC.
Description: Compliance filing: Central Antelope Dry Ranch C LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5106.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–1255–007.
Applicants: Antelope Big Sky Ranch LLC.
Description: Compliance filing: Antelope Big Sky Ranch MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5078.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–1738–007.
Applicants: Beacon Solar 4, LLC.
Description: Compliance filing: Beacon Solar 4, LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5103.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–1901–007.
Applicants: Elevation Solar C LLC.
Description: Compliance filing: Elevation Solar C LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5107.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–1955–007.
Applicants: Antelope DSR 2, LLC.
Description: Compliance filing: Antelope DSR 2 MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5080.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–1973–007.
Applicants: Western Antelope Blue Sky Ranch B LLC.
Description: Compliance filing: Western Antelope Blue Sky Ranch B MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5069.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–2201–006.
Applicants: Antelope DSR 1, LLC.
Description: Compliance filing: Antelope DSR 1 MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5079.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–2541–006.
Applicants: Pioneer Wind Park I, LLC.
Description: Compliance filing: Pioneer Wind Park I, LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5123.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–2578–007.
Applicants: North Lancaster Ranch LLC.
Description: Compliance filing: North Lancaster Ranch MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5122.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER17–306–006.
Applicants: Beacon Solar 3, LLC.
Description: Compliance filing: Beacon Solar 3, LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5098.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER17–544–006.
Applicants: Beacon Solar 1, LLC.
Description: Compliance filing: Beacon Solar 1, LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5097.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER17–1357–005.
Applicants: Duke Energy Carolinas, LLC.
Description: Compliance filing: DEC–DEP Settlement Compliance Filing (ER17–1357) to be effective 6/1/2017.
Filed Date: 5/17/19.
Accession Number: 20190517–5113.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER17–1864–005.
Applicants: Bayshore Solar A, LLC.
Description: Compliance filing: Bayshore Solar A LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5085.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER17–1871–005.
Applicants: Bayshore Solar B, LLC.
Description: Compliance filing: Bayshore Solar B MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5086.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER17–1909–005.
Applicants: Bayshore Solar C, LLC.
Description: Compliance filing: Bayshore Solar C MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5096.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER18–829–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Wisconsin Electric Power Company to be effective N/A.
Filed Date: 5/17/19.
Accession Number: 20190517–5130.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER18–1667–001.
Applicants: Antelope Expansion 2, LLC.
Description: Compliance filing: Antelope Expansion 2 MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5084.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER18–2487–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Rail Splitter Wind Farm LLC to be effective N/A.
Filed Date: 5/17/19.
Accession Number: 20190517–5105.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER18–2492–001.
Applicants: FTS Master Tenant 2, LLC.
Description: Compliance filing: FTS Master Tenant 2 MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5111.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–846–001.
Applicants: Antelope DSR 3, LLC.

Description: Compliance filing: Antelope DSR 3, LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5081.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1791–001.
Applicants: Riverhead Solar Farm, LLC.
Description: Compliance filing: Riverhead Solar Farm LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5124.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1885–000.
Applicants: Black Hills Colorado Electric, LLC.
Description: § 205(d) Rate Filing: Tariff Revisions for Joint Dispatch Transmission Service to be effective 7/15/2019.
Filed Date: 5/16/19.
Accession Number: 20190516–5099.
Comments Due: 5 p.m. ET 6/6/19.

Docket Numbers: ER19–1886–000.
Applicants: Stony Creek Wind Farm, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 7/16/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5002.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1887–000.
Applicants: Emera Maine.
Description: Compliance filing: Order No. 845 Compliance to be effective 5/20/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5024.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1888–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: SPS Formula Rate Revisions to Incorporate Changes Accepted in ER19–404 to be effective 4/16/2016.
Filed Date: 5/17/19.
Accession Number: 20190517–5045.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1889–000.
Applicants: Antrim Wind Energy LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 7/17/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5087.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1890–000.
Applicants: MATL LLP.
Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5109.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1891–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Cancel IFA Mountainview SA No. 6 to be effective 7/17/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5126.
Comments Due: 5 p.m. ET 6/7/19.

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 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10882 Filed 5–23–19; 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 rate filings:

Docket Numbers: ER10–1910–016; ER10–1911–016.
Applicants: Duquesne Light Company, Duquesne Power, LLC.
Description: Notice of Change in Status of the Duquesne MBR Sellers.
Filed Date: 5/17/19.
Accession Number: 20190517–5202.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER10–2527–008; ER10–1821–019; ER10–2400–012; ER10–2405–007; ER10–2414–010; ER10–2528–004; ER10–2529–004; ER10–2530–005; ER10–2531–009; ER10–2532–014; ER10–2533–008; ER10–2534–005; ER10–2535–010; ER10–2839–006; ER10–3097–008; ER11–4475–012; ER19–1044–001.
Applicants: Midland Cogeneration Venture Limited Partnership, Allegheny Ridge Wind Farm, LLC, Aragonne Wind LLC, Blue Canyon Windpower LLC, Buena Vista Energy, LLC, Caprock Wind LLC, Cedar Creek Wind Energy, LLC, Crescent Ridge LLC, Goshen Phase II LLC, GSG, LLC, Kumeyaay Wind LLC, Mendota Hills, LLC, Rockland Wind Farm LLC, High Prairie Wind Farm II LLC, Old Trail Wind Farm, LLC, Telocaset Wind Power Partners, LLC, Bruce Power Inc.
Description: Notice of Non-Material Change in Status of Allegheny Ridge Wind Farm, LLC, et al.
Filed Date: 5/17/19.
Accession Number: 20190517–5218.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER17–2059–003.
Applicants: Puget Sound Energy, Inc.
Description: Notice of Non-Material Change in Status of Puget Sound Energy, Inc.
Filed Date: 5/17/19.
Accession Number: 20190517–5198.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1507–002.
Applicants: Duke Energy Carolinas, LLC.
Description: Compliance filing: Joint OATT LGIP—Order 845 Compliance Filing (Errata) to be effective 5/22/2019.
Filed Date: 5/20/19.
Accession Number: 20190520–5077.
Comments Due: 5 p.m. ET 6/10/19.

Docket Numbers: ER19–1895–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–05–17_SPP–MISO JOA Enhancements to Coordinated System Planning Process to be effective 7/17/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5182.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1896–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: SPP–MISO JOA Revisions to Enhance Coordinated System Planning Process to be effective 7/17/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5185.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1897–000.
Applicants: Coolidge Power LLC.
Description: Notice of Cancellation of Market-Based Rate Tariff of Coolidge Power LLC.
Filed Date: 5/17/19.
Accession Number: 20190517–5206.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1898–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Attachment AE Revisions to Enhance MCR Market Design to be effective 12/31/9998.
Filed Date: 5/20/19.
Accession Number: 20190520–5019.
Comments Due: 5 p.m. ET 6/10/19.

Docket Numbers: ER19–1899–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC.
Description: Notice of Cancellation of Generation Facility Transmission Interconnection Agreement (No. 599) of Mid-Atlantic Interstate Transmission, LLC.
Filed Date: 5/17/19.
Accession Number: 20190517–5223.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1900–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Compliance filing: OATT Order No. 845 Compliance to be effective 5/20/2019.
Filed Date: 5/20/19.
Accession Number: 20190520–5065.
Comments Due: 5 p.m. ET 6/10/19.

Docket Numbers: ER19–1901–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Enhance Minimum Daily Contingency Reserve Requirement Calculation to be effective 12/31/9998.
Filed Date: 5/20/19.
Accession Number: 20190520–5079.
Comments Due: 5 p.m. ET 6/10/19.

Docket Numbers: ER19–1902–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Compliance filing: OATT Order No. 845 Compliance to be effective 5/20/2019.
Filed Date: 5/20/19.
Accession Number: 20190520–5090.
Comments Due: 5 p.m. ET 6/10/19.

Docket Numbers: ER19–1903–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA No. 5380; Queue No. AB1–182 to be effective 4/22/2019.
Filed Date: 5/20/19.
Accession Number: 20190520–5096.
Comments Due: 5 p.m. ET 6/10/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–30–000.
Applicants: GridLiance West LLC.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of GridLiance West LLC.
Filed Date: 5/17/19.
Accession Number: 20190517–5203.
Comments Due: 5 p.m. ET 6/7/19.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH19–11–000.
Applicants: Alberta Investment Management Corporation.
Description: Alberta Investment Management Corporation submits FERC 65–B Waiver Notification.
Filed Date: 5/17/19.
Accession Number: 20190517–5207.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: PH19–12–000.
Applicants: OMERS Administration Corporation.
Description: OMERS Administration Corporation submits FERC 65–B Waiver Notification.
Filed Date: 5/17/19.
Accession Number: 20190517–5222.
Comments Due: 5 p.m. ET 6/7/19.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR19–4–001.
Applicants: North American Electric Reliability Corporation.
Description: Request of the North American Electric Reliability Corporation to Advance Funds from its Operating Contingency Reserves to Support Dissolution of FRCC Inc.'s Regional Entity Division.
Filed Date: 5/16/19.
Accession Number: 20190516–5056.
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 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10880 Filed 5–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–71–000]

Manitowoc Public Utilities; Notice of Institution of Section 206 Proceeding

May 17, 2019.

On May 17, 2019, the Commission issued an order in Docket No. EL19–71–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the reactive power revenue requirement of Manitowoc Public Utilities may be unjust and unreasonable. *Manitowoc Public Utilities,* 167 FERC ¶ 61,157 (2019).

Any interested person desiring to be heard in Docket No. EL19–71–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), within 21 days of the date of issuance of the order.

Dated: May 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10876 Filed 5–23–19; 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: RP19–1224–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Notice Regarding Non-Jurisdictional Gathering Facilities (PEB–743) 5–16–2019.
Filed Date: 5/16/19.
Accession Number: 20190516–5070.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: RP19–1225–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Priority of Service—Compliance Filing to be effective 7/1/2019.
Filed Date: 5/16/19.
Accession Number: 20190516–5097.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: RP15–23–011.
Applicants: Transwestern Pipeline Company, LLC.

Description: Compliance filing RP15–23 Compliance with Order on Reserved Capacity Release Issue to be effective 7/1/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5006.
Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: RP19–1016–001.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: Compliance filing Supplemental Compliance Filing Pursuant to Order No. 587–Y to be effective 8/1/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5000.
Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: RP19–1017–001.
Applicants: Kinder Morgan Illinois Pipeline LLC.
Description: Compliance filing Supplemental Compliance Filing Pursuant to Order No. 587–Y to be effective 8/1/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5001.
Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: RP19–1226–000.
Applicants: Greylock Pipeline, LLC.
Description: Compliance filing Revised negotiated rates 2019 to be effective 3/1/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5022.
Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: RP19–1227–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Columbia Gas 860005 5–21–2019 Release to be effective 5/21/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5039.
Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: RP19–1228–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Reservation Charge Credit Exemptions to be effective 6/17/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5083.
Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: RP19–979–001.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Compliance filing Supplemental Compliance Filing Pursuant Order No. 587–Y to be effective 8/1/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5027.
Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: RP19–980–001.
Applicants: Natural Gas Pipeline Company of America.
Description: Compliance filing Supplemental Compliance Filing Pursuant to Order No. 587–Y to be effective 8/1/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5026.
Comments Due: 5 p.m. ET 5/29/19.

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 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10881 Filed 5–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–7–000]

Tennessee Gas Pipeline Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed 261 Upgrade Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the 261 Upgrade Project, proposed by Tennessee Gas Pipeline Company, LLC (Tennessee Gas) in the above-referenced docket. Tennessee Gas requests authorization to provide 72,400 million cubic feet per day (Mcf/d) to subscribed Project shippers. Tennessee Gas also requests approval to upgrade facilities at Compressor Station 261 to increase reliability to existing shippers. The Project includes modifications to existing facilities and installation of new pipeline in Hampden County, Massachusetts.

The EA assesses the potential environmental effects of the construction and operation of the 261 Upgrade Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed 261 Upgrade Project includes the following facilities:

Horsepower Replacement Project

- Abandon and replace two existing turbine compressor units with one new turbine compressor unit and auxiliary facilities; and
- abandon and replace the emergency generator.

Looping Project

- Install 2.1 miles of 12-inch-diameter pipeline loop adjacent to Tennessee Gas pipelines;
- install pig launcher and receiver facilities and tie-in piping; and
- abandon and remove an inactive 6-inch-diameter pipeline.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP19–7). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen

environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on June 17, 2019.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–7–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10878 Filed 5–23–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–115–000.
Applicants: Canadian Breaks LLC.
Description: Self-Certification of Exempt Wholesale Generator Status of Canadian Breaks LLC.
Filed Date: 5/17/19.
Accession Number: 20190517–5147.
Comments Due: 5 p.m. ET 6/7/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–762–013.
Applicants: Sierra Solar Greenworks LLC.
Description: Compliance filing: Sierra Solar Greenworks MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5180.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER15–2680–009.
Applicants: Sandstone Solar LLC.
Description: Compliance filing: Sandstone Solar LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5129.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–890–008.
Applicants: Summer Solar LLC.
Description: Compliance filing: Summer Solar MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5134.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–1609–003.
Applicants: ID SOLAR 1, LLC.
Description: Compliance filing: ID Solar 1 MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5179.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–1956–007.
Applicants: Western Antelope Dry Ranch LLC.
Description: Compliance filing: Western Antelope Dry Ranch MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5138.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER16–2224–006.
Applicants: Solverde 1, LLC.
Description: Compliance filing: Solverde 1, LLC MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5133.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–832–001.
Applicants: Duke Energy Florida, LLC.
Description: Compliance filing: DEF-Notice of Cancellation (ER19–832) eTariff Metadata Compliance Filing to be effective 11/1/2015.
Filed Date: 5/17/19.
Accession Number: 20190517–5156.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–847–001.
Applicants: San Pablo Raceway, LLC.
Description: Compliance filing: San Pablo Raceway MBR Tariff to be effective 5/18/2019.
Filed Date: 5/17/19.
Accession Number: 20190517–5125.
Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1402–000.
Applicants: Coyote Ridge Wind, LLC.
Description: Report Filing: Supplement to Application for Market-Based Rate Authority to be effective N/A.
Filed Date: 5/17/19.
Accession Number: 20190517–5112.
Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1892–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: 2019–05–17_SA 3028 Ameren IL-Prairie Power Project #14 Pleasant View to be effective 4/18/2019.

Filed Date: 5/17/19.

Accession Number: 20190517–5148.

Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1893–000.

Applicants: Dominion Energy South Carolina, Inc.

Description: § 205(d) Rate Filing: VCS Transmission Agr Between SCE&G and SCPSA to be effective 7/17/2019.

Filed Date: 5/17/19.

Accession Number: 20190517–5155.

Comments Due: 5 p.m. ET 6/7/19.

Docket Numbers: ER19–1894–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Cancellation: Notice of Termination of Capetown Wind Farm E&P Agreement to be effective 5/15/2019.

Filed Date: 5/17/19.

Accession Number: 20190517–5157.

Comments Due: 5 p.m. ET 6/7/19.

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 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–10879 Filed 5–23–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0239; FRL–9994–30–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Grain Elevators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Grain Elevators (EPA ICR Number 1130.12, OMB Control Number 2060–0082), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 30, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 24, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2011–0239, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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, EPA 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.*

Abstract: The New Source Performance Standards (NSPS) for Grain Elevators (40 CFR part 60, subpart DD) apply to each affected facility at any grain terminal elevator or any grain storage elevator. The facilities are each truck unloading station, truck loading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer and all grain handling operations that commenced construction, modification or reconstruction after August 3, 1978. Owners or operators of the affected facilities must make a one-time-only report of the date of construction or reconstruction; notification of the actual date of startup; notification of any physical or operational change to existing facility that may increase the rate of emission of the regulated pollutant; notification of initial performance test; and results of initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction, or any period during which the monitoring system is inoperative. This information is being collected to assure compliance with 40 CFR part 60, subpart DD

Form Numbers: None.

Respondents/affected entities: Grain elevator operations.

Respondent's obligation to respond: Mandatory (40 CFR part 60 Subpart DD).

Estimated number of respondents: 200 (total).

Frequency of response: Initially.

Total estimated burden: 460 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $52,000 (per year), which includes no annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB. The regulations have not changed over the past three years and are not anticipated to change over the next three years, and the growth rate for the industry is very low or non-existent. This ICR reflects the on-going burden and costs for existing facilities.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–10892 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0503; FRL–9993–65–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (EPA ICR Number 1847.08, OMB Control Number 2060–0390), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2019. Public comments were previously requested via the **Federal Register** on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 24, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0503, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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, EPA 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.*

Abstract: The Emission Guidelines for Large Municipal Waste Combustors at 40 CFR part 60, subpart Cb were proposed on September 20, 1994, promulgated on December 19, 1995, and amended on August 25, 1997, and May 10, 2006. These regulations apply to existing facilities constructed on or before September 20, 1994 that own and operate municipal waste combustion (MWC) units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units). The reporting and recordkeeping requirements discussed below result from the emission guidelines that apply to large MWCs covered by EPA-approved and effective State plans and, where a State plan has not been approved, large MWCs covered by the Federal plan. This information is being collected to assure compliance with 40 CFR part 60, subpart Cb.

In general, all Emission Guidelines standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to Emission Guidelines.

Form Numbers: None.

Respondents/affected entities: Large municipal waste combustors.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Cb).

Estimated number of respondents: 77 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Total estimated burden: 394,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $63,700,000 (per year), includes $1,530,000 annualized capital or operation & maintenance costs.

Changes in the estimates: There is a small adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease in labor hours is not due to any program changes. Instead, the slight decrease is due to a decrease in the number of respondents, and several minor adjustments and updates to the calculations based on new information collected by the Agency. Two units were discovered to be affected by the Federal plan, instead of the State Plan, and thus decreased the burden for Designated State Administrators. In addition, several units were determined to be privately owned rather than publicly owned based on new data. There was a slight decrease in capital/startup and O&M costs because the number of units changed.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–10885 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9044–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 05/13/2019 Through 05/17/2019

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190108, Draft, USFS, OR, Shasta Agness Landscape Restoration Project, Comment Period Ends: 07/09/2019, Contact: Anne Trapanese 541–560–3433.

EIS No. 20190109, Draft, USACE, OR, Detroit Dam Downstream Fish Passage and Temperature Control, Comment

Period Ends: 07/23/2019, Contact: Kelly Janes 503–808–4510.

EIS No. 20190111, Draft Supplement, TVA, TN, Update of TVA's Natural Resource Plan, Comment Period Ends: 07/08/2019, Contact: Matthew Higdon 865–632–8051.

EIS No. 20190112, Draft, BLM, ID, Four Rivers Field Office Draft Resource Management Plan and Draft Environmental Impact Statement, Comment Period Ends: 08/22/2019, Contact: Pamela Murdock 208–384–3300.

EIS No. 20190113, Final, USFS, NM, Luna Restoration Project, Review Period Ends: 07/08/2019, Contact: Emily Irwin 575–773–4678.

EIS No. 20190114, Final, DOE, LA, ADOPTION—Plaquemines LNG and Gator Express Pipeline Project, Contact: Brian Lavoie 202–586.–2459.

The Department of Energy (DOE) has adopted the Federal Energy Regulatory Commission's Final EIS No. 20190091, filed 5/3/2019 with the EPA. DOE was a cooperating agency on this project. Therefore, recirculation of the document is not necessary under Section 1506.3(c) of the CEQ regulations.

EIS No. 20190115, Draft, BIA, CA, Campo Wind Energy Project with Boulder Brush Facilities, Comment Period Ends: 07/08/2019, Contact: Dan ''Harold'' Hall 916–978–6041.

Dated: May 20, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–10846 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2018–3763; FRL–9994–05–Region 4]

Ward Transformer Superfund Site; Raleigh, North Carolina; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement agreement with Pharmacia LLC, concerning the Ward Transformer Superfund Site located in Raleigh, North Carolina. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until June 24, 2019. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this document. Comments may also be submitted by referencing the site's name through one of the following methods: Internet: *https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.*

- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW, Atlanta, Georgia 30303
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at (404) 562–8887.

Dated: April 8, 2019.

Maurice L. Horsey, IV,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2019–10954 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0506; FRL–9993–81–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Small Municipal Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Small Municipal Waste Combustors (EPA ICR Number 1900.07, OMB Control Number 2060–0423), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2019. Public comments were previously requested, via the **Federal Register**, on May 30, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before June 24, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0506 to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

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: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@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.*

Abstract: The New Source Performance Standards (NSPS) for Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA) were proposed on August 30, 1999, and promulgated on December 6, 2000. These regulations apply to both existing facilities and new facilities with small municipal waste combustor (MWCs) that combust greater than 35 tons per day (tpd), but with less than 250 tpd of municipal solid waste. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. This information is being collected to

assure compliance with 40 CFR part 60, subpart AAAA.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Small municipal waste combustors (MWCs).

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart AAAA).

Estimated number of respondents: 5 (total).

Frequency of response: Initially, annually, and semiannually.

Total estimated burden: 17,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,010,000 (per year), which includes $207,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an overall increase in respondent burden from the most recently-approved ICR due to an increase in the number of respondents. The number of respondents reflects a continued growth rate of one new respondent over the next three years. There is also an increase in the operation and maintenance (O&M) costs due to the increase in the number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–10891 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9993–99–OAR]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet on September 17, 2019. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's website: *http://www2.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee website. To subscribe to the MSTRS listserv, send an email to *mccubbin.courtney@epa.gov.*

DATES: Tuesday, September 17, 2019 from 9 a.m. to 4:30 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting is currently scheduled to be held at the EPA's National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Ann Arbor, MI 48105. However, this date and location are subject to change and interested parties should monitor the Subcommittee website (above) for the latest logistical information.

FOR FURTHER INFORMATION CONTACT: Courtney McCubbin, Designated Federal Officer, Transportation and Climate Division, Mailcode 6406A, U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460; Ph: 202–564–2436; email: *mccubbin.courtney@epa.gov*.

Background on the work of the Subcommittee is available at: *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac*. Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. McCubbin at the address above by September 4, 2019. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Ms. McCubbin (see above). To request accommodation of a disability, please contact Ms. McCubbin, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 13, 2019.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2019–10955 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0738 and EPA–HQ–OAR–2010–0682; FRL–9993–82–OAR]

Notice of Final Approval for an Alternative Means of Emission Limitation at Shell Oil Products U.S. Martinez Refinery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: This document announces our approval of the alternative means of emission limitation (AMEL) request under the Clean Air Act (CAA) submitted by Shell Oil Products U.S. Martinez Refinery (Shell Martinez) to operate a multi-point ground flare (MPGF) at a refinery in Martinez, California. The EPA received one non-substantive comment that appears to support the request; we received no adverse comment on the request. This approval document specifies the operating conditions and monitoring, recordkeeping, and reporting requirements that these facilities must follow to demonstrate compliance with the approved AMEL.

DATES: The approval of the AMEL request from Shell Martinez to operate an MPGF at the Shell Martinez refinery, as specified in this document, is approved on May 24, 2019.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0738. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m.

Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Angie Carey, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2187; fax number: (919) 541–0516; and email address: *carey.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

AMEL alternative means of emission limitation
BTU/scf British thermal units per standard cubic foot
CFR Code of Federal Regulations
DCU delayed coking unit
EPA Environmental Protection Agency
MACT maximum achievable control technology
MPGF multi-point ground flare
NESHAP national emission standards for hazardous air pollutants

Organization of this document. The information in this document is organized as follows:

I. Background
A. Summary
B. Regulatory Flare Requirements
II. Summary of Public Comments on the AMEL Request
III. AMEL for the MPGF

I. Background

A. Summary

In a **Federal Register** document dated March 11, 2019, the EPA provided public notice and solicited comment on the request under the CAA by Shell Martinez to operate an MPGF at a refinery in Martinez, California (see 84 FR 8715). In that document, the EPA solicited comment on all aspects of the AMEL request, including the operating conditions specified in that document that are necessary to achieve a reduction in emissions of volatile organic compounds and organic hazardous air pollutants at least equivalent to the reduction in emissions required by the maximum achievable control technology (MACT) requirements for Petroleum Refineries at 40 CFR 63.670(d) that apply to emission sources that would be controlled by this MPGF. Shell Martinez requested the AMEL for its MPGF that controls emissions from its delayed coking unit (DCU). Shell Martinez submitted an AMEL request to operate a flare with tip exit velocities greater than those allowed in 40 CFR 63.670(d) while achieving ≥ 96.5-percent combustion efficiency and 98-percent destruction efficiency.

This action provides a summary of our approval of this AMEL request.

B. Regulatory Flare Requirements

Shell Martinez provided the information specified in the flare AMEL framework set forth in the Petroleum Refinery MACT at 40 CFR 63.670(r) to support its AMEL request. Shell Martinez is seeking an AMEL to operate its MPGF during upset emergency conditions. This DCU is subject to the Petroleum Refinery MACT, 40 CFR part 63, subpart CC; accordingly, the request followed the AMEL framework specified in 40 CFR part 63, subpart CC, at 40 CFR 63.670(r).

II. Summary of Public Comments on the AMEL Request

The Agency received one non-substantive comment that appears to support the initial notice. No adverse comment was received on the request.

III. AMEL for the MPGF

The EPA is approving the AMEL request by Shell Martinez to operate an MPGF with tip exit velocities greater than those allowed in 40 CFR 63.670(d) while achieving ≥96.5-percent combustion efficiency and 98-percent destruction efficiency. We are also establishing in this notice the operating conditions for this MPGF as part of this approval. These operating conditions, which are the same as those set forth in the March 11, 2019, document, will ensure that this flare will achieve emission reductions at least equivalent to those achieved by flares complying with the relevant requirements in the Petroleum Refinery MACT. The operating conditions are as follows:

(1) The MPGF must be operated according to the requirements of the Petroleum Refinery MACT, including 40 CFR 63.670 and 63.671, except that all references to a combustion zone heating value of 270 British thermal units per standard cubic feet (BTU/scf) are replaced with a value of 800 BTU/scf and the flare tip velocity requirements of 40 CFR 63.670(d) do not apply.

(2) Each stage that cross-lights must have at least two pilots with a continuously lit pilot flame.

(3) The operator of the DCU MPGF system shall install and operate pressure monitor(s) on the main flare header, as well as a valve position indicator monitoring system capable of monitoring and recording the position for each staging valve to ensure that the flare operates at normal maximum operating pressure of 15 pounds per square inch gauge as described in the AMEL application. The pressure monitor shall meet the requirements in Table 13 of 40 CFR 63, subpart CC.

(a) The owner or operator of the Shell Martinez DCU MPGF shall meet the reporting requirements in the Petroleum Refinery MACT in 40 CFR 63.655(g)(11)(i)–(iii). In addition, the Shell Martinez MPGF notification shall also include records specified in sections (i)–(ii) below.

(i) Records of when the pressure monitor(s) on the main flare header show the flare burners are operating outside the range of tested conditions or outside the range of the manufacturer's specifications. Indicate the date and time for each period, the pressure measurement, the stage(s) and number of flare burners affected, and the range of tested conditions or manufacturer's specifications.

(ii) Records of when the staging valve position indicator monitoring system indicates that a stage of the flare should not be in operation and is, or that a stage of the flare should be in operation and is not. Indicate the date and time for each such period, whether the stage was supposed to be open but was closed, or vice versa, and the stage(s) and number of flare burners affected.

Dated: May 20, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–10904 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0750; FRL–9993–37]

Registration Review Proposed Interim Decisions for Several Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: Aliphatic solvents, bispyribac-sodium, diclosulam, florasulam, flucarbazone-sodium, hydramethylnon, imazamox, imazapic, imazaquin, imazethapyr, penoxsulam,

phosphorous acid and salts, polyoxin D zinc salts, and trifluralin.

DATES: Comments must be received on or before July 23, 2019.

ADDRESSES: Submit your comments, identified by 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, is 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 information 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 for the pesticide of interest 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 on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. 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 proposed interim decisions for all 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 proposed interim registration review decisions for the pesticides shown in the following table, and opens a 60-day public comment period on the proposed interim decisions.

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
Aliphatic solvents Case 3004	EPA–HQ–OPP–2016–0039	Veronica Dutch, *dutch.veronica@epa.gov*, 703–308–8585.
Bispyribac-sodium Case 7258	EPA–HQ–OPP–2014–0074	Moana Appleyard, *appleyard.moana@epa.gov*, 703–308–8175.
Diclosulam Case 7249	EPA–HQ–OPP–2015–0285	Susan Bartow, *bartow.susan@epa.gov*, 703–603–0065.
Florasulam Case 7274	EPA–HQ–OPP–2015–0548	Moana Appleyard, *appleyard.moana@epa.gov*, 703–308–8175.
Flucarbazone-sodium Case 7251	EPA–HQ–OPP–2013–0283	Veronica Dutch, *dutch.veronica@epa.gov*, 703–308–8585.
Hydramethylnon Case 2585	EPA–HQ–OPP–2012–0869	Christian Bongard, *bongard.christian@epa.gov*, 703–347–0337.
Imazamox Case 7238	EPA–HQ–OPP–2014–0395	Patricia Biggio, *biggio.patricia@epa.gov*, 703–347–0547.
Imazapic Case 7234	EPA–HQ–OPP–2014–0279	Eric Fox, *fox.ericm@epa.gov*, 703–347–0104.
Imazaquin Case 7204	EPA–HQ–OPP–2014–0224	Matthew Manupella, *manupella.matthew@epa.gov*, 703–347–0411.
Imazethapyr Case 7208	EPA–HQ–OPP–2013–0774	Katherine St. Clair, *st.clair.katherine@epa.gov*, 703–347–8778.
Penoxsulam Case 7265	EPA–HQ–OPP–2015–0303	Samantha Thomas, *thomas.samantha@epa.gov*, 703–347–0514.
Phosphorous Acid and Its Salts Case 6035.	EPA–HQ–OPP–2016–0488	Cody Kendrick, *kendrick.cody@epa.gov*, 703–347–0468.
Polyoxin D Zinc Salt Case 6076	EPA–HQ–OPP–2014–0108	Cody Kendrick, *kendrick.cody@epa.gov*, 703–347–0468.

Registration review case name and number	Docket ID No.	Chemical review manager and contact information
Trifluralin Case 0179	EPA–HQ–OPP–2012–0417	Patricia Biggio, *biggio.patricia@epa.gov*, 703–347–0547.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in the table in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in the table in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the Table in Unit IV. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a ''*Response to Comments Memorandum*'' in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/pesticide-reevaluation.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 6, 2019.

Charles Smith,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–10945 Filed 5–23–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0804, OMB 3060–1096]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 24, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program.

Form Numbers: FCC Forms 460, 461, 462, 463, 465, 466, and 467.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Governments.

Number of Respondents and Responses: 20,314 respondents; 117,042 responses.

Estimated Time per Response: 0.1–40 hours.

Frequency of Response: On occasion and one-time annual reporting requirements, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405.

Total Annual Burden: 275,090 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the Commission. Respondents may, however, request confidential treatment for information they believe to be confidential under *47 CFR 0.459* of the Commission's rules. We note that the universal service administrator must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service support program; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission seeks Office of Management and Budget (OMB) approval of a revision (change in reporting and recordkeeping requirements) to this information collection. This collection is utilized for the rural health care support mechanism (RHC Program) of the Commission's universal service fund (USF). Section 254(h)(A)(1) of the Telecommunications Act of 1996 (1996 Act), 47 U.S.C. 254(h)(A)(1), mandates that telecommunications carriers provide telecommunications services for health care purposes to eligible rural public or non-profit health care providers at rates that are ''reasonably comparable'' to rates in urban areas. In addition, section 254(h)(2)(A) of the 1996 Act, 47 U.S.C. 254(h)(2)(A), directs the Commission to establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to ''advanced telecommunications and information services'' for public and non-profit health care providers.

Based on this legislative mandate, the Commission established the two components of the RHC Program—the Telecommunications (Telecom) Program and the Healthcare Connect Fund Program. Additionally, in 2006, the Commission established the Pilot Program which provided funding for a limited time (through funding year 2012). At the time of the Commission's last revision of this information collection, while no new funding was available under Pilot Program, some projects were still spending funds previously committed as part of the Pilot Program. Since that time, all invoicing under the Pilot Program has been completed and there are no remaining funds to be disbursed under the Pilot Program. This revised collection is therefore necessary to eliminate the requirements associated with this program. Additionally, this collection of information is necessary so that the Commission and the Universal Service Administrative Company (USAC), the administrator of the USF program, will have sufficient information to determine if entities are eligible for funding pursuant to the RHC Program, to determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse.

This information is also necessary in order to allow the Commission to evaluate the extent to which the RHC Program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's performance goals for the Healthcare Connect Fund Program. Accordingly, this information collection is being revised to: (1) Eliminate the requirements for the Pilot Program and (2) extend the existing information collection requirements for the Healthcare Connect Fund and Telecom Programs.

This submission is organized by program indicating which information collection requirements are being eliminated or extended for each RHC program. The Healthcare Connect Fund includes FCC Forms 460, 461, 462, and 463, and the Telecom Program includes FCC Forms 465, 466, 467.

OMB Control Number: 3060–1096.

Title: Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 121 respondents; 1,452 responses.

Estimated Time per Response: 2.5 hours–20 hours.

Frequency of Response: Quarterly reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201, 202 and 254 of the Communications Act of 1934, as amended.

Total Annual Burden: 12,100 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not anticipate providing confidentiality of the information submitted by prepaid calling card providers. Particularly, the prepaid calling card providers must send reports to their transport providers. Additionally, the quarterly certifications sent to the Commission will be made public through the Commission's Electronic Comment Filing System (ECFS) process. These certifications will be filed in the Commission's docket associated with this proceeding. If the respondents submit information they believe to be confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Prepaid calling card service providers must report quarterly the percentage of interstate, intrastate and international access charges to carriers from which they purchase transport services. Prepaid calling card providers must also file certifications with the Commission quarterly that include the above information and a statement that they are contributing to the federal Universal Service Fund based on all interstate and international revenue, except for revenue from the sale of prepaid calling cards by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–10923 Filed 5–23–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0953]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 23, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control No.: 3060–0953.

Title: Section 95.2309, Frequency Coordination/Coordinator, Wireless Medical Telemetry Service.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and Not-for-profit institutions.

Number of Respondents and Responses: 3,000 respondents; 3,000 responses.

Estimated Time per Response: 2–5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 154, 303, 307.

Total Annual Burden: 15,000 hours.

Total Annual Cost: $750,000.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: No information is requested that would require assurance of confidentiality.

Needs and Uses: The Commission will submit this information collection to OMB as a revision after this 60-day comment period to obtain the full three-year clearance from them.

On May 19, 2017, the Federal Communications Commission released a Report and Order, *Review of the Commission's Part 95 Personal Radio Services Rules,* WT Docket No. 10–119, FCC 17–57, which reorganized and updated the Commission's Part 95 rules, including those for the wireless medical telemetry service (WMTS). The Commission merged the requirements of former Sections 95.1111 and 95.1113 into a new Section 95.2309, but did not impose any new requirements that would be subject to this collection of information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–10924 Filed 5–23–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this notice announces the establishment of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with agencies from the States of Georgia and Iowa. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before June 24, 2019. This computer matching program will commence on June 24, 2019, unless comments are received that require a contrary determination, and will conclude on November 24, 2020.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, FCC, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program. The purpose of this particular program is to verify Lifeline eligibility by establishing that applicants or subscribers from Georgia and Iowa are enrolled in the SNAP program.

Participating Non-Federal Agencies:

• The Georgia Department of Human Services, Department of Children and Family Services; and

• The Iowa Department of Human Services.

Authority for Conducting the Matching Program: 47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

Purpose(s): In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. *Id.* at 4011–2, paras. 135–7.

Categories of Individuals: The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

Categories of Records: The categories of records involved in the matching program include, but are not limited to, a Lifeline applicant or subscriber's full name; physical and mailing addresses; partial Social Security number or Tribal ID number; date of birth; qualifying person's full name (if qualifying person is different from subscriber); qualifying person's physical and mailing addresses; qualifying person's partial Social Security number or Tribal ID number, and qualifying person's date of birth. The National Verifier will transfer these data elements to the source agencies, which will respond either ''yes'' or ''no'' that the individual is enrolled in a Lifeline-qualifying assistance program.

System(s) of Records: The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 82 FR 38686 (Aug. 15, 2017) and became effective on September 14, 2017.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–10938 Filed 5–23–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receivership

Notice is hereby given that the Federal Deposit Insurance Corporation (FDIC or Receiver) as Receiver for the institution listed below intends to terminate its receivership for said institution.

NOTICE OF INTENT TO TERMINATE RECEIVERSHIP

Fund	Receivership name	City	State	Date of appointment of receiver
10191	Bank Of Illinois	Normal	IL	03/05/2010

The liquidation of the assets for the receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing, identify the receivership to which the comment pertains, and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, on May 21, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–10868 Filed 5–23–19; 8:45 am]

BILLING CODE 6714–01–P

JOINT FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member and Employee Thrift Advisory Council Meeting

77 K Street NE, 10th Floor, Washington, DC 20002, May 29, 2019, 8:30 a.m.

Open Session

1. Approval of the April 29, 2019 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Performance
   (c) Legislative Report
3. Quarterly Reports
   (d) Metrics
4. OCE Annual Report
5. Contact Center Update
6. Withdrawal Project Update

Closed Session

Information covered under 5 U.S.C. 552b (c)(6) and (c)(9)(B).

Contact Person For More Information: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: May 21, 2019.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2019–10946 Filed 5–23–19; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

[60Day–19–0041; Docket No. ATSDR–2019–0007]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''*National Amyotrophic Lateral Sclerosis (ALS) Registry*.'' The National ALS Registry collects information from persons with ALS to better describe the prevalence and potential risk factors for ALS.

DATES: ATSDR must receive written comments on or before July 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. ATSDR–2019–0007 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. ATSDR will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

The National Amyotrophic Lateral Sclerosis (ALS) Registry (OMB Control No. 0923–0041, Expiration Date 11/30/2019)—Revision—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year Paperwork Reduction Act (PRA) clearance for the National Amyotrophic Lateral Sclerosis (ALS) Registry (0923–0041, Expiration Date 11/30/2019). The current request is a revision designed to strengthen the usefulness of the National ALS Registry for researchers. The changes to the ICR include:

(1) Addition of an organized sports participation survey to capture history and current participation in physical activities. This additional survey will take approximately 5 minutes to complete and will add an additional 63 total burden hours for respondents;

(2) Two additional questions to capture race and ethnicity upon registration with other basic demographic information will be added to ALS Case Registration Form prior to Persons with ALS (PALS) completing more detailed surveys.

On October 10, 2008, President Bush signed S.1382: ALS Registry Act which amended the Public Health Service Act to provide for the establishment of an Amyotrophic Lateral Sclerosis (ALS) Registry. The activities described are part of the ongoing effort to maintain the National ALS Registry.

First approved in 2010 for self-registration, the primary goal of the surveillance system/registry remains to obtain reliable information on the incidence and prevalence of ALS and to better describe the demographic characteristics (age, race, sex, and geographic location) of persons with ALS. Those interested in participating in the National ALS Registry must answer a series of validation questions and if determined to be eligible they can register.

The secondary goal of the surveillance system/registry is to collect additional information on potential risk factors for ALS, including, but not limited to, family history of ALS, smoking history, military service, residential history, lifetime occupational exposure, home pesticide use, hobbies, participation in sports, hormonal and reproductive history (women only), caffeine use, trauma, health insurance, open-ended supplemental questions, and clinical signs and symptoms. After registration, participants complete as many as 17 voluntary survey modules, each taking up to five minutes. In addition, in Year 1, a disease progression survey for new registrants is completed at zero, three, and six months. In Year 2 and Year 3, the disease progression survey is repeated at the yearly anniversary and at six months. For burden estimation, the number of disease progression survey responses per year has been rounded up to three times.

A biorepository component was added in 2016 to increase the value of the National ALS Registry to researchers. As part of registration the participant can request additional information about the biorepository and provide additional contact information. A geographically representative sample is selected to provide specimens. There are two types of specimen collections, in-home and postmortem. The in-home

collection includes blood, urine, and saliva. The postmortem collection includes the brain, spinal cord, cerebral spinal fluid (CSF), bone, muscle, and skin.

In addition to fulfilling the two-part Congressional mandate, the Registry is designed to be a tool for ALS researchers. Now that the Registry has matured, ATSDR has made data and specimens available to approved researchers and has added a respondent type. Researchers can request access to specimens, data, or both collected by the National ALS Registry for their research projects. ATSDR will review applications for scientific validity and human subjects' protection and make data/specimens available to approved researchers. ATSDR is collaborating with ALS service organizations to conduct outreach activities through their local chapters and districts as well as on a national level. They provide ATSDR with information on their outreach efforts in support of the Registry on a monthly basis.

There are no costs to the respondents other than their time. Participation in this proposed information collection is completely voluntary. The total number of burden hours requested is 1,946 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Person with ALS	ALS Case Validation Questions	1,670	1	2/60	56
	ALS Case Registration Form	1,500	1	10/60	250
	Voluntary Survey Modules	750	1	85/60	1,063
	Disease Progression Survey*	750	3	5/60	188
	ALS Biorepository Specimen Processing Form and In-Home Collection.	325	1	30/60	163
	ALS Biorepository Saliva Collection	350	1	10/60	59
Researchers	ALS Registry Research Application Form	36	1	30/60	18
	Annual Update	24	1	15/60	6
ALS Service Organization.	Chapter/District Outreach Reporting Form	135	12	5/60	135
	National Office Outreach Reporting Form	2	12	20/60	8
Total					1,946

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–10836 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–19–1171; Docket No. CDC–2019–0036]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Study to Explore Early Development (SEED) Phase 3. This study evaluates potential risk factors for Autism Spectrum Disorders (ASD) and the behavioral and health characteristics of children with autism by conducting a case control study to compare them with children who have other developmental disabilities and children from the general population.

DATES: CDC must receive written comments on or before July 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0036 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Lead, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.
- *Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

*Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Study to Explore Early Development (SEED) Phase 3—Extension—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Autism spectrum disorders (ASD) are group of neurodevelopmental disorders characterized by qualitative impairments in social interaction, and communication and stereotyped behaviors and interests. Recent systematic population surveys and routine monitoring systems in the U.S. and other countries indicate the prevalence to be 1–2%. Apart from the identification of some rare genetic conditions that are commonly associated with autism, causal mechanisms for the disorder remain largely unknown.

The Children's Health Act of 2000 mandated CDC to establish autism surveillance and research programs to address the number, incidence, and causes of autism and related developmental disabilities. Under the provisions of this act, NCBDDD funded five Centers for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) through program announcements in FY2001 and FY2002; CDC's NCBDDD served as the sixth CADDRE site.

For the first funding cycle (2001–2006), each CADDRE grantee had three core objectives: To develop a protocol for a multi-site collaborative epidemiologic study focused on autism (which was eventually named the Study to Explore Early Development [SEED]); to conduct surveillance of autism and other developmental disabilities; and to conduct site-specific investigator initiated studies on autism. In FY 2006, through a second CADDRE funding cycle, five grantees were awarded. The CADDRE activities for the second funding cycle (2006–2011) were limited to implementation of the first phase of SEED (subsequently known as SEED 1). CDC served as the sixth CADDRE SEED 1 site during this period. A second phase of SEED (SEED 2) was funded under a third funding cycle (2011–2016). Five CADDRE grantees received the awards. Again, CDC served as the sixth SEED 2 site.

A third phase of SEED (SEED 3) was funded in July 2016. Five extramural sites were funded. Together with the CDC, they are implementing the SEED 3 collaborative protocol. The SEED 3 protocol for identification of study participants, recruitment, and study data collection flow is similar to the protocols for SEED 1 and 2. CDC obtained approval to collect information for SEED 3 in 2017 (OMB 0920–1171). The current request is to obtain an extension of this approval so that data collection may continue beyond the current expiration date of 3/31/2020.

While all SEED phases have the same research goals and the same basic study design, data collection was greatly streamlined and revised between SEED 1, SEED 2, and SEED 3. Many study instruments and data collection components included in the SEED 1 protocol are not included in the SEED 3 protocol; two instruments included in the SEED 3 protocol were developed subsequent to SEED 1 to capture an abbreviated version of information that had been included on some of the discontinued SEED 1 forms and to capture some additional information overlooked in the SEED 1 protocol; and instruments included in all phases of SEED underwent review and minor revision subsequent to SEED 1 to address ambiguities and difficulties experienced during SEED 1 data collection. No additional changes are requested from the SEED 3 protocol that initially obtained OMB approval. Implementing this phase of SEED will increase the total SEED pooled sample size for investigation of high priority hypotheses. Maintaining the same basic study design and general protocol integrity will ensure that data pooling can be achieved across SEED phases.

Families will be identified from each of the three groups: Autism Spectrum Disorder (ASD), other developmental delay or disorder comparison group (DD), and a second comparison group of children randomly drawn from the entire study cohort population (POP). It is expected that the six SEED 3 study sites will enroll a total of 2,106 children and complete the study protocol. The data collection will take approximately nine hours 10 minutes (ASD group); five hours 30 minutes (POP group); two hours 45 minutes (DD group) to complete, which includes: (1) Maternal telephone interview with questions about maternal reproductive history and pregnancy with the index child, (2) parent-completed questionnaires about parental and child health and child development, (3) in-person child developmental evaluation, (4) maternal and child anthropometry measurements, and (5) biosampling from biological parents and child. There are no costs to participants other than their time. The total estimated annual burden hours are 7,118.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Mother, ASD workflow. *All potential participants sent mailing.*	Invitation Packet/Response Card	1,718	1	10/60	286
Mother, ASD workflow. *Potentially eligible with contact by study staff.*	Invitation Call Script and Social Communication Questionnaire.	859	1	30/60	430
Mother, ASD workflow. *Eligible, consented, and enrolled; assigned to the ASD workflow based on enrollment intake.*	Enrollment Packet	469	1	20/60	156
Mother, ASD workflow. *Completed this study step.*	Follow-up Phone Call Script and Checklist and Pregnancy Reference Form.	422	1	15/60	106

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Mother, ASD workflow. *Completed this study step.*	Maternal Interview Call	422	1	1	422
Mother, ASD workflow. *Completed this study step.*	Self-Administered Forms	375	1	105/60	656
Mother, ASD workflow. *Completed this study step.*	Follow-up Call 2	375	1	20/60	125
Mother, ASD workflow. *Completed this study step.*	Clinic/Home Visit—Developmental Assessment, saliva collection, overall consent.	328	1	225/60	1,230
Father, ASD workflow. *Completed this study step.*	Clinic/Home Visit—Saliva Collection	164	1	15/60	41
Child, ASD workflow. *Completed this study step.*	Clinic/Home Visit—Developmental Assessment.	328	1	135/60	738
Mother, POP workflow. *All potential participants sent mailing.*	Invitation Packet/Response Card	1,466	1	10/60	244
Mother , POP workflow. *Potentially eligible with contact by study staff.*	Invitation Call Script and Social Communication Questionnaire.	733	1	30/60	367
Mother , POP workflow. *Eligible, consented, and enrolled; assigned to the POP workflow based on enrollment intake.*	Enrollment Packet	334	1	20/60	111
Mother, POP workflow. *Completed this study step.*	Follow-up Phone Call Script and Checklist and Pregnancy Reference Form.	301	1	15/60	75
Mother, POP workflow. *Completed this study step.*	Maternal Interview Call	301	1	1	301
Mother, POP workflow. *Completed this study step.*	Self-Administered Forms	267	1	105/60	467
Mother, POP workflow. *Completed this study step.*	Follow-up Call 2	267	1	20/60	89
Mother, POP workflow. *Completed this study step.*	Developmental Assessment, saliva collection, overall consent.	234	1	50/60	195
Father, POP workflow. *Completed this study step.*	Clinic/Home Visit—Saliva Collection	117	1	15/60	29
Child, POP workflow. *Completed this study step.*	Clinic/Home Visit—Developmental Assessment, saliva collection.	234	1	90/60	351
Mother, DD workflow. *All potential participants sent mailing.*	Invitation Packet/Response Card	641	1	10/60	107
Mother, DD workflow. *Potentially eligible with contact by study staff.*	Invitation Call Script and SCQ	321	1	30/60	161
Mother, DD workflow. *Eligible, consented, and enrolled; assigned to the DD workflow based on enrollment intake.*	Enrollment Packet	175	1	20/60	58
Mother, DD workflow. *Completed this study step.*	Follow-up Phone Call Script, and Checklist and Pregnancy Reference Form.	158	1	15/60	40
Mother, DD workflow. *Completed this study step.*	Maternal Interview Call	158	1	1	158
Mother, DD workflow. *Completed this study step.*	Self-Administered Forms	140	1	55/60	128
Mother, DD workflow. *Completed this study step.*	Follow-up Call 2	140	1	20/60	47
Total					7,118

Jeffrey Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–10839 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–19–19APK; Docket No. CDC–2019–0038]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Enhanced Surveillance for Cases Linked to a Multistate Outbreak of Multidrug-resistant *Campylobacter* Infections Linked to Contact with Pet Store Puppies.'' This investigation will determine the scope of multidrug-resistant infections caused by contact with pet store dogs during a 2016–2018 outbreak to inform infection prevention recommendations and interventions.

DATES: CDC must receive written comments on or before July 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0038 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Enhanced surveillance for cases linked to a multistate outbreak of multidrug-resistant *Campylobacter* infections linked to contact with pet store puppies—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) requested an Emergency 90-day approval for a New Information Collection, ''Enhanced surveillance for cases linked to a multistate outbreak of multidrug-resistant Campylobacter infections linked to contact with pet store puppies,'' and was approved in April 2019. This standard OMB Clearance is being requested so that information collection that may proceed beyond the Emergency Clearance approval period will come under OMB approval.

During 2016–2018 CDC, several states, and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service investigated a multistate outbreak of multidrug-resistant Campylobacter infections. Epidemic and laboratory evidence indicated that contact with puppies sold through Petland stores was the major source of this outbreak. A total of 113 people with laboratory-confirmed infections or symptoms consistent with Campylobacter infection were linked to this outbreak. Illnesses were reported from 17 states. Illnesses started on dates ranging from January 12, 2016 to January 7, 2018. Ill people ranged in age from less than one year to 86, with a median age of 27. Sixty-three percent of ill people were female. Of 103 people with available information, 23 (22%) were hospitalized. No deaths were reported. Whole genome sequencing (WGS) showed that isolates from people infected with Campylobacter were closely related genetically. The outbreak investigation was closed on January 30, 2018.

Campylobacter jejuni isolated from clinical samples from people sickened in this outbreak were resistant to commonly recommended, first-line antibiotics. Antibiotic resistance may be associated with increased risk of hospitalization, development of a bloodstream infection, or treatment failure in patients. Using WGS, we identified multiple antimicrobial resistance genes and mutations in most isolates from 38 ill people and 10 puppies in this outbreak. This finding matched results from standard antibiotic susceptibility testing methods used by CDC's National Antimicrobial Resistance Monitoring System laboratory on isolates from five ill people and seven puppies in this outbreak. The 12 isolates tested by standard methods were resistant to azithromycin, ciprofloxacin, clindamycin, erythromycin, nalidixic

acid, telithromycin, and tetracycline. In addition, 10 were resistant to gentamicin, and two were resistant to florfenicol. This resistance pattern is very rare, only being documented in 0.3 percent of surveillance isolates. NARMS has been conducting surveillance for antimicrobial resistance in Campylobacter isolates since 1997.

Unlike for most multistate foodborne disease outbreaks, the outbreak vehicle could not be removed from commerce. Therefore, it is likely that cases of human illness have continued. Current Campylobacter surveillance will likely not detect ongoing cases associated with the outbreak. Therefore we propose an enhanced surveillance project screening DNA sequences of Campylobacter isolates for the unique multidrug resistance pattern using predictive resistance software. Epidemiologic information regarding contact with puppies or dogs to determine ongoing transmission would then be collected from the newly identified cases to determine if they can be linked to the outbreak. We are concerned about continued human illnesses and the potential for ongoing transmission of the multidrug-resistant outbreak strain. Without actions and interventions put in place to address the use of antimicrobials, the outbreak will likely continue.

Therefore we propose an enhanced surveillance project screening available Campylobacter isolates for the unique multidrug resistance pattern using predictive resistance software. Epidemiologic information would then be collected from newly identified cases to determine if cases were associated with the outbreak. There is no cost to respondents other than the time to participate. Total estimated burden is 38 hours. Authorizing legislation comes from Section 301 of the Public Health Service Act (42 U.S.C. 241).

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General public	Dog Exposure Questionnaire	50	1	15/60	13
State and Local Health Department Staff.	Dog Exposure Questionnaire	50	1	30/60	25
Total					38

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–10837 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the World Trade Center Health Program Scientific/Technical Advisory Committee (STAC)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the WTCHP STAC. The Centers for Disease Control and Prevention (CDC), in accordance with provisions of the James Zadroga 9/11 Health and Compensation Act of 2010, (42 U.S.C. 300mm–1(a)(2)), is seeking nominations for membership on the World Trade Center (WTC) Health Program STAC. The STAC consists of 17 members including experts in fields associated with occupational medicine, pulmonary medicine, environmental medicine or environmental health, industrial hygiene, epidemiology, toxicology, mental health, and representatives of WTC responders, as well as representatives of certified-eligible WTC survivors. The STAC reviews scientific and medical evidence and makes recommendations to the Administrator of the WTC Health Program on additional Program eligibility criteria and additional WTC-related health conditions, reviews and evaluates policies and procedures used to determine whether sufficient evidence exists to support adding a health condition to the list of WTC-Related Health Conditions, makes recommendations regarding individuals to conduct independent peer reviews of the scientific and technical evidence underlying a final rule adding a condition to the List of WTC-Related Health Conditions, and provides consultation on research regarding certain health conditions related to the September 11, 2001 terrorist attacks.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to accomplishing the committee's objectives. The Administrator of the WTC Health Program is seeking nominations for members fulfilling the following categories:

- Occupational physician who has experience treating WTC rescue and recovery workers;
- Mental health professional;
- Industrial hygienist;
- Representative of WTC responders; and
- Representative of certified-eligible WTC survivors;
- Physician with expertise in pulmonary medicine.

Members may be invited to serve for four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of STAC objectives. More information on the committee is available at *https://www.cdc.gov/wtc/stac.html.*

DATES: Nominations for membership on the STAC must be received no later than June 28, 2019. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to NIOSH Docket 229–H, c/o Mia Wallace, Committee Management Specialist, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, MS: E–20, Atlanta, Georgia 30329, or emailed (recommended) to *nioshdocket@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Tania Carreón-Valencia, Designated Federal Officer, WTC Health Program Associate Director for Science, 1600 Clifton Rd. NE, MS: R–12, Atlanta, GA 30329; telephone (513) 841–4515; email *TCarreonValencia@cdc.gov.*

SUPPLEMENTARY INFORMATION: U.S. Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in

terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. NIOSH identifies potential candidates and provides a slate of nominees for consideration to the Director of CDC for STAC membership each year; CDC reviews the proposed slate of candidates, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in October, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address);
- The category of membership (environmental medicine or environmental health specialist, occupational physician, pulmonary physician, representative of WTC responders, representative of certified-eligible WTC survivors, industrial hygienist, toxicologist, epidemiologist, or mental health professional) that the candidate is qualified to represent;
- A summary of the background, experience, and qualifications that demonstrates the candidate's suitability for the nominated membership category; and
- At least one letter of recommendation from a person(s) not employed by HHS. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–10872 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–18XG]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Evaluation of the third decade of the National Occupational Research Agenda (NORA) Council Effectiveness to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 19, 2018 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Evaluation of the Third Decade of the National Occupational Research Agenda (NORA) Council Effectiveness—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health (NIOSH) is responsible for conducting research and making recommendations to prevent worker injury and illness, as authorized in Section 20(a)(1) of the Occupational Safety and Health Act (29 U.S.C. 669). In 1995–1996, NIOSH saw an opportunity to enhance its ability to accomplish its mission through partnerships that involved a broad national stakeholder base in occupational safety and health. With stakeholder input, NIOSH developed and launched a partnership program titled the National Occupational Research Agenda (NORA) in 1996. Participation in NORA includes stakeholders from universities, large and small businesses, professional societies, government agencies, and worker organizations. NORA runs in ten-year cycles, with the first decade running 1996–2006, the second 2006–2016, and the third 2016–2026.

The structure of NORA has evolved over time, and now, in the third decade, it is organized into ten industry sectors based on major areas of the U.S. economy, and seven health and safety cross-sectors organized according to the major health and safety issues affecting the U.S. working population. The work of the sectors and cross-sectors is managed through a partnership structure of councils. Each of the 17 councils develops and maintains an agenda for the decade for its sector. The sector agendas become part of the

national agenda for improvements in occupational safety and health through research and partnerships. Representing all stakeholders, the councils use an open process to set research objectives, share information, encourage partnerships, and promote improved workplace practices.

NIOSH is requesting a 12-month OMB approval to administer a survey to NORA council members and leaders. As the steward of NORA, it is NIOSH's responsibility to ensure that councils, which are central to the work of NORA, are operating well. Without this data collection, NIOSH's internal review of NORA would lack critical stakeholder input from its many non-Federal partners.

The target population is all current and former members and leaders of each of the 17 NORA councils in the third decade of NORA. The web-based survey requests information on council activities, the effectiveness of the council and its processes, and suggestions for improving the effectiveness and impact of NORA councils in the future.

NIOSH will invite approximately 425 non-Federal NORA Sector council members to complete the web-based survey. Participation is voluntary and the estimated burden per response is 12 minutes. Based on experience with similar information collections, NIOSH estimates receipt of 225 completed responses. There are no costs to respondents other than their time. The total estimated annualized burden is 45 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Non-federal NORA Council members or leaders	Council Survey	225	1	12/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–10833 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–19–19ARD; Docket No. CDC–2019–0037]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''An Evaluation of CDC's STEADI Older Adult Fall Prevention Initiative in a Primary Care Setting.'' This new data collection effort is an essential component to determine the impact of CDC's Stopping Elderly Accidents, Deaths, and Injuries (STEADI) initiative on falls, emergency department visits, and hospitalizations due to falls.

DATES: CDC must receive written comments on or before July 23, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0037 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: *Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffery M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Evaluation of CDC's STEADI Older Adult Fall Prevention Initiative in a Primary Care Setting—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Falls are the leading cause of both fatal and non-fatal injuries among older adults, defined as age 65 and older. From 2007 to 2016, fall death age-adjusted rates increased by 31% with almost 30,000 older adults dying as the result of a fall in 2016. The economic consequences of falls are significant and growing as the population ages, with medical costs of older adult falls estimated at $50 billion. CDC created the Stopping Elderly Accidents, Deaths, and Injuries (STEADI) initiative to guide health care providers' fall prevention activities in the primary care setting.

This new data collection effort is an essential component to determine the impact of CDC's Stopping Elderly Accidents, Deaths, and Injuries (STEADI) initiative on falls, emergency department visits, and hospitalizations due to falls. It will help CDC determine the impact of less resource intense versions of STEADI, and evaluate the process of implementing STEADI fall prevention initiative in a primary care setting to provide context for the impact evaluations. The study population will be limited to adults 65 and older who have an outpatient visit during the study period and screen as high risk for falls at the selected primary care clinics implementing the STEADI fall prevention initiative. The study population for the process evaluation will include the clinical implementation staff at the selected clinics where the intervention will take place (physicians, physician assistants/nurse practitioners, study research nurses, and practice or operations manager).

Two data collection methods will be used; the CDC's Stay Independent Fall Risk Screener will be administered to older adult patients at selected primary care clinics to determine which older adults are at high risk for a fall. Those who screen at high risk will be assigned, based on clinic attended and week of attendance, to one of three study arms. Patient surveys will be used to determine whether or not these patients experience a fall during the study period, are treated for a fall, and/or use any fall prevention strategies throughout the study period. Four surveys will be administered to each patient during a 12-month period: One baseline survey and three follow-up surveys. Older adults will also be asked to keep track of their falls in a monthly falls diary, so they can accurately recall and report the information during the 12-month period for the patient surveys. The process evaluation interviews will be used to understand the attitudes of clinical staff towards the implementation process, barriers and facilitators to implementation, and the implementation fidelity to core components of the STEADI initiative. Descriptive statistics and cross tabulations will be used to describe quantitative data from the patient survey and process evaluation data. Risk ratios of the effect of the intervention on post-intervention falls will be calculated comparing intervention and control groups while controlling for demographic, health, attitude, and behavior variables.

The data collected from this study will be used to: Demonstrate the impact of STEADI and different components of STEADI on falls and fall injuries in a primary care setting and improve the implementation of STEADI in a primary care setting. There are no costs to the respondents other than their time. The total estimated annualized burden hours is 3,836.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Patient	Stay Independent Fall Risk Screener.	5,093	1	10/60	849
	Patient Consent Form	*1,333	1	12/60	267
	Patient Baseline Survey	1,000	1	15/60	250
	Patient Follow-up Survey	896	3	15/60	672
	Patient Falls Diary	896	12	10/60	1,792
Nurse	Nurse Interview Guide/Consent	1	1	1	1
Physician/Physician Assistants/Nurse Practitioners.	Provider Interview Guide/Consent	3	1	1	3
Clinic operations Manager	Operations Manager Guide/Consent	2	1	1	2
Total					3,836

Jeffrey M. Zirger,

Lead, Information Collection Review Office Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–10838 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR); Correction

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, Office of Public Health Preparedness and Response (BSC, OPHPR); April 24 2019, 10:30 a.m. to 5:00 p.m., EDT; April 25, 2019, 8:30 a.m. to 3:00 p.m., EDT which was published in the **Federal Register** on March 15, 2019 Volume 84, Number 51, pages 9525.

The meeting date, time, and agenda should read as follows: This is a one day meeting on April 24, 2019, 8:30 a.m. to 4:00 p.m. EDT.

Matters To Be Considered: The agenda will include: (1) OPHPR Updates from Director, (2) OPHPR Interval Updates from Division Directors, (3) Report from the Biological Agent Containment Working Group (BACWG), (4) Update on the response to the Ebola outbreak in the Democratic Republic of Congo (DRC).

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Office of Science and

Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop D–44, Atlanta, Georgia 30329, Telephone: (404) 639–7450; Fax: (404) 471–8772; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–10871 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

World Trade Center Health Program Scientific/Technical Advisory Committee (WTCHP, STAC); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Charter Renewal.

SUMMARY: This gives notice that under Public Law 111–347 (the James Zadroga 9/11 Health and Compensation Act of 2010), as amended by Public Law 114–113, and the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, the World Trade Center Health Program Scientific/Technical Advisory Committee, the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through May 12, 2021.

FOR FURTHER INFORMATION CONTACT: Tania Carreón-Valencia, Ph.D., Designated Federal Officer, WTCHP STAC, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, MS: R–12, Atlanta, GA 30329; telephone (513) 841–4515; email *TCarreonValencia@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–10873 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–0824]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled National Syndromic Surveillance Program—Revision to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 20, 2019 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Syndromic Surveillance Program (OMB Control No. 0920–0824, Exp. 5/31/2019)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Syndromic surveillance uses syndromic data and statistical tools to detect, monitor, and characterize unusual activity for further public health investigation or response. Syndromic data include electronic extracts of electronic health records (EHRs) from patient encounter data from emergency departments, urgent care, ambulatory care, and inpatient healthcare settings, as well as pharmacy and laboratory data. Though these data are being captured for different purposes, they are monitored in near real-time as potential indicators of an event, a disease, or an outbreak of public health significance. On the national level, these data are used to improve nationwide situational awareness and enhance responsiveness to hazardous events and disease outbreaks to protect America's health, safety, and security.

The BioSense Program was created by congressional mandate as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and was launched by the CDC in 2003. The BioSense Program has since been expanded into the National Syndromic Surveillance Program (NSSP) which promotes and advances development of a syndromic surveillance system for the timely exchange of syndromic data.

CDC requests a three-year approval for a Revision for NSSP (OMB Control No. 0920–0824, Expiration Date 5/31/2019). This Revision includes a new request for approval to receive onboarding data from state, local and territorial public health departments about healthcare facilities in their jurisdiction.

NSSP features the BioSense Platform and a collaborative Community of Practice. The BioSense Platform is a secure integrated electronic health information system that CDC provides, primarily for use by state, local and

territorial public health departments. It includes standardized analytic tools and processes that enable users to rapidly collect, evaluate, share, and store syndromic surveillance data. NSSP promotes a Community of Practice in which participants collaborate to advance the science and practice of syndromic surveillance. Health departments use the BioSense Platform to receive healthcare data from facilities in their jurisdiction, conduct syndromic surveillance, and share the data with other jurisdictions and CDC.

The BioSense Platform provides the ability to analyze healthcare encounter data from EHRs, as well as laboratory data. All EHR and laboratory data reside outside of CDC in a cloud-enabled, web-based platform that has Authorization to Operate from CDC. The BioSense Platform sits in the secure, private Government Cloud which is simply used as a storage and processing mechanism, as opposed to on-site servers at CDC. This environment provides users with easily managed on-demand access to a shared pool of configurable computing resources such as networks, servers, software, tools, storage, and services, with limited need for additional IT support. Each site (*i.e.,* state or local public health department) controls its data within the cloud and is provided with free secure data storage space with tools for posting, receiving, controlling and analyzing their data; an easy-to-use data display dashboard; and a shared environment where users can collaborate and advance public health surveillance practice. Each site is responsible for creating its own data use agreements with the facilities that are sending the data, retains ownership of any data it contributes to its exclusive secure space, and can share data with CDC or users from other sites.

NSSP has three different types of information collection:

(1) Collection of onboarding data about healthcare facilities needed for state, local, and territorial public health departments to submit EHR data to the BioSense Platform;

(2) Collection of registration data needed to allow users access to the BioSense Platform tools and services; and

(3) Collection of data sharing permissions so that state and local health departments can share data with other state and local health departments and CDC.

Healthcare data shared with CDC can include: EHR data received by state and local public health departments from facilities including hospital emergency departments and inpatient settings, urgent care, and ambulatory care; laboratory tests ordered and their results from LabCorp, a national private sector laboratory company; and EHR data from the Department of Defense (DoD) and the Department of Health and Human Services (HHS) National Disaster Medical System (NDMS) Disaster Medical Assistance Teams (DMATs).

Respondents include state, local, and territorial public health departments. There are no costs to respondents other than their time to participate. The only burden incurred by the health departments are for submitting onboarding data about facilities to CDC, submitting registration data about users to CDC, and setting up data sharing permissions with CDC. The estimated annual burden is 195 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State, Local, and Territorial Public Health Departments.	Onboarding	10	100	10/60
State, Local, and Territorial Public Health Departments.	Registration	10	15	10/60
State, Local, and Territorial Public Health Departments.	Data Sharing Permissions	10	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–10835 Filed 5–23–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–1957]

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 23, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development,

Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–1957 Social Security Office Report of State Buy-in Problem

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:* Social Security Office Report of State Buy-in Problem; *Use:* The statutory authority for the State Buy-in program is Section 1843 of the Social Security Act, amended through 1989. Under Section 1843, a State can enter into an agreement to provide Medicare protection to individuals who are members of a Buy-in coverage group, as specified in the State's Buy-in agreement. The Code of Federal Regulations at 42 CFR Section 407.40 provides for States to enroll in Medicare and pay the premiums for all eligible members covered under a Buy-in coverage group. Individuals enrolled in Medicare through the Buy-in program must be eligible for Medicare and be an eligible member of a Buy-in coverage group. The day to day operations of the State Buy-in program is accomplished through an automated data exchange process. The automated data exchange process is used to exchange Medicare and Buy-in entitlement information between the Social Security District Offices, State Medicaid Agencies and the Centers for Medicare & Medicaid Services (CMS). When problems arise that cannot be resolved though the normal data exchange process, clerical actions are required. The CMS–1957, ''SSO Report of State Buy-In Problem'' is used to report Buy-in problems cases. The CMS–1957 is the only standardized form available for communications between the aforementioned agencies for the resolution of beneficiary complaints and inquiries regarding State Buy-in eligibility. *Form Number:* CMS–1957 (OMB control number: 0938–0035); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 5,854; *Total Annual Responses:* 5,854; *Total Annual Hours:* 1,951. (For policy questions regarding this collection contact Keith Johnson at 410–786–1148.)

Dated: May 21, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–10963 Filed 5–23–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10553, CMS–2746, CMS–2728, and CMS–10157]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by June 24, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and

includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Quality Assessment and Performance Improvement Programs, State Review of Accreditation Status, Medicaid Managed Care Quality Rating System, and Quality Strategy (QS) and Supporting Regulations; *Use:* Medicaid beneficiaries and stakeholders use the information collected and reported to understand the state's quality improvement goals and objectives, and to understand how the state is measuring progress on its goals. States use this information to help monitor and assess the performance of their Medicaid managed care programs. This information may assist states in comparing the outcomes of quality improvement efforts and can assist them in identifying future performance improvement subjects. CMS uses this information as a part of its oversight of Medicaid programs. *Form Number:* CMS–10553 (OMB control number: 0938–1281); *Frequency:* Yearly and occasionally; *Affected Public:* Private sector (business or other for profits) and State, Local, or Tribal Governments; *Number of Respondents:* 603; *Total Annual Responses:* 6,441; *Total Annual Hours:* 52,343. (For policy questions regarding this collection contact Barbara Dailey at 410–786–9012.)

2. *Type of Information Collection Request:* Reinstatement; *Title of Information Collection:* End Stage Renal Disease Death Notification; *Use:* The ESRD Death Notification form (CMS–2746) is completed by all Medicare-approved ESRD facilities upon death of an ESRD patient. Its primary purpose is to collect fact of death and cause of death of ESRD patients. The ESRD Program Management and Medical Information System (PMMIS) has the responsibility of collecting, maintaining and disseminating, on a national basis, uniform data pertaining to ESRD patients and their treatment of care. All renal facilities approved to participate in the ESRD program are required by Public Law 95–292 to supply data to this system.

Federal regulations require that the ESRD Networks examine the mortality rates of every Medicare-approved facility within its area of responsibility. CMS–2746 provides the necessary data to assist the ESRD Networks in making decisions that result in improved patient care and in cost-effective distribution of ESRD resources. The data is used by the ESRD Networks to verify facility deaths and to monitor facility performance. The form is also used by health care planning agencies and researchers to determine survival rates by diagnoses. *Form Number:* CMS–2746 (OMB control number: 0938–0448); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 7,311; *Total Annual Responses:* 92,023; *Total Annual Hours:* 46,011.50. (For policy questions regarding this collection contact Gequinicia Polk at 410–786–2305.)

3. *Type of Information Collection Request:* Reinstatement; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration; *Use:* In accordance with section 226A of the law, the primary purpose of this form is to have a patient medically determined, by a physician, to have end stage renal disease for purposes of filing for Medicare benefits. The End Stage Renal Disease (ESRD) Medical Evidence (CMS–2728) is completed for all ESRD patients either by the first treatment facility or by a Medicare-approved ESRD facility when it is determined by a physician that the patient's condition has reached that stage of renal impairment that a regular course of kidney dialysis or a kidney transplant is necessary to maintain life. The data reported on the CMS–2728 is used by the Federal Government, ESRD Networks, treatment facilities, researchers and others to monitor and assess the quality and type of care provided to end stage renal disease beneficiaries. Collection of these data are also necessary for entitlement of ESRD patients to Medicare benefits and also for the establishment and maintenance of a single, nationwide kidney disease registry for dialysis, transplant, and prospective transplant patients, and will store pertinent medical facts on each registrant. The data will enable individual practitioners and facilities to review, compare, and improve ESRD patient treatment methods, which will permit local Medical Review Boards to more effectively monitor utilization and quality of medical care. *Form Number:* CMS–2728 (OMB control number: 0938–0046); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 7,311; *Total Annual Responses:* 138,000; *Total Annual Hours:* 103,500. (For policy questions regarding this collection contact Gequinicia Polk at 410–786–2305.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The HIPAA Eligibility Transaction System (HETS); *Use:* HIPAA regulations require covered entities to verify the identity of the person requesting PHI and the person's authority to have access to that information. Under the HIPAA Security rules, covered entities, regardless of their size, are required under 45 CFR Subtitle A, Subpart C 164.312(a)(2)(i) to ''assign a unique name and/or number for identifying and tracking user identity.'' A 'user' is defined in 164.304 as a ''person or entity with authorized access'' Accordingly, the HIPAA Security rule requires covered entities to assign a unique name and/or number to each employee or workforce member who uses a system that receives, maintains or transmits electronic PHI so that system access and activity can be identified and tracked by user. This pertains to workforce members within small or large provider offices, health plans, group health plans, and clearinghouses. Federal law requires that CMS take precautions to minimize the security risk to the federal information system. Federal Information Processing Standards Publication (FIPS PUB) 1() 1–2 Paragraph 11.7—Security and Authentication states that: ''Agencies shall employ risk management techniques to determine the appropriate mix of security controls needed to protect specific data and systems. The selection of controls shall take into account procedures required under applicable laws and regulations.'' Accordingly, CMS requires that entities who wish to connect to the HETS application via the CMS Extranet and/or internet are uniquely identified. CMS is required to verify the identity of the person requesting the Protected Health Information (PHI) and the person's authority to have access to Medicare eligibility information. Furthermore, CMS requires that trading partners who wish to conduct eligibility transactions on a real-time basis with CMS provide certain assurances as a condition of

receiving access to the Medicare eligibility information for the purpose of conducting real-time 270/271 inquiry/response transactions. *Form Number:* CMS–10157 (OMB control number: 0938–0960); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for profits, Not-for-Profits Institutions; *Number of Respondents:* 1000; *Total Annual Responses:* 1000; *Total Annual Hours:* 250. (For policy questions regarding this collection contact Rupinder Singh at 410 786–7484.)

Dated: May 21, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–10964 Filed 5–23–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.647]

Announcement of an Unsolicited Single-Source Grant Award to the Woodson Center in Washington, DC

AGENCY: Office of Planning, Research and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of issuance.

SUMMARY: The Administration for Children and Families (ACF), Office of Planning, Research and Evaluation announces the award of a grant in the amount of $150,000 to the Woodson Center of Washington, DC, to support an environmental scan of models of service for privately managed foster care.

DATES: The project period will be May 15, 2019, to November 14, 2019.

FOR FURTHER INFORMATION CONTACT: Wendy DeCourcey, Senior Social Science Analyst; Office of Planning, Research and Evaluation; 330 C Street SW, Washington, DC 20201. Telephone: 202–260–2039.

SUPPLEMENTARY INFORMATION: The Woodson Center plans to complete an environmental scan of privately managed foster care systems in multiple states. This environmental scan is expected to inform future networking efforts among similar organizations and identification and dissemination of best practices.

Statutory Authority: Social Security Act, Title XI, Section 1110, 42 U.S.C. 1310.

Elizabeth Leo,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2019–10897 Filed 5–23–19; 8:45 am]

BILLING CODE 4184–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Extension of Assets for Independence (AFI) Performance Progress Report (PPR) (OMB #0970–0483)

AGENCY: Office of Community Services; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Community Services (OCS), Administration for Children and Families (ACF) is requesting approval of a three-year extension of the Assets for Independence (AFI) Performance Progress Report (PPR) Long Form and AFI PPR Short Form (OMB #0970–0483, expiration 8/31/2019). There are no changes requested to the forms.

DATES: *Comments due within 60 days of publication.* 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 Assets for Independence (AFI) Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998, Pub. L. 105–285, [42 U.S.C. 604 note]) requires that organizations operating AFI projects submit annual progress reports.

This request is for approval and extension of the current AFI PPR that expires August 31, 2019. OCS will continue to use the data collected in the AFI PPR to prepare the annual AFI Report to Congress, to evaluate and monitor the performance of the AFI program overall and of individual projects, and to inform and support technical assistance efforts. The AFI PPR will continue to fulfill AFI Act reporting requirements and program purposes.

AFI program grantees are required to submit Standard Form Performance Progress Reports (SF–PPR) semiannually: One time per year using an abbreviated short form and one time using a long form. Both data collection instruments are available for review online at: *https://www.acf.hhs.gov/ocs/resource/afi-ppr-long-form*, *https://www.acf.hhs.gov/ocs/resource/afi-ppr-short-form.*

Note: This request does not affect financial reporting requirements for AFI grantees. The SF–425 will still be required semiannually throughout the grant project period with a final report due 90 days after the grant project period ends.

Respondents: Assets for Independence (AFI) program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
AFI PPR Short Form	145	1	0.5	72.5
AFI PPR Long Form	145	1	3.8	551

Estimated Total Annual Burden Hours: 623.5.

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: Pub. L. 105–285, [42 U.S.C. 604 note].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–10863 Filed 5–23–19; 8:45 am]

BILLING CODE 4184–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1281]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of April 24, 2019. The amendment is being made to reflect a change in the **DATES** portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G610, Silver Spring, MD 20993, 301–796–6875, *Patricio.garcia@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 2019 (84 FR 17173), FDA announced that a meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee would be held on May 30, 2019, from 10 a.m. to 4 p.m. On page 17173, in the third column, in the **DATES** section, the sentence ''The meeting will be held on May 30, 2019, from 10 a.m. to 4 p.m. and on May 31, 2019, from 8 a.m. to 4 p.m.'' is changed to read as follows:

The meeting will be held on May 30, 2019, from 9 a.m. to 4 p.m. and on May 31, 2019, from 8 a.m. to 4 p.m.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: May 21, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–10900 Filed 5–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2037]

Electronic Nicotine Delivery System Device and E-Liquid Manufacturer Site Tours Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Tobacco Products (CTP), is announcing an invitation for participation in its voluntary Electronic Nicotine Delivery System (ENDS) Device and E-Liquid Manufacturer Site Tours Program. This program is intended to give CTP staff an opportunity to visit facilities that develop, manufacture, or test ENDS devices or e-liquids (including pods or cartridges) to gain a better understanding of the processes involved in the development, manufacturing, and testing of ENDS devices and e-liquids. The site tours in this program are not intended as regulatory inspections. The purpose of this document is to invite ENDS device or e-liquid manufacturers that can demonstrate assembly process and present supply chain information, and laboratories that conduct ENDS aerosol and e-liquid testing, that are interested in participating in the ENDS Device and E-Liquid Manufacturer Site Tours Program to submit requests to CTP.

DATES: Submit either an electronic or written request for participation in this program by July 23, 2019. See section IV of this document for information on requests for participation.

ADDRESSES: If your facility is interested in participating in a facility visit, please submit a request either electronically to *https://www.regulations.gov* or in writing to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Karla Price, Office of Science, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *AskCTP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act) was signed into law, amending the Federal Food, Drug, and Cosmetic Act (FD&C Act) by, among other things, adding a new chapter (chapter IX) granting FDA the authority to regulate tobacco product manufacturing, distribution, and marketing. The Tobacco Control Act provides FDA authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and any other tobacco products that the Agency by regulation deems to be subject to the law.

On May 10, 2016, FDA published a final rule entitled ''Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products'' (81 FR 28974), which became effective on August 8, 2016. Under this rule, all products, such as ENDS, that meet the statutory definition of ''tobacco product'' set forth in section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), including components and parts, but excluding accessories of newly deemed products, are now subject to chapter IX of the FD&C Act.

CTP's Office of Science is conducting the ENDS Device and E-Liquid Manufacturer Site Tours Program to provide its staff an opportunity to visit facilities that develop, manufacture, or test ENDS devices or e-liquids (including pods or cartridges). The ENDS device and e-liquid facilities are regulated by FDA if they, among other things, manufacture products that meet the statutory definition of a ''tobacco product'' set forth in section 201(rr) of the FD&C Act. The site tours will aid the Agency in gaining a better understanding of the processes involved in developing, manufacturing, and

testing ENDS devices and e-liquids (including pods or cartridges).

II. Description of ENDS Device and E-Liquid Manufacturer Site Tours Program

In the ENDS Device and E-Liquid Manufacturer Site Tours Program, CTP staff will observe the operations of ENDS device and e-liquid manufacturers, including the development, manufacturing, and testing of ENDS devices and e-liquids. The site tours in this program are not intended as regulatory inspections; rather, the program is meant to educate CTP staff and improve their understanding of ENDS devices and e-liquids. It is anticipated that the site tours will take place in 2020.

III. Site Selection

CTP hopes to be able to tour the facilities of different size manufacturers of ENDS devices, as well as facilities that develop or manufacture e-liquids (including pods and cartridges). This includes laboratories that test e-liquids or aerosols. Final site selections will be based on the availability of funds and resources for the relevant fiscal year as well as the desire to visit a wide variety of ENDS device and e-liquid manufacturers. FDA plans on visiting five or fewer ENDS device or e-liquid manufacturers. All travel expenses associated with the ENDS Device and E-Liquid Manufacturer site tours will be the responsibility of FDA.

IV. Requests for Participation

To aid in site selection, your request for participation should include the following information:

- A description of your company, including the size of the organization;
- A list of the ENDS devices and e-liquids your company develops or manufactures, including whether the company performs e-liquid and aerosol testing;
- The name and contact information (including address, phone number, and email) of your point of contact for the request;
- The physical address(es) of the site(s) for which you are submitting a request; and
- A proposed 1-day agenda that will aid with planning travel, indicating start and end times and provides addresses of all sites during the tour.

Identify requests for participation with the docket number found in brackets in the heading of this document. Received requests are available for public examination in the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 20, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–10898 Filed 5–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–E–5055]

Determination of Regulatory Review Period for Purposes of Patent Extension; EDWARDS INTUITY ELITE AORTIC VALVE

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 EDWARDS INTUITY ELITE AORTIC VALVE 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 (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by July 23, 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 20, 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 23, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 20, 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–5055 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; EDWARDS INTUITY ELITE AORTIC VALVE.'' 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: 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 EDWARDS INTUITY ELITE AORTIC VALVE. EDWARDS INTUITY ELITE AORTIC VALVE is indicated for the replacement of diseased, damaged, or malfunctioning native or prosthetic aortic valves. Subsequent to this approval, the USPTO received a patent term restoration application for EDWARDS INTUITY ELITE AORTIC VALVE (U.S. Patent No. 8,911,493) from Edwards Lifesciences Corp., 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 EDWARDS INTUITY ELITE AORTIC VALVE 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 EDWARDS INTUITY ELITE AORTIC VALVE is 1,508 days. Of this time, 1,203 days occurred during the testing phase of the regulatory review period, while 305 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:* June 28, 2012. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on June 28, 2012.

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):* October 13, 2015. The applicant claims February 4, 2014, as the date the premarket approval application (PMA) EDWARDS INTUITY ELITE AORTIC VALVE (PMA P150036) was initially submitted. However, according to FDA records, the PMA submitted February 4, 2014, was incomplete, and PMA P150036 was not submitted as a complete PMA until October 13, 2015.

3. *The date the application was approved:* August 12, 2016. FDA has verified the applicant's claim that PMA P150036 was approved on August 12, 2016.

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 605 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 20, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–10889 Filed 5–23–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on April 1, 2019, through April 30, 2019. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: May 17, 2019.

George Sigounas,

Administrator.

List of Petitions Filed

1. Adria Pecora and Joseph Pecora, Jr. on behalf of Maryanne Pecora, Deceased, West Caldwell, New Jersey, Court of Federal Claims No: 19–0474V
2. Jeffrey Young and Tara Young on behalf of L. Y., Warren, Pennsylvania, Court of Federal Claims No: 19–0475V
3. Kathleen Corsillo, Columbia, Maryland, Court of Federal Claims No: 19–0476V
4. Timothy Riese, Sherman Oaks, California, Court of Federal Claims No: 19–0477V
5. Titus Henderson, Green Bay, Wisconsin, Court of Federal Claims No: 19–0479V
6. Michael B. Jordon, Hinesville, Georgia, Court of Federal Claims No: 19–0481V
7. Ashley McGlone, Manheim, Ohio, Court of Federal Claims No: 19–0483V
8. Keith Cousens, Glassboro, New Jersey, Court of Federal Claims No: 19–0485V
9. Jacquelyn Tracey, Lawrenceville, Georgia, Court of Federal Claims No: 19–0486V
10. Jeffrey Swab, Bel Air, Maryland, Court of Federal Claims No: 19–0488V
11. Kim Bordini Senn on behalf of O. S. S., Portland, Oregon, Court of Federal Claims No: 19–0489V
12. Larry Wienhoff, Hannibal, Missouri, Court of Federal Claims No: 19–0490V
13. Arthur Contreras, Burbank, California, Court of Federal Claims No: 19–0491V
14. Wendy Nelson on behalf of I. N., Morgantown, West Virginia, Court of Federal Claims No: 19–0494V
15. Charles Marion, Huntsville, Alabama, Court of Federal Claims No: 19–0495V

16. Ruth P. Grazier, Seattle, Washington, Court of Federal Claims No: 19–0497V
17. Marcella Harley, Fort Myers, Florida, Court of Federal Claims No: 19–0500V
18. Christopher Lane, Redding, California, Court of Federal Claims No: 19–0501V
19. Linda C. Duncan, Pine Bluff, Arkansas, Court of Federal Claims No: 19–0502V
20. Sheri McCluskey on behalf of T. D. G., Fort Worth, Texas, Court of Federal Claims No: 19–0503V
21. John Barrington, Everett, Washington, Court of Federal Claims No: 19–0504V
22. Julio Samble on behalf of J. J. S., El Paso, Texas, Court of Federal Claims No: 19–0507V
23. Patricia Cooper, Gainesville, Georgia, Court of Federal Claims No: 19–0509V
24. Katherine Sloan, Iowa City, Iowa, Court of Federal Claims No: 19–0511V
25. Teresa Cochran, Phoenix, Arizona, Court of Federal Claims No: 19–0513V
26. Valerie Sloan, Iowa City, Iowa, Court of Federal Claims No: 19–0514V
27. Audrey Sloan, Iowa City, Iowa, Court of Federal Claims No: 19–0515V
28. Melissa Sloan, Iowa City, Iowa, Court of Federal Claims No: 19–0516V
29. Leslie Davies, Poughkeepsie, New York, Court of Federal Claims No: 19–0519V
30. John Moriarty, East Brunswick, New Jersey, Court of Federal Claims No: 19–0523V
31. Dayna Clark, Hartford, Connecticut, Court of Federal Claims No: 19–0524V
32. Betty Darlene Craft, Alexandria, Louisiana, Court of Federal Claims No: 19–0525V
33. Michael E. Deutsch, Evanston, Illinois, Court of Federal Claims No: 19–0530V
34. Shelley Peterson, Murrieta, California, Court of Federal Claims No: 19–0532V
35. Jesse Lloyd, Waupun, Wisconsin, Court of Federal Claims No: 19–0534V
36. Ashley Borders and Matthew Byler on behalf of A. B., West Chester, Ohio, Court of Federal Claims No: 19–0535V
37. Charles Brandt, Selma, California, Court of Federal Claims No: 19–0536V
38. Marjorie Madan, Stamford, Connecticut, Court of Federal Claims No: 19–0537V
39. Steven M. Centers, Danville, Illinois, Court of Federal Claims No: 19–0539V
40. Maria Pagonis, Lake Bluff, Illinois, Court of Federal Claims No: 19–0540V
41. George Garrison, Springfield, Ohio, Court of Federal Claims No: 19–0541V
42. Mira Epshteyn, Staten Island, New York, Court of Federal Claims No: 19–0542V
43. Michael Short, Murfreesboro, Tennessee, Court of Federal Claims No: 19–0543V
44. Edlin M. Crawford, Fairfield, California, Court of Federal Claims No: 19–0544V
45. Gayane Diana Karapetian, Glendale, California, Court of Federal Claims No: 19–0546V
46. Sharon Alexander, Houma, Louisiana, Court of Court of Federal Claims No: 19–0547V
47. Deborah Coutu, Cumming, Georgia, Court of Court of Federal Claims No: 19–0548V
48. Samuel Kamau, Des Moines, Iowa, Court of Court of Federal Claims No: 19–0549V
49. Jasmine Vega, Brooklyn, New York, Court of Federal Claims No: 19–0550V
50. Angela Richardson on behalf of S. R., Sterling Heights, Michigan, Court of Federal Claims No: 19–0551V
51. Paul M. Doherty, Boston, Massachusetts, Court of Federal Claims No: 19–0552V
52. Klaudia Aubuchon, Pomona, California, Court of Federal Claims No: 19–0553V
53. Bradley Robert Wilson, Houston, Texas, Court of Federal Claims No: 19–0554V
54. Russell Pearce, Holmdel, New Jersey, Court of Federal Claims No: 19–0555V
55. Anne L. Steffens on behalf of Hannah L. Steffens, Chesterfield, Missouri, Court of Federal Claims No: 19–0556V
56. Vincent E. Pachasa and Christopher M. Pachasa on behalf of Kathleen E. Pachasa, Cleveland, Ohio, Court of Federal Claims No: 19–0557V
57. Mikayla Whitfield, Atlanta, Georgia, Court of Federal Claims No: 19–0559V
58. Julie Crofton, Granbury, Texas, Court of Federal Claims No: 19–0561V
59. Alma Howze, Canton, Michigan, Court of Federal Claims No: 19–0563V
60. Lisa Wooden-Moore, Katy, Texas, Court of Federal Claims No: 19–0564V
61. Ashish Dave, Pearland, Texas, Court of Federal Claims No: 19–0565V
62. Nigel Jackson, Springfield, Virginia, Court of Federal Claims No: 19–0566V
63. Joyce Robinson, Pittsburgh, Pennsylvania, Court of Federal Claims No: 19–0567V
64. Julie Lyons, Worthington, Ohio, Court of Federal Claims No: 19–0571V
65. Mary L. Holdren, Danville, Pennsylvania, Court of Federal Claims No: 19–0572V
66. Lesa N. Lyle on behalf of E. B. G., Birmingham, Alabama, Court of Federal Claims No: 19–0574V
67. John Rogers, Louisville, Kentucky, Court of Federal Claims No: 19–0576V
68. Genevieve Costabile, Johnston, Rhode Island, Court of Federal Claims No: 19–0578V
69. Ginger K. Williford, Dallas, Texas, Court of Federal Claims No: 19–0579V
70. Jessica Scheyder on behalf of J. H. S., Fredericksburg, Virginia, Court of Federal Claims No: 19–0580V
71. Ruth Thomas, Muncie, Indiana, Court of Federal Claims No: 19–0581V
72. Bienchis Y. Esteva-Feliz on behalf of The Estate of Apolinar Hasem Perdomo Feliz, Deceased, Raleigh, North Carolina, Court of Federal Claims No: 19–0582V
73. Christine Sartorelli, Concord, New Hampshire, Court of Federal Claims No: 19–0584V
74. Maria Silva, Wenatchee, Washington, Court of Federal Claims No: 19–0585V
75. Scott B. Hearth, M.D., Roseville, California, Court of Federal Claims No: 19–0589V
76. Katy Correa, Plainfield, Illinois, Court of Federal Claims No: 19–0592V
77. Aaron Weso, Keshena, Wisconsin, Court of Federal Claims No: 19–0596V
78. Nancy Andrews, Sarasota, Florida, Court of Federal Claims No: 19–0597V
79. Alicia Jackson, Oklahoma City, Oklahoma, Court of Federal Claims No: 19–0598V
80. Donna Chambers, Milton, Massachusetts, Court of Federal Claims No: 19–0599V
81. Sharon Fisher, Pleasantville, New Jersey, Court of Federal Claims No: 19–0600V
82. Gunvantbhai Bhakta, Whittier, California, Court of Federal Claims No: 19–0601V
83. Jacqueline Hernandez, Summerville, South Carolina, Court of Federal Claims No: 19–0603V

84. Michael Brent Klusman, Olathe, Kansas, Court of Federal Claims No: 19–0604V
85. Siddharth Mehta on behalf of Amrit Mehta, Deceased, Mount Kisco, New York, Court of Federal Claims No: 19–0606V
86. Kenneth Barber, Lake City, Florida, Court of Federal Claims No: 19–0607V
87. Sophia Simm-Bankston, Riverdale, Georgia, Court of Federal Claims No: 19–0608V
88. Carl Felts, Lancaster, Ohio, Court of Federal Claims No: 19–0609V
89. Carmen Teufel, Woodbridge, Virginia, Court of Federal Claims No: 19–0610V
90. Roberta Decker, Cockeysville, Maryland, Court of Federal Claims No: 19–0620V
91. Beverly Hicks, Great Falls, Montana, Court of Federal Claims No: 19–0621V
92. Robert Yuodelis, Bellevue, Washington, Court of Federal Claims No: 19–0622V
93. Lafonda Collier, High Point, North Carolina, Court of Federal Claims No: 19–0623V
94. Priscilla Johansen, Portland, Oregon, Court of Federal Claims No: 19–0626V
95. Tyler Anthony Thacker, Cincinnati, Ohio, Court of Federal Claims No: 19–0627V
96. Suzanne Allmart and Husayn Allmart on behalf of A. A., Evanston, Illinois, Court of Federal Claims No: 19–0628V
97. Nicole White, Apple Valley, Minnesota, Court of Federal Claims No: 19–0630V
98. Amy Thompson, Spotsylvania Courthouse, Virginia, Court of Federal Claims No: 19–0631V
99. Marissa Sheppard, Atlanta, Georgia, Court of Federal Claims No: 19–0632V
100. Tammy Ernst, Northfield, New Jersey, Court of Federal Claims No: 19–0633V
101. Heather Nelson, Rockport, Massachusetts, Court of Federal Claims No: 19–0634V
102. Patricia Slugo, Beaver, Pennsylvania, Court of Federal Claims No: 19–0635V
103. Peggy Stager, Aberdeen, South Dakota, Court of Federal Claims No: 19–0636V
104. Julie A. Fullerton, Missoula, Montana, Court of Federal Claims No: 19–0637V
105. Herman Haji, Rancho Cucamonga, California, Court of Federal Claims No: 19–0639V
106. Laura Mariani, Midland Park, New Jersey, Court of Federal Claims No: 19–0640V
107. Steinar Lee, Laguna Niguel, California, Court of Federal Claims No: 19–0641V
108. Erica Urech, Santa Barbara, California, Court of Federal Claims No: 19–0642V

[FR Doc. 2019–10828 Filed 5–23–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Immediate Office of the Secretary; Reimagine HHS Accelerate Clinical Innovation Initiative; Public Hearing, June 20–21, 2019

AGENCY: Transformation Management Office, Immediate Office of the Secretary, HHS.

ACTION: Notice of meeting and request for comments.

SUMMARY: The Department of Health and Human Services (HHS) is announcing a public meeting to seek public input and comment on opportunities to leverage departmental resources, increase collaboration, and to partner with private stakeholders in the service of accelerating the process for clinical innovation in the United States. HHS is specifically interested in how to decrease the overall time for a new medical product (drug, medical device, biologic) to go from discovery to widespread patient access and use while maintaining the critical public health standards of the Department.

HHS is seeking participation in the meeting and written comments from all interested parties, including, but not limited to, patients, physicians, researchers, medical product developers, commercial health insurance plan sponsors and carriers, private investors, and the community at large. This meeting and the written comments are intended to assist HHS, in developing programs and procedures for assessing and accelerating the pace of the clinical innovation enterprise throughout the United States. HHS is seeking input on specific questions identified below but is interested in any other pertinent information participants in the public meeting would like to share. This meeting is open to the public.

DATES:

Meeting Date: Thursday, June 20 8:30 a.m. to 4:00 p.m. eastern standard time (EST and Friday, June 21, 8:30 a.m. to 4:00 p.m. EST.

Deadline for Meeting Registration, Presentations, Special Accommodations and Comments: Wednesday, June 12, 5:00 p.m., EST.

ADDRESSES: *Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Great Hall, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Benjamin Eloff, Associate Director for Innovation Policy and Processes, Accelerate Clinical Innovation, U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 749D, Washington, DC 20201 or via email at *Benjamin.Eloff@fda.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Benjamin Eloff, Associate Director for Innovation Policy and Processes, Accelerate Clinical Innovation, U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 749D, Washington, DC 20201, phone: (240) 328–8717 email: *Benjamin.eloff@fda.hhs.gov.* Press inquiries are handled through Carla Daniels, Public Affairs Specialist, Office of the Assistant Secretary for Public Affairs; phone: (202) 690–4595 email: *Carla.Daniels@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website *https://www.eventbrite.com/e/reimagine-hhs-accelerate-clinical-innovation-initiative-public-hearing-tickets-61875011826* or by contacting the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Registration to attend the public meeting will be accepted on a first-come, first-served basis. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

Registration to present at the public meeting will be accepted on a first-come, first-served basis. To ensure a variety of viewpoints, HHS has specifically reserved portions of time to receive feedback from patients, medical product developers, investors, and private insurers. HHS has included questions for comment in section III of this document. Please identify by

number each question you wish to address in your presentation and the approximate time requested. HHS will do its best to accommodate requests to speak. HHS will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. Once HHS notifies registered presenters of their scheduled times, presenters should submit a copy of each presentation, identified with docket number HHS–OS–2019–0006, to *http://www.regulations.gov.*

Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Submission of Comments for the Public Meeting

Submit electronic comments, identified with docket number HHS–OS–2019–0006, to *http://www.regulations.gov.*

Submit written comments to Comments for HHS Public Meeting, Transformation Management Office, U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 749D, Washington, DC 20201.

I. Background

The HHS 2018–2022 strategic plan identifies ReImagine HHS as the approach to meet the strategic goals of the department. The Accelerate Clinical Innovation (ACI) initiative is one of ten initiatives under ReImagine HHS and is focused on identifying and facilitating ways to shorten the time needed for safe and effective medical products to go from discovery to patient use. ACI is seeking public comment regarding the entire medical innovation process at an enterprise level to ensure that patients have timely access to new medical products that meet the high public health standards expected and deserved by the American public and ensured by HHS.

HHS as a department is involved in all stages of the clinical innovation enterprise, including performing and funding basic laboratory research, clinical trials, small business grants, protecting patient rights and welfare, evaluating scientific data, approving products for use, establishing criteria and payment rates for their inclusion in the Medicare program, and monitoring products in the marketplace. These different functions of HHS are performed across separate divisions. When an innovation completes development and becomes available to patients, it is uncommon for the Department to perform a retrospective review of lessons learned about the processes involving coordination between multiple divisions that could promote future reforms to improve the service delivery model and make the process more efficient or effective.

HHS is seeking public comment from key stakeholders involved in the biomedical innovation process. Specifically, HHS would like to receive public comment regarding:

1. The appropriate federal role, if any, in connecting medical product developers with payers, commercial plan carriers, and/or Medicaid managed care plans for purposes of making the coverage decision process more efficient;
2. Enhanced knowledge sharing to assist in the innovation enterprise stakeholder's decision-making processes;
3. Metrics for the overall innovation system to assess the viability of the system and measure the impact of procedural and policy changes; and,
4. Procedures, methods, and data for the identification and prioritization of diseases or conditions that would benefit from enhanced focus.

Coverage Decision Process Facilitation

HHS is seeking more information about an appropriate federal role, if any, in connecting medical product developers with payers, commercial plan carriers and/or Medicaid managed care plans for purposes of making the coverage decision process more efficient. We have heard from certain stakeholders, especially medical product developers from smaller companies, that they have experienced inefficiency and expense associated with educating payers, carriers, and plans on new medical products after they have been cleared or approved for use by the Food and Drug Administration. Similarly, we have heard from representatives of payers, carriers, and plans that they find the process of learning about new medical products to be inefficient.

HHS is seeking comments from members of the public regarding the coverage decision process in the commercial market. We are particularly interested in hearing from plan sponsors/administrators, carriers, and medical product developers about whether there may be an appropriate role for the federal government in helping to more efficiently promote information sharing between product developers and payers, carriers and plans; the kind of information needed to make a coverage determination; and what mechanisms could be used to promote information sharing to make the process more efficient for all stakeholders.

Knowledge Sharing

HHS is interested in knowledge sharing in several domains. First, HHS collectively holds massive data resources from clinical trials, epidemiological data, grants, and many other sources that can inform a host of decisions beyond the specific purpose of any individual data set. HHS is interested to receive comments regarding how the biomedical innovation stakeholder community can use data in making decisions, and what data would be useful to investors and non-CMS payers to build business cases and to make coverage and reimbursement decisions. HHS is also interested in knowledge sharing related to experiences bringing an innovation through the development process, and what opportunities exist for enhanced communication and collaboration among HHS components or with other federal and non-federal stakeholders to reduce inefficiency and increase predictability, without altering scientific standards and while appropriately protecting research participant privacy and security. The data from these resources are a mix of publicly-available and confidential information, therefore, any use or sharing of data would require the appropriate consent and procedures to remove identifying characteristics.

Enterprise-Level Biomedical Innovation Metrics

Each individual working unit within HHS measures performance based on metrics necessary to achieve the specific functions of that unit. Likewise, private businesses (developers, payers, providers, investors) have fiduciary responsibilities to measure progress, increase efficiency, and deliver results. However, there are no universally agreed-upon metrics for the performance of the clinical innovation enterprise as a whole, and therefore, no objective way to assess the effects of process or procedural changes within HHS intended to accelerate innovation. ACI is working to identify metrics and is seeking specific public comment regarding measures that would accurately reflect the pace of clinical innovation in the United States.

Identification and Prioritization of Areas of Focus

The ACI initiative has identified some strengths and opportunities for HHS to leverage that will move the department to a more proactive stance for clinical innovation. HHS has a strong workforce with a broad array of expertise,

unparalleled by any other organization in the world this is motivated by—and believe strongly in—the public health mission of the Department. HHS also holds vast amounts of scientific and clinical data that can provide insights into opportunities for innovation. When focused on specific issues, HHS has a strong track record of achieving meaningful results by working together in the Department, across the Federal government, with private partners, and with patients. These assets are the foundation upon which an innovation accelerator can be built. However, HHS resources are limited, necessitating prioritization of diseases or conditions that would benefit from enhanced department-wide focus to accelerate biomedical innovation and present the greatest possible impact on public health.

HHS is seeking specific input regarding the factors, types of data and analysis methods, and other aspects of the process for focus area identification and prioritization. It is not the intent of this public hearing to identify or address specific diseases or conditions at this time, but rather to develop an objective process for doing so.

II. Public meeting

A. Purpose and Scope of the Meeting

The public meeting is intended to provide an opportunity for broad public participation and comment concerning the process for biomedical innovation in the United States and how HHS can act by itself or in partnership to accelerate the pace of bringing new safe, effective medical products to patients who need them. HHS specifically is requesting input regarding opportunities to assess and improve the overall innovation process across HHS through information sharing and collaboration among federal agencies and through public-private partnership. This meeting and the written comments are intended to assist HHS in developing programs and processes at the HHS enterprise level to accelerate the pace of clinical innovation while maintaining critical public health standards for safety and effectiveness.

While HHS is considering opportunities for accelerating clinical innovation in the United States, including data sharing, outreach, collaborations, and partnerships, this meeting is not intended to specifically address changes to policies, procedures, scientific or regulatory standards, review processes or similar programmatic details enacted and overseen by the constituent operating and staff divisions of HHS.

B. Format of the Meeting

The meeting will be conducted by a panel of HHS officials. The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be determined by HHS and will be based on the number of registered presenters. Presentations will be grouped by the sector the presenters represent, with time reserved for patients and their representatives, payers including plan sponsors, carries, and managed care plans, and investors. Within the groups, presenters will be scheduled to speak in the order in which they register. Only the HHS panel members may question any presenter during or at the conclusion of each presentation. The meeting will be recorded and transcribed.

In addition, written comments will also be accepted and presented at the meeting, time permitting, if they are received by the date specified in the **DATES** section of this notice.

C. Live Streaming Information

For participants who cannot attend the public meeting in person there will be an option to view the public meeting via live streaming technology. Information on the option to view the meeting via live streaming technology will be posted at a later time *www.regulation.gov.*

III. Issues for Discussion

HHS invites comment at the public meeting about how the Department can act to accelerate the pace of clinical innovation while maintaining critical public health standards. When providing comment, please include a discussion of which phase of development (*e.g.* discovery, preclinical, first-in-man, feasibility, pivotal clinical trial, registration, marketing, benefit categorization, coding, coverage, reimbursement, inclusion in standards of practice, etc.) and which stakeholder sector(s)' (*e.g.* patients, physicians, researchers, medical product developers, commercial health insurance plan sponsors and carriers, private investors, and the community at large) experiences you are providing. HHS is specifically interested in public input on the following questions:

1. What existing resources can HHS leverage to provide the biomedical innovation community with timely, meaningful information to promote product development, while promoting competition and maintaining commercial confidential information?

2. Which aspects of the regulatory framework for biomedical product development marketing are the most unclear to your stakeholder community, and how could HHS act to clarify processes?

3. What additional information or data would be helpful to your stakeholder sector (*e.g.* patients, physicians, private insurance, product developers, private investors, etc.) to improve decision-making and efficiency of product development?

4. Are there specific metrics for the overall biomedical innovation enterprise across public and non-public sectors that HHS could use to track and measure results of process changes?

5. What metrics, data sources, procedures or other factors should be considered in the identification and prioritization of diseases or conditions that would receive the most impact from enhanced HHS-wide focus?

IV. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the individual(s) at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.*

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the

start of the meeting, to allow additional time to clear security. Security measures include the following:

• Presentation of a government issued photographic identification to the Federal Protective Service or Guard Service personnel.

• Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

V. Transcripts

As soon as a transcript of the public meeting is available, it will be accessible on *www.regulations.gov.* A transcript also will be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the PHS FOIA Office, 7700 Wisconsin Avenue, Suite #920, Bethesda, MD 20857; phone: (301) 492–4800; fax: (301) 492–4848; email: *FOIARequest@psc.hhs.gov.*

VI. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. All information will be received subsequent to a general solicitation of comments in the **Federal Register** or solicited at or in connection with a public hearing or meeting, thereby making the information collection requests in accordance with the implementing regulations of the PRA at 5 CFR 1320.3(h)(4) and 5 CFR 1320.3(h)(8), respectively. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Dated: May 20, 2019.

Charles N.W. Keckler,

Associate Deputy Secretary, Immediate Office of the Secretary.

[FR Doc. 2019–10911 Filed 5–23–19; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against William W. Cruikshank, Ph.D. (Respondent), former Professor of Medicine, Pulmonary Center, Boston University (BU) School of Medicine. Dr. Cruikshank engaged in research misconduct in research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grant R01 CA122737–01A2. The administrative actions, including debarment for a period of five (5) years, were implemented beginning on May 13, 2019, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr. P.H., Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

William W. Cruikshank, Ph.D., Boston University School of Medicine: Based on the report of an investigation conducted by BU and analysis conducted by ORI in its oversight review, ORI found that Dr. William W. Cruikshank, former Professor of Medicine, Pulmonary Center, BU School of Medicine, engaged in research misconduct in research supported by NCI, NIH, grant R01 CA122737–01A2.

ORI found that Respondent engaged in research misconduct by knowingly, intentionally, and/or recklessly falsifying and/or fabricating data included in the following published paper, an earlier version of the submitted manuscript, a seminar presentation, and two grant applications submitted to NCI, NIH:

• *J. Clin. Invest.* 2011;121:4838–49 (hereafter referred to as ''*JCI* 2011''). Retracted in *J. Clin. Invest.* 2014;124(11):5085.

• Manuscript submitted to *J. Clin. Invest.* (hereafter referred to as the ''*JCI* manuscript'').

• Cruikshank, W. ''A New Look at T Cell Cancers: A Case Study of Translational Research.'' Presented at the Clinical Research Training (CREST) Seminar Series on 09/08/09 (hereafter referred to as the ''CREST Presentation'').

• R01 CA122737–01A1 and R01 CA122737–01A2.

Respondent knowingly, intentionally, and recklessly falsified and/or fabricated Western blot data for protein expression in primary CD4+ T cells from patients with advanced T-cell acute lymphocytic leukemia (T–ALL) or cutaneous T-cell lymphomas (CTCL), by copying blot band images from unrelated sources, manipulating to disguise their origin, and combining multiple images to generate new figures to falsely represent results using sixty-four (64) such band images in the following sixteen (16) figures and related text included in one (1) manuscript, one (1) published paper, two (2) grant applications, and a seminar presentation:

• Figures 1 and 3 in *JCI* 2011, also included as Figure 3 (top and bottom right) in R01 CA122737–01A2 and as Figures 1 and 4 in the initial *JCI* manuscript, respectively
• Figure 8B in *JCI* 2011, also included as Figure 9 in R01 CA122737–01A2
• Figure 9 in *JCI* 2011
• Figures 14A and 14B in R01 CA122737–01A2, also included as Figure 14B in R01 CA122737–01A1
• Figure 4 in R01 CA122737–01A2, also included as Figure 4 in R01 CA122737–01A1
• Slides 24, 25, and 29 in the CREST Presentation

Specifically:

• In Figure 3 in *JCI* 2011, also included as Figure 4 in the *JCI* manuscript and Slide 24 of the CREST Presentation (with no white spaces between bands) as well as Figure 3 (top right section with the tubulin panel flipped 180° clockwise) in R01 CA122737–01A2, the respondent reused a single Western blot band image to represent expression of tubulin and Pro-IL–16 in more than one experimental and control subjects.

• In Figure 1 in *JCI* 2011, also included as Figure 1 in the *JCI* manuscript, Figure 3 (bottom panel) in R01 CA122737–01A2, and in Slide 25 of the CREST Presentation, the respondent copied blot band images from unpublished and/or previously published unrelated experiments and reused a single Western blot band image to falsely represent expression of p27Kip1 and Skp2 in more than one CTCL Patient.

• The respondent reused and relabeled blot band images from unpublished and/or previously published unrelated experiments to falsely represent new experimental results as follows:

➢ Four band images from the unpublished and unrelated figure

''CSC × 24 hrs'' to represent Skp2 protein expression in CTCL Patients

➢ Six band images from Figure 5B in a paper published in *Biochemistry*[1] to represent Actin protein expression in eight (8) CTCL Patients, one (1) T–ALL Patient, and two (2) normal subjects in Figure 1 of *JCI* 2011 and Figure 3 (bottom panel) in R01 CA122737–01A2

• In Figure 8B (bottom part) in *JCI* 2011, also included as Figure 9 in R01 CA122737–01A2 and Slide 29 in the CREST Presentation, respondent falsely reused β-actin, Laminin B, alpha-tubulin, GFP-Pro-IL–16 and HSC70 band images of ''Knockdown of HSC70 in Jurkat cells and Hut78 cells'' as from Normal Human Patient and Normal Subject T-cells.

• In Figure 14A in R01 CA122737–01A2, respondent falsely reused GFP-Pro-IL–16 band images of ''Knockdown of HSC70 in Jurkat cells'' as AKT and phospho-AKT expression and the nuclear Pro-IL–16 band images from Figure 5B in *Biochemistry* 2002 as FOXO1 protein expression in human T-cells stimulated with IL–16.

• In Figure 14B in R01 CA122737–01A1 and R01 CA122737–01A2, respondent falsely reused band images from Figure 5B in *Biochemistry* 2002 that represents Anti-pro IL6 and Anti-Tubulin to represent FOXO1 protein expression in human T-cells.

• In Figure 9 in *JCI* 2011, respondent falsely reused band images representing CD26–T cells of CTCL Patient to also represent normal human subject control for CD26+ and control for CD26–T cells in the same figure.

• In Figure 5 in R01 CA122737–01A1, also included as Figure 4 in R01 CA122737–01A2, respondent reused and falsely relabeled band images within the same figure to represent different experimental conditions.

Respondent intentionally, knowingly, and recklessly falsified and/or fabricated Western blot data for siRNA knockdown of Heat shock cognate 71 kDa protein (HSC70) in Jurkat cells purportedly with two different siRNA constructs, by reusing and relabeling ten (10) band images from experiments on Hut78 cells and a failed experiment in Jurkat cells, and included them in four (4) figures in one manuscript, one published paper, one grant application, and one presentation.

Specifically, respondent reused band images of an unpublished Western blot figure, by:

• Reusing results of a single HSC70 siRNA knockdown on Hut78 cells and relabeling them to represent data from Jurkat cells in Figure 6 in the first submission of the *JCI* manuscript, Figure 6 in *JCI* 2011, and Figure 10 in R01 CA122737–01A2 (also included as Slide 27 in the CREST Presentation)

• reusing results for a second siRNA construct that failed to knockdown HSC70 in Jurkat cells and relabeling them as from control samples in Figure 6 in *JCI* 2011

Dr. Cruikshank entered into a Voluntary Exclusion Agreement (Agreement) and voluntarily agreed for a period of five (5) years, beginning on May 13, 2019:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations''); and

(2) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

Wanda K. Jones,

Interim Director, Office of Research Integrity.

[FR Doc. 2019–10874 Filed 5–23–19; 8:45 am]

BILLING CODE 4150–31–P

[1] Wilson KC, Cruikshank WW, Center DM, Zhang Y. Prointerleukin-16 contains a functional CcN motif that regulates nuclear localization. *Biochemistry* 2002;41:14306–14312 (hereafter referred to as ''*Biochemistry* 2002'').

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the joint meeting of the National Cancer Advisory Board and NCI Board of Scientific Advisors, June 10, 2018, 8:30 a.m. to June 11, 2018, 12:00 p.m., National Cancer Institute Shady Grove Campus, Rockville, MD 20850 which was published in the **Federal Register** on February 11, 2019, 84 FR 3312.

This meeting notice is amended to add two subcommittee meetings on Sunday, June 9, 2019. The National Cancer Advisory Board (NCAB) Ad Hoc Subcommittee on Population Science, Epidemiology and Disparities will meet on June 9, 2019 from 5:30 p.m. to 7:00 p.m. and the NCAB Subcommittee on Planning and Budget will meet on June 9, 2019 from 7:30 p.m. to 9:00 p.m. at the Gaithersburg Marriott Washingtonian Center, 9751 Washington Boulevard, Room—To Be Determined, Gaithersburg, MD 20878.

This meeting notice is also amended to change the meeting from a two-day to a one-day meeting, correct the year, and change the closed session agenda. The joint meeting of the NCAB and NCI Board of Scientific Advisors will now be held on June 10, 2019 with the open session from 8:30 a.m. to 4:45 p.m. and the closed session from 5:00 p.m. to 6:00 p.m. The closed session agenda is corrected to be the Review of NCAB grant applications. The meeting is partially Closed to the public.

Dated: May 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–10943 Filed 5–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be held as a teleconference only and is open to the public to dial-in for participation. Individuals who plan to dial-in to the meeting and need special assistance or other reasonable accommodations in order to do so, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee; Translational Research Strategy Subcommittee (TRSS).

Date: June 19, 2019,

Time: 10:00 a.m. to 11:00 a.m.

Agenda: Review the Glioblastoma (GBM) Working Group Report.

Place: National Cancer Institute Shady Grove, Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Telephone Conference Call), Phone: 240–276–6500, Conference Code: 1102766460, Passcode: 6460.

Contact Person: Peter Ujhazy, MD, Ph.D., Deputy Associate Director, Translational Research Program, Division of Cancer Treatment and Diagnosis, National Institutes of Health, National Cancer Institute, 9609 Medical Center Drive, Room 3W106, Rockville, MD 20850, 240–276–5681, *ujhazyp@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on

this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 21, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–10944 Filed 5–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Minority Health and Health Disparities Special Emphasis Panel, which was published in the **Federal Register** on May 10, 2019, 91FR20644.

This **Federal Register** Notice is being amended to correct the Contact Person's phone number and email address from (301) 451–2432, *ismonddr@mail.nih.gov* to (301) 451–9536, *mlaudesharp@nih.gov*. The meeting is closed to the public.

Dated: May 21, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–10947 Filed 5–23–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–07]

60-Day Notice of Proposed Information Collection; Comprehensive Transactional Forms Supporting FHA's Section 242 Mortgage Insurance Program for Hospitals

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 23, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this notice.

Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Collette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone (202) 402–3400 or email at *Colette.Pollard@hud.gov* for information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Facsimile (fax) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Paul A Giaudrone, Office of Healthcare Programs, Office of Hospital Facilities, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone (202) 708–0599 (this is not a toll free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Facsimile (fax) comments are not acceptable.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Comprehensive Transactional Forms Supporting FHA's Section 242 Mortgage Insurance Program for Hospitals.

OMB Approval Number: 2502–0602.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–91070–OHF, HUD–91071–OHF, HUD–91073–OHF, HUD–91111–OHF, HUD–91725–OHF, HUD–92013–OHF, HUD–92023–OHF, HUD–92070–OHF, HUD–92080–OHF, HUD–92117–OHF, HUD–92205–OHF, HUD–92223–OHF, HUD–92266–OHF, HUD–92322–OHF, HUD–92330–OHF, HUD–92330A–OHF, HUD–92403–OHF, HUD–92403A–OHF, HUD–92415–OHF, HUD–92422–OHF, HUD–92434–OHF, HUD–92441–OHF, HUD–92442–OHF, HUD–92448–OHF, HUD–92452A–OHF, HUD–92452–OHF, HUD–92455–OHF, HUD–92456–OHF, HUD–92464–OHF, HUD–92466–OHF, HUD–92476–OHF, HUD–92476A–OHF, HUD–92476B–OHF, HUD–92479–OHF, HUD–92554–OHF, HUD–92576–OHF, HUD–93305–OHF, HUD–94000–OHF, HUD–94001–OHF, HUD–94128–OHF.

Description of the Need for the Information and Proposed Use

This collection of information is required specifically for the application and administration of the Department of Housing and Urban Development, Federal Housing Administration Section 242 Hospital Mortgage Insurance Program pursuant to 24 CFR 242, 241, 223(f), and 223(a)(7). The collection is a comprehensive set of HUD documents that are critically needed for processing applications and loan endorsements for FHA mortgage insurance under the Section 242 Hospital Mortgage Insurance Program, for ongoing asset management of such facilities, and other information related to these facilities for loan modifications, construction projects, and physical and environmental reviews. This information is requested and is used by the Office of Healthcare Facilities (OHF) and Office of Architecture and Engineering (OAE) within FHA's Office of Healthcare Programs (OHP).

The purpose for which the information is being collected by HUD is to review Section 242 applications to determine the eligibility of applicant hospitals for FHA mortgage insurance, underwrite insured hospital loans, ensure that the collateral securing each loan is adequate, capture administrative data, process initial/final endorsement, and manage FHA's hospital portfolio. Additional information related to loan modifications, construction projects, and physical and environmental reviews is collected if applicable.

The information being collected consists of various HUD forms that program participants complete with project specifications, technical descriptions, details, and/or signatures that are utilized by HUD during various stages of the application, underwriting, commitment, closing, and asset management processes involved with the administration of FHA's Section 242 mortgage insurance program.

The information is used by HUD staff for internal review of applications to determine if projects qualify for Section 242 hospital mortgage insurance and to manage and monitor the application,

commitment, initial/final endorsement, asset management, and administration processes needed to support hospital projects insured by FHA. Agreements and legal documents are used by HUD staff, lenders, borrowers, construction managers, and depository institutions, when applicable, to process initial/final endorsement of loans. Information reported for ongoing asset management of FHA-insured facilities will be used by HUD staff to monitor and manage risk within the FHA portfolio and ensure ongoing compliance with HUD Program Obligations. Information is also be used by HUD staff to determine whether the Program meets its stated goals and management objectives. The information is collected from lenders/mortgage bankers, borrowers/hospital management officials, attorneys, general contractors/construction managers, architects/engineers, agents and others involved in hospital projects, which may, at times include local government entities and other third parties, as well as HUD staff to allow OHF to manage and monitor the application, commitment, initial/final endorsement, asset management, and administration processes needed to support hospital projects insured by FHA.

This collection is needed to update and renew the current collection that was approved for a 36-month period by OMB on August 19, 2016, with an expiration date of August 31, 2019. Where changes have been made to existing OHF forms, the proposed versions are also presented in both redline/strikeout and unmarked formats. New or unchanged forms are presented in unmarked format. The revised hospital documents can be viewed at: *http://portal.hud.gov/hudportal/HUD?src=/federal_housing_administration/healthcare_facilities/section_242/additional_resources/242_docs_2019renewal.*

Two new forms are being added to this collection: HUD–92266–OHF (Application for Transfer of Physical Assets) and HUD–92476B–OHF (Escrow Agreement for Proceeds from Partial Release of Collateral). The HUD–92266–OHF form is based on an existing Office of Multifamily form, modified for Section 242-insured hospitals. The application collects the information required for OHF staff to review requests to transfer insured physical assets to new purchasers that will continue to hold the FHA-insured loan. The HUD–92476B–OHF is being added to provide an escrow agreement template for infrequent instances when a borrower sells and requests to release HUD-insured collateral. Both documents are based on existing versions used by the Office of Housing in other mortgage insurance programs but modified to appropriately reflect Section 242 program needs.

HUD–9250–OHF (Funds Authorizations) will be removed from the collection. The document was added to Collection 2502–0602 in a prior submission and was based upon a similar form used for OHP's residential care facility program. The form has proven to be unnecessary for the Section 242 hospital program and will be removed.

Thirty-five of the forty documents within the collection are being renewed with no operational content changes, except for updated burden hour estimates and additional language added to the burden statements to ensure that requirements under 5 CFR 1320.8(b)(3) are met. Additional language (specifically, the phrase ''under penalty of perjury'') was also added to clarify fraud warnings and certification for forms with certifications. Revisions are proposed for the HUD–92466–OHF (Regulatory Agreement), HUD–92422–OHF (Financial and Statistical Data for HUD Reporting), and HUD–94000–OHF (Security Instrument) to include edits that were made to clarify current policies and definitions, reflect updated general accepted accounting standards, or to address minor inconsistencies across documents. A summary of the specific changes made to the revised documents is provided below.

Summary of Changes to Documents

HUD–92476B–OHF Escrow Agreement for Proceeds From Partial Release of Collateral. New document used to establish an escrow agreement and escrow account as part of the approval process for the partial release of FHA-insured collateral. Document defines permitted uses of escrowed proceeds, including usage for collateralized property improvements, purchase of equipment, or principal payments of the FHA-insured mortgage. Requires approval of all advances in writing by HUD and the Lender.

HUD–92266–OHF Application for Transfer of Physical Assets. New document based on an existing Office of Multifamily Housing application form for Transfer of Physical Assets transactions, modified for Section 242-insured hospitals.

HUD–92422–OHF Financial and Statistical Data for HUD Reporting. Definitions were updated to be consistent with account names, and a definition for ''Allowances for Contractual Deductions and Bad Debt'' was added. ''Deferred Financing Costs'' was moved from the ''Limited Use Assets'' to the ''Long Term Debt and Leases'' (previously ''Long Term Debt and Capital Leases'') account. ''Right of Use Assets'' was added to the ''Net PPE'' account. Some restricted and unrestricted net asset accounts were combined and account names and definitions were updated. A note was added to clarify that ''Bad Debt Expense'' can be recorded as a separate line item, depending on the accounting reporting standards being used.

HUD–94000–OHF Security Instrument/Mortgage/Deed of Trust. In Section 1 (Definitions), the definition of Patient Accounts Receivables was clarified in the definition of Accounts Receivables. The definition of Personalty and Mortgaged Property was revised to add the income or sales distributed from a joint venture.

HUD–92466–OHF Hospital Regulatory Agreement—Borrower. Changes were made to sections of the Regulatory Agreement as follows:

- *Section 1 and Section 49 (Definitions).* Revised to include definitions found in 24 CFR 242.1 and Handbook 4615.1 to provide clarity. Definitions section from Appendix D was moved to Section 49. Definition of Patient Accounts Receivables was added for Distribution of Assets in Section 18 and Additional Indebtedness in Section 20.
- *Section 11—Property and Operations; Encumbrances.* Added new item (g) regarding Borrower notification to HUD.
- *Section 17—Transactions With Affiliates.* Clarified transactions with Affiliates regarding lower of fully allocated cost or market value.
- *Section 18—Distribution of Assets.* Changed Section 18(b)(v) to reflect financial requirements per 24 CFR 242.1 for the Surplus Cash definition. Included definitions and ratios in Section 49.
- *Section 19—Board Review/Business Plan/Consultants' Report.* Added ''BOARD REVIEW'' to title for clarity. In Section 19(c)(iv), removed ''pro forma balance sheet'' as a deliverable and clarified Business Plan deliverables to HUD for income statement and cash flow analysis. Combined the roles of ''Review Consultant'' and ''Independent Consultant'' into one consultant to allow for more timely review and cost savings for Borrower.
- *Section 20—Additional Indebtedness.* Under Long Term Debt, clarified when HUD consent is needed versus notification and timing; added CEO to parties eligible to submit documentation for notification; and added new section 20(a)(vi) to specify

Borrower agreement to assets becoming part of the Mortgaged Property at HUD's discretion upon release of a lien. Under Unsecured Short-Term Debt, clarified when HUD consent is needed versus notification and timing and added CEO to parties eligible to submit documentation for notification. Added Section 20(c) for Lines of Credit to apply to short-term and long-term lines of credits secured by accounts receivable.

• *Section 21—Successor Clause.* Removed Section 21(a). Clarified successor clauses and definitions to emphasize HUD's option for approval.

• *Section 29—Permits and Approvals.* Added new Section 29(e) regarding Borrower's responsibility to report accrediting organization or entity findings to HUD upon occurrence, along with action plan requirements.

• *Section 36—Actions Requiring Prior Written Approval of HUD.* Revised 36(g) to clarify when HUD approval is required for actions impacting collateral under the FHA-insured mortgage. Added new item 36(q) for establishing, developing, or organizing a joint venture.

Respondents (i.e., affected public): Business or other for pro-fit; Not-for-profit institutions.

Estimated Number of Respondents: 485.

Estimated Number of Responses: 1,069.

Frequency of Response: 2.2.

Average Hours per Response: 74.

Total Estimated Burdens: $79,426.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 13, 2019.

Vance T. Morris,

Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–10932 Filed 5–23–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number: FR–6146–N–06]

Privacy Act of 1974; Matching Program

AGENCY: Office of Administration, HUD.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, HUD is providing notice of its intent to execute a new computer matching agreement with the U.S. Department of Veterans Affairs (VA). The matching agreement covers the exchange of data obtained by VA pertaining to delinquent debt. The purpose of the match is to update the Credit Alert Verification Reporting System (CAIVRS), which is maintained by HUD.

DATES: The period of this matching program is estimated to cover the 18-month period from June 15, 2019 through December 15, 2020. However, the computer matching agreement (CMA) will become applicable at the later of the following two dates: June 15, 2019 or 30 days after the publication of this notice, unless comments have been received from interested members of the public requiring modification and republication of the notice.

ADDRESSES: Interested persons are invited to submit comments regarding this notice at *www.regulations.gov* or to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10110, Washington, DC 20410. Communications should refer to the above docket number. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Contact the ''Recipient Agency'' John Bravacos, Senior Agency Official for Privacy, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10139, Washington, DC 20410, telephone number (202) 708–3054.

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on April 15, 2016, at 81 FR 22292. The Computer Matching program seeks to set forth the terms and conditions governing disclosures of records, information, or data (collectively referred to herein as ''data'') made by VA to HUD. This data is obtained by VA and pertains to delinquent debt that individuals owe to VA. The purpose of its transmittal is to update the Credit Alert Verification Reporting System (CAIVRS), which is a computer information system maintained by HUD. The data match will allow for the prescreening of applicants for Federal direct loans or federally guaranteed loans, for the purpose of determining the applicant's credit worthiness, by ascertaining whether the applicant is delinquent or in default on a loan owed directly to or guaranteed by the Federal Government. The terms and conditions of this Agreement ensure that VA makes such disclosures of data, and that HUD uses such disclosed data, in accordance with the requirements of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, 5 U.S.C. 552a.

Participating Agencies: The U.S. Department of Veterans Affairs is the source agency and the Department of Housing and Urban Development is the recipient agency.

Authority for Conducting the Matching Program: HUD and VA are authorized to participate in the matching program under Title 31, United States Code, Section 3720B; Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs); the Budget and Accounting Acts of 1921 and 1950, as amended; the Debt Collection Act of 1982, as amended; the Deficit Reduction Act of 1984, as amended; and the Debt Collection Improvement Act of 1996, as amended.

Purpose: The purpose of CAIVRS is to give participating federal agencies and authorized private lenders acting on the government's behalf, access to a database of delinquent federal debtors for the purpose of pre-screening the credit worthiness of applicants for direct loans and federally guaranteed loans. The use of CAIVRS will allow

HUD to better monitor its credit programs and to reduce the credit extended to individuals with outstanding delinquencies on debts owed to HUD and other Federal agencies. Thus, both risk reduction and debt recovery are primary objectives of CAIVRS and this matching program.

Categories of Individuals: The matching program involves records of individuals applying for direct loans and federally guaranteed loans.

Categories of Records: The following is the category of record in this matching agreement:

• Borrower ID Number—SSN, Employer Identification Number (EIN) or Taxpayer Identification Number (TIN) of the individual debtor on a delinquent federal direct loan or federally-guaranteed loan.

Systems of Records: The HUD records used in the information comparison are retrieved from, and the results of the information comparison are maintained within, the HUD system of records from the following systems: HUD/SFH–01—Single Family Default Monitoring System, SFDMS, F42D (72 FR 65350, November 20, 2007; routine uses updated 80 FR 81837, December 31, 2015); HSNG.SF/HWAA.02—Single Family Insurance System—Claims Subsystem, CLAIMS, A43C (79 FR 10825, February 26, 2014); HUD/HS–55—Debt Collection and Asset Management System (DCAMS) (72 FR 63919, November 13, 2007), which consists of two sister systems identified as DCAMS—Title I, DCAMS–T1, F71 and DCAMS—Generic Debt, DCAMS–GD, F71A; and CFO/FY.03—Financial Data Mart, FDM A57R (79 FR 16805, March 26, 2014).

VA's records come from: 88VA244, Centralized Accounts Receivable System/Centralized Accounts Receivable On-Line System, CARS/CAROLS (83 FR 40140, August 13, 2018).

Dated: May 16, 2019.

John Bravacos,

Senior Agency Official for Privacy.

[FR Doc. 2019–10929 Filed 5–23–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number: FR–6146–N–05]

Privacy Act of 1974; Matching Program

AGENCY: Office of Administration, HUD.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, HUD is providing notice of its intent to execute a new computer matching agreement with the U.S. Small Business Administration (SBA). The matching agreement covers the exchange of data obtained by SBA pertaining to delinquent debt. The purpose of the match is to update the Credit Alert Verification Reporting System (CAIVRS), which is maintained by HUD.

DATES: The period of this matching program is estimated to cover the 18-month period from June 15, 2019 through December 15, 2020. However, the computer matching agreement (CMA) will become applicable at the later of the following two dates: June 15, 2019 or 30 days after the publication of this notice, unless comments have been received from interested members of the public requiring modification and republication of the notice.

ADDRESSES: Interested persons are invited to submit comments regarding this notice at *www.regulations.gov* or to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10110, Washington, DC 20410. Communications should refer to the above docket number. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Contact the ''Recipient/Source Agency'' John Bravacos, Departmental Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10139, Washington, DC 20410, telephone number (202) 708–3054.

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on January 5, 2016, at 81 FR 248. The Computer Matching program seeks to set forth the terms and conditions governing disclosures of records, information, or data (collectively referred to herein as ''data'') made by SBA to HUD. This data is obtained by SBA and pertains to delinquent debt that individuals owe to SBA. The purpose of its transmittal is to update the Credit Alert Verification Reporting System (CAIVRS), which is a computer information system maintained by HUD. The data match will allow for the prescreening of applicants for Federal direct loans or federally guaranteed loans, for the purpose of determining the applicant's credit worthiness, by ascertaining whether the applicant is delinquent or in default on a loan owed directly to or guaranteed by the Federal Government. The terms and conditions of this Agreement ensure that SBA makes such disclosures of data, and that HUD uses such disclosed data, in accordance with the requirements of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, 5 U.S.C. 552a.

Participating Agencies: The U.S. Small Business Administration is the source agency and the Department of Housing and Urban Development is the recipient agency.

Authority for Conducting the Matching Program: HUD and SBA are authorized to participate in the matching program under Title 31, United States Code, Section 3720B. Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs); the Budget and Accounting Acts of 1921 and 1950, as amended; the Debt Collection Act of 1982, as amended; the Deficit Reduction Act of 1984, as amended, and the Debt Collection Improvement Act of 1996, as amended.

Purpose: The purpose of CAIVRS is to give participating federal agencies and authorized private lenders acting on the government's behalf, access to a database of delinquent federal debtors for the purpose of pre-screening the credit worthiness of applicants for direct loans and federally guaranteed loans. The use of CAIVRS will allow HUD to better monitor its credit programs and to reduce the credit extended to individuals with outstanding delinquencies on debts owed to HUD and other Federal agencies. Thus, both risk reduction and debt recovery are primary objectives of CAIVRS and this matching program.

Categories of Individuals: The matching program involves records of individuals applying for direct loans and federally guaranteed loans.

Categories of Records: The following is the category of record in this matching agreement:

• Borrower ID Number—SSN, Employer Identification Number (EIN) or Taxpayer Identification Number (TIN) of the individual debtor on a delinquent federal direct loan or federally-guaranteed loan.

Systems of Records: The HUD records used in the information comparison are retrieved from, and the results of the

information comparison are maintained within, the HUD system of records from the following systems: HUD/SFH–01—Single Family Default Monitoring System, SFDMS, F42D (72 FR 65350, November 20, 2007; routine uses updated 80 FR 81837, December 31, 2015); HSNG.SF/HWAA.02—Single Family Insurance System—Claims Subsystem, CLAIMS, A43C (79 FR 10825 February 26, 2014); HUD/HS–55—Debt Collection and Asset Management System (DCAMS) (72 FR 63919 November 13, 2007), which consists of two sister systems identified as DCAMS—Title I, DCAMS–T1, F71 and DCAMS—Generic Debt, DCAMS–GD, F71A; and CFO/FY.03—Financial Data Mart, FDM A57R (79 FR 16805, March 26, 2014).

SBA's records come from: (1) Disaster Loan Case File (SBA 20) (74 FR 14890, April 1, 2009); and (2) Loan System (SBA 21) (as amended 77 FR 61467, October 9, 2012). SBA will provide HUD with delinquent debtor files contained in the Systems of Records described above for obligors that have received a 60-day due process notification letter prior to referral to the Department of Treasury for offset and cross-servicing.

Dated: May 16, 2019.

John Bravacos,

Senior Agency Official for Privacy.

[FR Doc. 2019–10930 Filed 5–23–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–20]

30-Day Notice of Proposed Information Collection: Revitalization Area Designation and Management

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: Comments Due Date: June 24, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 22, 2018 at 83 FR 53288.

A. Overview of Information Collection

Title of Information Collection: Revitalization Area Designation and Management.

OMB Approval Number: 2502–0566.

Type of Request: Extension of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The Department accepts requests from state, local, or tribal governments or HUD-approved nonprofit organizations to designate a geographic area as a Revitalization Area by sending a written Requesting Letter to HUD. Revitalization Areas are intended to promote community revitalization through expanded homeownership opportunities of revitalization areas.

Respondents (*i.e.,* affected public): State, local, or tribal governments or HUD-approved nonprofit organizations.

Respondents: Business (mortgage lenders).

Estimated Number of Respondents: 42.

Estimated Number of Responses: 42.

Frequency of Response: 1.

Average Hours per Response: 2.

Total Estimated Burdens: 84.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 13, 2019.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–10931 Filed 5–23–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G]

Draft Environmental Impact Statement for the Proposed Campo Wind Energy Project, San Diego, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, this notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency has prepared a Draft Environmental Impact Statement (DEIS) in connection with the approval of a lease between the Campo Band of Diegueno Mission Indians (Tribe) and Terra-Gen Development Company, LLC (Terra-Gen), to construct and operate a wind energy generation project on the Campo Indian Reservation (Reservation). This Notice of Availability (NOA) also announces that the DEIS is now available for public review and that a public hearing will be held to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by July 8, 2019. The date of a public hearing on the DEIS will be announced at least 15 days in advance through a notice to be published in local newspapers (*San Diego Union-Tribune* and *San Diego Business Journal*) and online at: *www.CampoWind.com.*

ADDRESSES: Commenters may mail or hand-deliver written comments to the Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825. See the **SUPPLEMENTARY INFORMATION** section of this notice for further directions on submitting comments. The location of a public hearing on the DEIS will be announced at least 15 days in advance through a notice to be published in local newspapers (*San Diego Union-Tribune* and *San Diego Business Journal*) and online at: *www.CampoWind.com.* The DEIS is available for review at:

- County of San Diego Public Library—Campo, 31356 Highway 94, Campo, CA 91906
- County of San Diego Public Library—Pine Valley, 28804 Old Highway 80, Pine Valley, CA 91962
- BIA Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825

FOR FURTHER INFORMATION CONTACT: Dan (Harold) Hall, Regional Archeologist BIA Pacific Region Branch, by telephone at (916) 978–6041 or by email at *harold.hall@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Process
II. Background on the Project
III. Alternatives
IV. Environmental Impact Analysis
V. Public Comment Procedures
VI. Authority

I. Background on the Process

Public review of the DEIS is part of the administrative process for the evaluation of the authorization of the Tribe's lease of trust land in eastern San Diego County, California. Terra-Gen proposes to construct and operate a wind energy generation facility in the lease area. A Notice of Intent to prepare an EIS was published in the **Federal Register** on November 11, 2018, (83 FR 58784) and posted on the *www.CampoWind.com* website. A public notice announcing the proposed action and the scoping meeting was published in the *San Diego Business Journal* on November 26, 2018, and the *San Diego Union-Tribune* on November 21, 2018. The BIA held a public scoping meeting for the proposed project on December 6, 2018, at the Campo Indian Reservation Tribal Hall, 36190 Church Road, Campo, California.

II. Background on the Project

The proposed action consists of BIA approval of a lease between the Tribe and Terra-Gen, to construct and operate a renewable energy generation project for 25 years on the Reservation, with the possibility of a 13-year extension for a total of 38 years. The lease would allow Terra-Gen to develop and operate a wind energy generation facility in the lease area. The project consists of the following components: (A) Up to 60 wind turbines of approximately 4.2 megawatts (MW) capacity and approximately 586 feet in total height; (B) access roads, including approximately 15 miles of new roads and approximately 15 miles of improved existing roads; (C) electrical collection and communication system; (D) project collector substation; (E) operations and maintenance facility; (F) meteorological towers; (G) water collection and septic system; (H) temporary concrete batch plant; (I) temporary staging areas; (J) on-reservation portion of the generation tie line (gen-tie line); and (K) boulder brush facilities (components on private lands including a portion of the gen-tie line, a high-voltage substation, a switchyard, and access roads).

III. Alternatives

The following alternatives are considered in the DEIS:

(1) Alternative 1, 252 MW—would include 60 turbines producing approximately 4.2 MW each, for a total production of approximately 252 MW. Up to 76 possible turbine sites have been evaluated, of which only 60 could be constructed under the lease. Total turbine height of approximately 586 feet.

(2) Alternative 2, 202 MW—would include a reduction in the Project's footprint, number of turbines, and generating capacity of approximately 20%, with 48 turbines that would produce approximately 4.2 MW each, for a total production of approximately 202 MW.

(3) Alternative 3, No Action Alternative—would entail the BIA not approving the proposed lease agreement between the Tribe and Terra-Gen for the construction of a wind energy project on the Reservation.

A wide range of additional alternatives were considered by the BIA but not carried forward for detailed analysis in the DEIS. The following alternatives were not analyzed in the DEIS because they either did not meet the purpose and need of the project or were not considered technically feasible or economically feasible or cost-effective: Mixed renewable generation (wind and solar), minimal build-out, off-reservation location, reduced capacity turbines, distributed generation.

IV. Environmental Impact Analysis

The DEIS analyzes the potential environmental impacts to 13 different resource categories, including:

- Land Resources
- Water Resources
- Air Quality
- Biological Resources
- GHG Emissions and Climate Change
- Cultural Resources
- Socioeconomic Conditions
- Resource Use Patterns
- Traffic and Transportation
- Noise
- Visual Resources
- Public Health and Safety
- Cumulative Scenario and Impacts.

V. Public Comment Procedures

BIA solicits public comments on the Draft EIS, in accordance with the Council on Environmental Quality's regulations for implementing NEPA and the DOI's NEPA regulations. Comments should include the commenting party's name, return address, and the caption: ''DEIS Comments, Campo Wind Energy Project,'' on the first page of written comments. The comment period lasts 45 days. See the **DATES** section of this notice for the deadline and **ADDRESSES** section of this notice for where to send your comments.

Public comment availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Commenting parties should be aware, before including their address, phone number, email address, or other personal identifying information in a comment, that comments may be made publicly available at any time. While a commenting party may request in its comment that identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Public meeting: You may provide comments in person at the public meeting. The date and location of the public hearing will be announced at least 15 days in advance through a notice to be published in local newspapers (*San Diego Union-Tribune* and *San Diego Business Journal*) and online at: *www.CampoWind.com.*

VI. Authority

This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46),

implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8.

Dated: May 17, 2019.

Tara Sweeney,

Assistant Secretary-Indian Affairs.

[FR Doc. 2019–10914 Filed 5–23–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[RR83530000, 190R5065C6, RX.59389832.1009676]

National Environmental Policy Act Implementing Procedures for the Bureau of Reclamation (516 DM 14)

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of final National Environmental Policy Act Implementing Procedures.

SUMMARY: This notice announces the addition of a new categorical exclusion under the National Environmental Policy Act of 1969 for the Bureau of Reclamation in the Department of the Interior's Departmental Manual (DM) at 516 DM 14. The new categorical exclusion is for the transfer of title of certain projects and facilities from the Bureau of Reclamation to a qualifying non-Federal project entity. The new categorical exclusion allows for more efficient review of appropriate title transfer actions.

DATES: The categorical exclusion is effective May 24, 2019.

ADDRESSES: The new categorical exclusion can be found at the web address *https://www.doi.gov/elips/browse,* at Series 31, Part 516, chapter 14.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Cunningham, Environmental Compliance Division, Bureau of Reclamation, (303) 445–2875; or via email at *ccunningham@usbr.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Reclamation (Reclamation) was established in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. Results are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure contributed to making Reclamation the largest wholesale supplier of water and the second largest producer of hydropower in the United States.

Title Transfer

Title transfer is a voluntary conveyance of ownership (title) for water projects, portions of projects, or project facilities such as dams, canals, laterals, and other water-related infrastructure and facilities to beneficiaries of those facilities. Title transfer divests Reclamation of responsibility for the operation, maintenance, management, regulation of, and liability for the project, lands, and facilities to be transferred. It provides the non-Federal entity with greater autonomy and flexibility to manage the facilities to meet its needs, in compliance with Federal, state, and local laws and in conformance with contractual obligations. Title-transferred assets would no longer be Federal assets.

Under the Reclamation Extension Act of 1914, the responsibility for operations, maintenance, and replacement of facilities may be, and often is, contractually transferred to the water users. Title or ownership of facilities and projects, however, must remain with the United States until Congress specifically authorizes their transfer. Since 1995, Reclamation has been working closely with qualifying entities of specific projects and has conveyed over 30 projects and/or project-related facilities, including dams, reservoirs, canals, laterals, buildings, project lands, and easements. Congressional authorizations for title transfer historically have occurred on a project-by-project basis. While Congress may authorize future title transfers by this same approach, recent legislation was passed to facilitate transfer of title for Reclamation project facilities. On March 12, 2019, the President signed into law the John D. Dingell, Jr. Conservation, Management, and Recreation Act, Public Law 116–9. Title VIII, Subtitle A of Public Law 116–9, *Reclamation Title Transfer* (Title VIII), authorizes Reclamation to transfer title of certain project facilities without additional Congressional action if they meet eligibility criteria, under procedures established by Reclamation.

Transfer of title is a Federal action under the National Environmental Policy Act (NEPA). NEPA requires that when a major Federal action would have significant impacts on the quality of the human environment, a statement be prepared to describe the impacts and effects on the human environment associated with the Federal action. When a Federal agency determines that a certain category of actions will not normally have an individually or cumulatively significant effect on the human environment and for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required, that category of actions may be excluded from further NEPA review (40 CFR 1508.4). When appropriately established and applied, categorical exclusions (CEs) serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive EAs or EISs (Council on Environmental Quality (CEQ) 2010).

Comments on the Proposal

Reclamation solicited comments from the public on establishing a new CE through a 30-day public comment period, announced in the **Federal Register** on October 17, 2018 (83 FR 52503). All comments received, to date, have been considered.

Reclamation received 16 letters from state governments, water and irrigation districts, water user organizations, a national environmental professionals association and a consortium of conservation interests. Individual comments included several that restated the objectives, limitations, and rationale for the CE, several that expressed general or detailed support or opposition for the CE, and several that expressed general or detailed support or opposition to transferring title.

Reclamation appreciates the interest and participation of all respondents. Reclamation has noted the comments, which provided general support and general opposition. For comments providing additional detail, questions, and suggestions, Reclamation, where appropriate, grouped the common comments and responds to the comments as follows:

Comment 1—Adequacy of analysis of title transfers: Commenters were concerned that a CE would preclude NEPA analysis or would not provide enough or sufficiently rigorous analysis for title transfer actions, including indirect effects, reasonable alternatives to be evaluated, and/or cumulative effects.

Response 1—CEs are not exemptions or waivers from NEPA. Rather, they are a type of NEPA review intended to accomplish the purposes of NEPA, efficiently and effectively. A CE is a tool to complete the NEPA environmental review process for proposals that normally would *not* require more resource-intensive EAs or EISs. Reclamation intends to meet

requirements under NEPA and other laws and regulations, ensuring the appropriate level of analysis and public involvement, consistent with regulations and policies. Any proposals not meeting the CE Qualification Factors (see CE Qualification Factors section in this notice) or triggering the Department of the Interior (Department) extraordinary circumstances, listed at 43 CFR 46.215, would need additional review.

Comment 2—Adequacy of public and agency involvement: Commenters were concerned that a CE would reduce the ability of the public and agencies to receive notification of the CE and provide public input. One commenter requested notification for any CE Reclamation considers across the Missouri River basin.

Response 2—The CEQ and the Department's NEPA implementing regulations do not require public notice of an agency's use of a CE. The eligibility criterion for transferring title, as described in CE Qualification Factor #8 does, however, establish Reclamation's commitment that affected state, local, and tribal governments, appropriate Federal agencies, and the public be notified, regarding proposed title transfers, and invited to participate in an open manner.

Comment 3—Title transfers should be subject to Congressional approval to protect the public interest: The commenter expressed concern that divestiture of any of Reclamation's projects or facilities without public or Congressional approval should be subject to specific limitations in order to protect the public interest.

Response 3—Reclamation is authorized to transfer title only as a result of Congressional action, including Public Law 116–9, Title VIII.

Comment 4—Eligibility factors for a proposed title transfer to qualify for use of the CE: The commenter recommends Reclamation's Framework for the Transfer of Title (September 2004) and Reclamation's policy clearly exclude the following types of projects and facilities, in part or in whole, from use of the CE:

- Large multi-purpose projects
- hydropower projects
- projects that lack consensus among project beneficiaries
- projects with a history of litigation or legal concerns
- inter-basin transfer projects or components of an inter-basin transfer project

Response 4—CEQ guidance advises that agencies develop CEs by setting limits on potential project actions to ensure they will not result in significant environmental impacts. Reclamation's new CE is intended to appropriately define and limit use to only those title transfer actions that meet CE Qualification Factors, do not involve extraordinary circumstances, and will not result in individually or cumulatively significant environmental impacts. Reclamation considered other factors for its CE, including some indicated by the commenter. Reclamation has determined, however, that the exclusions suggested by this comment are substantially satisfied in other CE Qualification Factors and analysis of extraordinary circumstances. For example, the transferee would be required to ensure there are no competing demands for the use of transferred facilities.

Comment 5—Scope of proposed title transfers: The commenter suggests that Reclamation should not divest a portion of a project that would not have qualified for a CE if considered in whole. The commenter expressed a particular concern with piecemeal divestitures involving the Garrison Diversion Unit.

Response 5—The terms ''piecemealing'' or ''improper segmentation'' are sometimes used to describe actions that are divided into smaller parts with less significant individual effects, in order to avoid preparing an EIS. Section 1508.25 of CEQ's NEPA implementing regulations requires that ''connected actions'' and ''cumulative actions'' be analyzed in the same impact statement. Reclamation will consider extraordinary circumstances to ensure actions under any CE are not part of a larger action.

Reclamation would not be prohibited from transferring title to a portion of a larger project where Congress authorizes it. In such cases, Reclamation would define the scope of actions to ensure the appropriate analysis and documentation. For projects that would facilitate future actions or are an initial action in a known series of actions, an EA or EIS may be required.

Comment 6—Extraordinary circumstances: The commenter suggests that Reclamation should not categorically exclude from NEPA analysis any projects for which extraordinary circumstances exist.

Response 6—Reclamation confirms that it would not use a CE for projects for which extraordinary circumstances exist. Reclamation prepares a CE Checklist to use any CE in 516 DM 14.5. The checklist provides a methodical approach to defining a proposed action according to its list of CEs and ensuring that the proposed action is analyzed against each extraordinary circumstance.

Comment 7—Suggested language to clarify CE Qualification Factors: Three commenters suggested amending the CE Qualification Factors to recognize coordination of operations agreements with the following edits (added language is indicated in italics below):

#3. The potential transferee must ensure that there are no competing demands for use of the transferred facilities*, with the exception of those demands accommodated by existing contractual arrangements.*

#4. The potential transferee must ensure that the facilities proposed for transfer are not hydrologically integrated with other facilities thereby impacting other contractors, stakeholders or activities*, with the exception of those impacts accommodated by existing contractual arrangements.*

Response 7—Reclamation accepts the rationale and suggested language for CE Qualification Factors #3 and #4. In addition, to ensure that potential transferees coordinate with other parties to such existing contractual arrangements, Reclamation revises CE Qualification Factor #6 as follows:

#6. The potential transferee must ensure that issues involving *existing contracts and agreements,* interstate compacts, and agreements are resolved, and treaty and international agreement obligations are fulfilled prior to transfer.

Finally, Reclamation revises the CE language itself to be consistent with the above revisions, and other clarifications with regard to the Secretary's responsibilities, as follows*:* ''Transfer from Federal ownership of facilities and/or interest in lands to a qualifying entity where there are no competing demands for use of the facilities; where the facilities are not hydrologically integrated; where, at the time of transfer, there would be no planned change in land or water use, or in operation, or maintenance of the facilities; and where the transfer would be consistent with the Secretary's responsibilities, including but not limited to *existing contracts or agreements,* the protection of land *resources* and water *rights* held in trust for federally recognized Indian tribes *and Indian individuals,* and ensuring compliance with international treaties and interstate compacts.''

Comment 8—Clarification on ''severing ties'': Commenters referred to language provided in Reclamation's **Federal Register** notice proposing the title transfer CE, introductory paragraphs, where we state, ''The transfer of title of a project or set of facilities will, in effect, sever

Reclamation's ties with that project or those conveyed facilities.'' The comments noted that ''even if title is transferred, ties with Reclamation are not severed. For example, the relationship with a water district would remain.''

Response 8—Because Reclamation would no longer own, operate, or otherwise manage transferred assets, transfers will normally sever its contractual relationships with affected water districts.

Comment 9—Project power: Multiple commenters discussed the need for continued access to project power for title transfer projects.

Response 9—The comment appears to be more related to the terms and conditions of title transfers rather than our review to establish a new CE. Reclamation would implement the terms and conditions of any Congressional action authorizing a title transfer, including any Congressional directive related to project use power.

Comment 10—Public interest and public trust: Multiple commenters questioned how operations of the transferred facilities would be carried out in such a manner that the public interest is maintained.

Response 10—Similar to the comment above, it appears to be more related to the terms and conditions of title transfers rather than our review to establish a CE. Reclamation would implement the terms and conditions of any Congressional action authorizing a title transfer. Once title is transferred, Reclamation has no authority over a non-Federal entity.

Comment 11—Indian trust resources: The commenter questioned how Indian trust resources would be managed and whether they would be maintained in a manner similar to that of the Federal Government.

Response 11—The United States cannot transfer its Indian trust responsibilities. Therefore, eligibility to use this CE would only involve proposals for which there are no Indian trust responsibilities. Language in Eligibility criterion #5 is amended to clarify this point, as follows: *The transfer would not include lands or facilities involving Indian trust responsibilities.*

Comment 12—Delegation to non-Federal entities: Multiple commenters questioned if Reclamation will delegate Federal authority to ensure proper management and protection of public trust resources.

Response 12—In general, Reclamation may not delegate its authorities to a non-Federal entity under title transfer. Once title is transferred, Reclamation has no authority over the facility or the owner. Under CE Qualification Factors, title transferees are required to demonstrate ability to properly manage the subject lands and facilities, which would be reflected in title transfer conditions and agreements.

Comment 13—Large and complex projects: The commenter questioned whether Reclamation will apply this CE to large and complex projects, such as the Federal Columbia River Power System.

Response 13—Reclamation will carefully apply this CE to only those proposed projects meeting the CE Qualification Factors and free of extraordinary circumstances. Each proposed title transfer will be reviewed on a case-by-case basis.

Comment 14—Additional considerations to determine eligibility to use a CE: The commenter expressed concern about several topics (below) and questioned how project requirements would be met:

- Illegal water deliveries, over-appropriation (*e.g.,* the Umatilla Basin controversy)
- Maintaining instream flow
- Ensuring tribal trust
- Re-allocation of water
- Discretion in mitigation
- Addressing damages to subject facilities caused by unforeseen circumstances (forces of nature, time)
- Addressing damages downstream caused by subject facilities (dam failure, slope failure, flooding)
- Congressional approval (all transfers require Congressional approval)

Response 14—Reclamation's proposed new CE is intended to appropriately define and limit use to only those title transfer actions that meet CE Qualification Factors, do not involve extraordinary circumstances, and will not result in individually or cumulatively significant environmental impacts. Reclamation considered other factors for its proposed CE, including some indicated by the commenter. For example, for a proposal to qualify for use of the CE, the transferee would be required to ensure there are no competing demands for the use of transferred facilities and the transfer would not include lands or facilities involving Native American trust responsibilities. Reclamation has determined that the commenter's suggestions are substantially satisfied by current CE Qualification Factors and analysis against extraordinary circumstances. Reclamation will consider all relevant factors when determining both the eligibility of the CE and the potential for extraordinary circumstances on each proposed title transfer.

Comment 15—Frequency of title transfer actions: The commenter expressed concern that establishing a CE would result in more frequent implementation of these types of actions and cumulative impacts of wide-scale disposal of Federal lands.

Response 15—Reclamation anticipates that establishing a CE would not change the overall number of potential, eligible title transfer proposals. Of those, only title transfers meeting CE Qualification Factors would be eligible to use the CE. Reclamation does not anticipate that establishing this CE would result in a wide-scale disposal of Federal lands.

Comment 16—CE development process: The commenter requests that Reclamation reconsider drafting of its proposal to establish a CE and recommends issuing a revised notice.

Response 16—Reclamation appreciates the commenter's suggestions and has revised the CE definition and CE Qualification Factors in response to comments to correct and clarify language. These changes will help ensure use of the CE only for title transfers that would *not* result in significant impacts. Reclamation is establishing this title transfer CE consistent with CEQ and Department regulations and guidance.

Comment 17—Change in use: The commenter expressed concern that the ''. . . language in the CE, 'at the time of transfer,' leaves open the possibility that these same facilities may undergo such changes in the future without the procedures and protections to the environment that normally would be required of Reclamation under NEPA.''

Response 17—The basis of this CE is that it applies only in instances where, at the time of transfer, such changes are not contemplated; and if they are, the use of this CE would not be allowed. This determination relies on the stated intentions of the potential transferee and the assumption that parties enter the agreement in good faith. Reclamation understands there is a chance a potential transferee could falsely state its intention or change its plan over time. These circumstances would be no better served by preparing an EA or an EIS. Reclamation believes that the potential for this scenario is mitigated by the underlying purposes of the project, in which a potential transferee is already invested and the interest a potential transferee would have in protecting its business integrity with Reclamation and others.

Comment 18—Undermines NEPA: The commenter is concerned that ''. . .

the desire for a speedy environmental review has undermined the very existence of NEPA.''

Response 18—As provided in CEQ regulations and guidance, establishing a CE and appropriately using CEs are consistent with the policy and objectives of NEPA.

Text of Addition to 516 DM 14, Section 14.5 Categorical Exclusions

F. Title Transfer Activities

(1) ''*Transfer from Federal ownership of facilities and/or interest in lands to a qualifying entity where there are no competing demands for use of the facilities; where the facilities are not hydrologically integrated; where, at the time of transfer, there would be no planned change in land or water use, or in operation, or maintenance of the facilities; and where the transfer would be consistent with the Secretary's responsibilities, including but not limited to existing contracts or agreements, the protection of land resources and water rights held in trust for federally recognized Indian tribes and Indian individuals, and ensuring compliance with international treaties and interstate compacts.*''

CE Qualification Factors

The CE is limited to the transfer of projects and/or project facilities from Federal ownership to a qualifying entity, which means an agency of State or local government or Indian tribe, a municipal corporation, quasi-municipal corporation, or other entity such as a water district that, as determined by the Secretary, has the capacity to continue to manage the conveyed property for the same purposes for which the property has been managed under Reclamation law. Accordingly, projects involving the following considerations *(CE Qualification Factors)* of a qualifying non-Federal entity would generally be eligible to be considered for the title transfer CE:

1. The potential transferee must demonstrate the technical capability to maintain and operate the facilities and lands on a permanent basis and an ability to meet financial obligations associated with the transferred assets.

2. The potential transferee must affirm that it has no plans to change the maintenance, operations, or use of the lands and water associated with the transferred facilities.

3. The potential transferee must ensure that there are no competing demands for use of the transferred facilities, with the exception of those demands accommodated by existing contractual arrangements.

4. The potential transferee must ensure that the facilities proposed for transfer are not hydrologically integrated with other facilities, thereby impacting other contractors, stakeholders or activities, with the exception of those impacts accommodated by existing contractual arrangements.

5. The transfer would not include lands or facilities involving Indian trust responsibilities.

6. The potential transferee must ensure that issues involving existing contracts and agreements, and interstate compacts and agreements, are resolved, and treaty and international agreement obligations are fulfilled prior to transfer.

7. The potential transferee must assume responsibility for all commitments and agreements into the future.

8. Potentially affected state, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussion to transfer title and will have: (a) The opportunity to comment and suggest options for remedying any problems; and (b) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner. If a project or facility is not eligible for transfer under Public Law 116–9, Title VIII, the transfer proponent may seek legislation to authorize the negotiated terms of the transfer of each project or facility.

Eligibility for this CE would be determined by Reclamation, based on the results of on-site inspections, surveys, and other methods of evaluation and documentation prepared by Reclamation to determine the presence or absence of the exceptions. To determine that a proposed title transfer fits within the CE, Reclamation would review the proposal to determine that all the following apply:

1. The Department's extraordinary circumstances would not be triggered by the title transfer action.

2. The title transfer action would not change:

a. Operation and maintenance of the facilities or lands transferred;

b. land or water use.

3. The title transfer action would not involve any unresolved issue associated with compliance with interstate compacts and agreements; meeting the Secretary's Indian trust responsibilities; and fulfilling treaty and international agreement obligations.

Even for a title transfer action that meets these criteria, Reclamation may, at its sole discretion, decide to prepare an EA or an EIS instead of applying the CE.

Public Law 116–9, Title VIII, Subtitle A, Reclamation Title Transfer

Title VIII facilitates the transfer of title to certain Reclamation project facilities. Reclamation's proposal to establish a new CE for title transfer is separate and independent from implementation of Title VIII. Reclamation anticipates that the applicability of the new CE to proposed projects qualifying for title transfer under Title VIII would be analyzed on a case-by-case basis. Likewise, proposed projects that qualify for the new CE may not qualify for inclusion under Title VIII. We note, however, that both Title VIII and Reclamation's draft language from its **Federal Register** Notice on October 17, 2018 (83 FR 52503) for the CE referenced ''eligibility criteria.'' Given that the two lists' specific eligibility criteria differ, Reclamation will use the term ''CE Qualification Factors'' for the CE to minimize confusion with the law. In addition, Reclamation has modified CE Qualification Factor #8 to account for title transfer proposals that may already be authorized under Title VIII, as well as those not yet authorized.

Categorical Exclusion

The Department and Reclamation find that the category of actions described in the CE (below), limited by the CE Qualification Factors, does not individually or cumulatively have a significant effect on the human environment. This finding is based on analysis of Reclamation's proposal to establish this CE, including analysis of Reclamation's title transfer actions. To date, Reclamation has prepared EAs and made findings of no significant impact (FONSI) on eight projects that were limited in scope, consistent with the CE Qualification Factors. The EA and FONSI documentation for these projects is available at *www.usbr.gov.* Reclamation has prepared two EISs on title transfer proposals and two EAs for projects that involved more complex actions than those that would meet the CE Qualification Factors. In addition, Reclamation has prepared 12 EAs and FONSIs on title transfer proposals for which mitigation was applied to reduce impacts to less than significant. Several of these proposals involved issues of concern including sites of interest to tribal communities and adverse effects to historic properties. The full complement of these EAs, FONSIs, EISs, and Reclamation's knowledge and experience contribute to the body of work Reclamation has used to analyze its title transfer actions and validate its

definition of projects for which the CE would be used.

The CEQ has reviewed the comments received and Reclamation's responses to those comments and has approved the CE. Therefore, the Department will add the final CE to the Departmental Manual at 516 DM 14.5 paragraph F., which covers ''Title Transfer Activities.'' Reclamation recognizes that certain proposed title transfer actions, when reviewed on a case-by-case basis, could trigger one or more of the extraordinary circumstances for which it is not appropriate to utilize the CE. In such cases, the proposed title transfer actions could have a significant environmental effect and would require additional NEPA analysis. Thus, prior to applying the CE, Reclamation will review all extraordinary circumstances in the Department's NEPA regulations. If any extraordinary circumstance does apply, Reclamation will conduct additional NEPA analysis and prepare an EA or EIS.

Amended Text for the Departmental Manual

The text that will be added to 516 DM is set forth below:

Part 516: National Environmental Policy Act of 1969

Chapter 14: Managing the NEPA Process—Bureau of Reclamation

* * * * *

14.5 Categorical Exclusions

* * * * *

F. Title Transfer Activities

* * * * *

(1) Transfer from Federal ownership of facilities and/or interest in lands to a qualifying entity where there are no competing demands for use of the facilities; where the facilities are not hydrologically integrated; where, at the time of transfer, there would be no planned change in land or water use, or in operation, or maintenance of the facilities; and where the transfer would be consistent with the Secretary's responsibilities, including but not limited to existing contracts or agreements, the protection of land resources and water rights held in trust for federally recognized Indian tribes and Indian individuals, and ensuring compliance with international treaties and interstate compacts.

Michaela E. Noble,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2019–10967 Filed 5–23–19; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. 19X.LLIDB00000. L16100000.DP0000. LXSS053D0000.241A. 4500133829

Notice of Availability for the Draft Four Rivers Field Office Resource Management Plan and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Four Rivers Field Office (FRFO), Boise, Idaho, has prepared a Draft Resource Management Plan (RMP) and associated Draft Environmental Impact Statement (EIS) and by this notice is announcing the release of the Draft RMP.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability of the Draft RMP/Draft EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the FRFO Draft RMP/Draft EIS by any of the following methods:

- *Website: http://go.usa.gov/xnsn6* (case sensitive)
- *Email: Four_Rivers_RMP@blm.gov.*
- *Fax:* 208–384–3326.
- *Mail:* Four Rivers Field Office, Attn: Brent Ralston, 3948 S Development Ave. Boise, Idaho 83705.

Copies of the FRFO Draft RMP/Draft EIS are available in the Boise District Office at the above address; at the Idaho BLM State Office, 1387 South Vinnell Way, Boise, ID 83709; and online at the following website: *http://go.usa.gov/xnsn6.*

FOR FURTHER INFORMATION, CONTACT: For further information, contact Pam Murdock, Project Lead, telephone 208–384–3300; address 3948 S Development Ave., Boise, Idaho 83705; email *Four_Rivers_RMP@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Murdock. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with Ms. Murdock. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The FRFO encompasses an area located in southwestern Idaho extending north of the Snake River from approximately Glenns Ferry in the southeast, west to Weiser, and north to McCall. The planning area includes all of the FRFO located outside the Morley Nelson Snake River Birds of Prey National Conservation Area which is governed by a separate RMP. The planning area encompasses approximately 783,000 surface acres and 1,173,150 acres of mineral estate in Ada, Adams, Boise, Camas, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington counties administered by the BLM. Much of the planning area comprises interspersed sections of public, private, State or Forest Service lands.

The FRFO currently manages land in accordance with the 1983 Kuna Management Framework Plan (MFP), the 1987 Jarbidge RMP, and the 1988 Cascade RMP. These plans have been amended since originally approved. This planning effort will identify goals and objectives and update management guidance to create a new RMP. The BLM engaged in public scoping to help identify planning issues that directed the formulation of alternatives and framed the analysis in the Draft RMP/Draft EIS. Issues include managing the scattered BLM-administered land base, balancing increasing public demand with conservation of fragile resources and balancing resource uses (including energy development). The planning effort also considers socio-economic concerns and special designations including lands with wilderness characteristics, wild and scenic rivers and Areas of Critical Environmental Concern (ACECs).

The Draft RMP/Draft EIS evaluates four alternatives in detail. Alternative A is the No Action Alternative, which is a continuation of current management, public use, resource protection, and conservation prescriptions in the existing RMPs and MFP, as amended. It does not address issues that were nonexistent or unforeseen when the BLM prepared the original RMPs and MFP.

Alternative B emphasizes protecting natural resource values from potential impacts of population growth and increased use and incorporates protective measures for plants and wildlife compared to other alternatives. While some areas would still emphasize recreation and community development

uses, the primary emphases are for conservation and reduction of habitat fragmentation and resource degradation.

Alternative C focuses on accommodating increased population growth and use of public lands within the planning area by emphasizing land disposal for local community expansion, providing economic expansion through extractive and renewable energy resource use and continues to provide recreational opportunities.

Alternative D is the Preferred Alternative, and emphasizes managing public lands to promote economic development while maintaining natural resource values. This alternative recognizes the diverse issues and needs throughout the planning area by promoting a balanced use of resources including management for oil and gas leasing and development, livestock grazing, recreational use and wildlife habitat, including big game winter range and migration corridors.

In the Draft EIS, the BLM proposes and evaluates ACECs to protect specific resource values and other uses where appropriate. Pursuant to 43 CFR 1610.7–2(b), this notice announces a concurrent public comment period for potential ACECs. A more detailed summary of all proposed ACECs is available at the project website provided above.

ACEC name	Alternative A acres	Alternative B acres	Alternative C acres	Alternative D acres
Bannister Basin		5,840		
Boise Front	11,360	24,630		
Buckwheat Flats		200		
Cartwright Canyon	400			
Cherry Gulch		3,070		
Hixon-CSTG Habitat	4,170	21,100	12,870	18,660
Goodrich Creek		450		
Hulls Gulch	120			
King Hill Creek	840	2,840		
Curlew Habitat	45,020	46,310	26,810	26,810
Lost Basin		60		
Mountain Home		520		
Rebecca Sandhill		1,250		
Sand-capped Knob	40	180		
Sand Hollow	1,300	1,330		
Sheep Creek		1,970		
Summer Creek		630		
Willow Creek	1,010	1,120		
Woods Gulch	40	40		

Pertinent information regarding the ACECs proposed for designation in Alternative D:

• *Hixon Columbian Sharp-tailed Grouse (CSTG) Habitat ACEC:* The 1988 Cascade RMP designated 4,170 acres as the Hixon CSTG Habitat ACEC to intensify habitat management for one of the last remaining populations of CSTG in western Idaho. Alternative D expands the ACEC to include lands acquired through purchase or exchange since the last planning effort and maintains habitat management objectives. The alternative would allow development activities within the ACEC, subject to restrictions, in order to maintain CSTG habitat. Salable mineral development would be allowed on sites more than 0.5 miles from key nesting and brood-rearing habitat as long as it does not exceed two acres in size, and would be subject to seasonal restrictions; the ACEC would be open to fluid mineral leasing subject to moderate constraints; all rights-of-way would be subject to timing restrictions and aboveground facilities would only be authorized if co-located with existing facilities; renewable energy development would not be allowed; and livestock grazing would be managed to maintain or enhance CSTG habitat.

• *Long-billed Curlew Habitat ACEC:* The 1988 Cascade RMP designated this ACEC to protect crucial nesting habitat for the curlew. Alternative D retains the ACEC designation for areas that continue to provide suitable habitat. The ACEC includes the following management prescriptions: Salable mineral development is allowed on sites more than 0.5 miles from key nesting and brood-rearing habitat, as long as it does not exceed five acres in size and conforms to seasonal restrictions; fluid mineral leasing is open subject to moderate constraints; and excludes wind energy rights-of-way.

The BLM initiated the land-use planning process on April 3, 2008, through a Notice of Intent published in the **Federal Register** (73 FR 18298), notifying the public of a formal scoping period and soliciting public participation. Since 2008, the BLM has held multiple meetings with Tribal governments, stakeholders, interest groups, cooperating agencies, counties and the public.

After the public comment period, the BLM will use substantive public comments to revise the Draft RMP/Draft EIS in preparation for its release as the Proposed RMP/Final EIS. The Notice of Availability for the Proposed RMP/Final EIS will be published in the **Federal Register**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

John F. Ruhs,

Idaho BLM State Director.

[FR Doc. 2019–10738 Filed 5–23–19; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X L1109AF LLUT980300 L12200000.PM0000–24–1A]

Notice of Public Meeting for the Utah Resource Advisory Council, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah RAC will hold a public meeting on June 17–18, 2019. The meeting will be held on June 17, 2019, from 12:00 p.m. to 4:00 p.m., and on June 18, 2019, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the Kanab High School, 59 E Cowboy Way, Kanab, Utah 84741. Written comments to address the RAC may be sent to the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, or via email to *BLM_UT_External_Affairs@blm.gov* with the subject line ''Utah RAC Meeting.''

FOR FURTHER INFORMATION CONTACT: Lola Bird, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4033; or email *lbird@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: Agenda topics will include selecting a new chairperson; BLM statewide updates and planning updates; and discussing recreation business plans for Cedar Mesa, Richfield Field Office, and Desolation Canyon. Final agenda will be posted online at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/RAC.*

The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals. The public may address the RAC in person or submit a written statement on June 17, 2019, at 3:00 p.m., and June 18, 2019, at 9:45 a.m. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. The BLM may also extend the comment period by 30 minutes. Written comments may also be sent to the BLM Utah State Office at the address listed in the **ADDRESSES** section of this Notice. All comments received will be provided to the Utah RAC. All comments received will be provided to the Utah RAC.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Detailed meeting minutes for the Utah RAC meetings will be maintained in the BLM Utah State Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Authority: 43 CFR 1784.4–2.

Edwin L. Roberson,

State Director.

[FR Doc. 2019–10893 Filed 5–23–19; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NHPA–27955; PPWONRADE2, PMP00EI05, YP00000]

RIN 1024–AE49

Tribal Consultation; National Register of Historic Places

AGENCY: National Park Service, Interior.

ACTION: Notice of Tribal consultation.

SUMMARY: The National Park Service (NPS) is announcing that it will be conducting Tribal consultation to obtain input from Tribes on proposed changes to regulations governing the National Register of Historic Places.

DATES: Tribes may submit written input by July 8, 2019. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the Tribal consultation sessions.

ADDRESSES: Tribes may submit written input to *consultation@nps.gov* or by mail to National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for addresses of the Tribal consultation sessions.

FOR FURTHER INFORMATION CONTACT: Joy Beasley, Acting Associate Director, Cultural Resources Partnerships and Science & Keeper of the National Register of Historic Places, NPS (WASO), (202) 354–6991, *joy_beasley@nps.gov.*

SUPPLEMENTARY INFORMATION: On March 1, 2019, NPS published a proposed rule to revise certain regulations, in 36 CFR parts 60 and 63, regarding the listing of properties in the National Register of Historic Places and determinations of eligibility of properties for such listing. *See* 84 FR 6996. The public comment period for the proposed rule ended on April 30, 2019. During the public comment period, representatives from several Tribes expressed concerns regarding the effect of the proposed rule on Tribes, and some Tribes specifically requested that government-to-government consultation be conducted regarding the proposed rule. The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation and recognition of their sovereignty and right to self-governance. Accordingly, we will be hosting the following Tribal consultation sessions:

Date	Time	Address
Monday, June 24, 2019	9:30 a.m. to 12:30 p.m., Local Time	(In association with National Congress of American Indians Mid-Year Conference) Nugget Casino & Resort, 1100 Nugget Ave., Sparks, NV 89431, Room: Southern Pacific B.
Monday, July 1, 2019	1 p.m. to 3 p.m., Eastern Time	(By teleconference) Call-in number: 888–324–2907, Passcode: 8756820.

The NPS looks forward to hearing Tribal input on these proposed regulations at one of the above sessions or in writing. NPS will be considering comments already received by Tribes but welcomes any supplementary information that Tribes may wish to submit.

Dated: May 16, 2019.

Ryan Hambleton,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2019–10853 Filed 5–23–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Light-Emitting Diode Products, Systems, and Components Thereof, DN 3385;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Lighting Science Group Corporation; Healthe, Inc. and Global Value Lighting, LLC on May 20, 2019. The original complaint was filed on May 1, 2019 and a notice of receipt of complaint; solicitation of comments relating to the public interest was published in the **Federal Register** on May 06, 2019. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diode products, systems, and components thereof. The complaint names as respondents: Nichia Corporation of Japan; Nichia America Corporation of Wixom, MI; Cree, Inc. of Durham, NC; Cree Hong Kong, Limited of Hong Kong; Cree Huizhou Solid State Lighting Co. Ltd. of China; OSRAM GmbH of Germany; OSRAM Licht AG of Germany; OSRAM Opto Semiconductors GmbH of Germany; OSRAM Opto Semiconductors, Inc. of Sunnyvale, CA; Lumileds Holding B.V. of the Netherlands; Lumileds, LLC of San Jose, CA; Signify N.V. (f/k/a Philips Lighting N.V.) of the Netherlands; Signify North America Corporation (f/k/a Philips Lighting North America Corporation) of Somerset, NJ; MLS Co., Ltd. of China; LEDVANCE GmbH of Germany; LEDVANCE LLC of Wilmington, MA; General Electric Company of Boston, MA; Consumer Lighting (U.S.), LLC (d/b/a GE Lighting, LLC) of Cleveland, OH; Current Lighting Solutions, LLC of Cleveland, OH; Acuity Brands, Inc. of Atlanta, GA; Acuity Brands Lighting Inc. of Conyers, GA; Leedarson Lighting Co., Ltd. of China; and Leedarson America, Inc. of Smyrna, GA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3385'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: May 20, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–10847 Filed 5–23–19; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1123]

Carburetors and Products Containing Such Carburetors; Notice of a Commission Determination Not To Review an Initial Determination Granting In-Part a Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 50) of the presiding administrative law judge (''ALJ''), granting in-part complainant's unopposed motion for leave to amend the complaint and notice of investigation to (1) substitute Huayi Mechanical and Electrical Co., Ltd. for originally named respondent Huayi Carburetor Factory, and update the corresponding address; (2) correct the corporate name of respondent Cabela's Incorporated to Cabela's LLC; and (3) substitute Techtronic Industries (Dongguan) Co. Ltd. for the named respondent Techtronic Industries Co. Ltd. of Hong Kong d/b/a Techtronic Industries Power Equipment.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 20, 2018, based on a complaint, as supplemented, filed on behalf of Walbro, LLC of Tucson, Arizona (''Complainant''). 83 FR 34,614 (July 20, 2018). The complaint, as supplemented, alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carburetors and products containing such carburetors by reason of infringement of one or more of U.S. Patent Nos. 6,394,424; 6,439,547; 6,533,254; 6,540,212; and 7,070,173. The complaint further alleges that an industry in the United States exists as required by section 337. The notice of investigation named numerous respondents, including Huayi Carburetor Factory of Chongqinq, China, Cabela's Incorporated of Sidney, Nebraska, and Techtronics Industries Co. Ltd of Hong Kong d/b/a Techtronic Industries Power Equipment of Hong Kong. The Office of Unfair Import Investigations (''OUII'') was named as a party in this investigation.

On March 14, 2019, Complainant filed an unopposed motion to amend the complaint and Notice of Investigate to: (1) Substitute ''Huayi Mechanical and Electrical Co., Ltd.'' for originally named respondent ''Huayi Carburetor Factory,'' and update the address accordingly to ''No.32, Xinghuo Industrial Zone, Fuding City, Fujian Province 355200, P.R. China''; (2) correct the corporate name of respondent ''Cabela's Incorporated'' to ''Cabela's LLC''; (3) substitute ''Techtronic Industries (Dongguan) Co. Ltd.'' for named respondent ''Techtronics Industries Co. Ltd of Hong Kong d/b/a Techtronic Industries Power Equipment;'' and (4) update contact information for Complainant's counsel. On March 25, 2019, OUII filed a response supporting the motion in-part.

On April 25, 2019, the ALJ issued Order No. 50. Order No. 50 finds that ''good cause exists for amending the complaint to change the names of Cabela's Incorporated and to substitute Respondents Huayi Mechanical and Electrical Co. Ltd. and Techtronic Industries (Dongguan) Co. Ltd. for Respondents Huayi Carburetor Factory, and Techtronic Industries Co. Ltd. of Hong Kong d/b/a Techtronic Industries Power Equipment.'' Order No. 50 at 2. The ALJ further finds that ''amending the Complaint and Notice of Investigation to reflect the proper names of the Respondents will aid in the development of the Investigation and is necessary to avoid prejudicing the public interest and rights of the parties to the Investigation.'' *Id.* However, the ALJ declined to grant the motion with respect to Complainant's request to change counsel's address as that change

is made normally through a notice of appearance. *Id.* No party petitioned for review.

The Commission has determined not to review the ID. The notice of investigation and complaint are amended.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 20, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–10852 Filed 5–23–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1106]

Certain Toner Cartridges and Components Thereof; Notice of a Commission Determination To Affirm an Initial Determination Granting Respondents' Motions for Summary Determination of Non-Infringement; Finding of No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the initial determination (''ID'') (Order No. 40) of the presiding administrative law judge (''ALJ'') granting certain respondents' respective motions for summary determination of non-infringement. Accordingly, the Commission has determined to find no violation of section 337. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 29, 2018, based on a complaint filed on behalf of Canon Inc. of Tokyo, Japan; Canon U.S.A. Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, ''Canon''). 83 FR 13516–17. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,746,826; 9,836,026; 9,841,727 (''the '727 patent''); 9,841,728 (''the '728 patent''); 9,841,729; 9,857,764; 9,857,765; 9,869,960; and 9,874,846. The Commission's notice of investigation named numerous respondents, including: Ninestar Corporation and Ninestar Image Tech Limited, both of Guangdong, China; Ninestar Technology Company, Ltd. of City of Industry, California; and Static Control Components, Inc. of Stanford, North Carolina (collectively, ''Ninestar''); Print-Rite N.A., Inc. of La Vergne, Tennessee; Union Technology International (M.C.O.) Co. Ltd. of Rodrigues, Macau; Print-Rite Unicorn Image Products Co. Ltd. of Zhuhai, China; The Supplies Guys, Inc. of Lancaster, Pennsylvania; and LD Products, Inc. of Long Beach, California (collectively, ''Print-Rite''); and Aster Graphics, Inc. of Placentia, California; Aster Graphics Co., Ltd. of Guangdong, China; and Jiangxi Yibo E-tech Co., Ltd. of Jiangxi, China (collectively, ''Aster''; all collectively, ''the active respondents''). The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. The '727 and '728 patents have been terminated from the investigation. *See* Order No. 18 (June 28, 2018), *unreviewed by* Comm'n Notice (July 23, 2018).

All other respondents have been found in default or terminated from the investigation based on withdrawal of Canon's allegations as to those respondents. *See, e.g.,* Order No. 11 (May 2, 2018) (ID finding eleven respondents in default); *unreviewed by* Comm'n Notice (May 23, 2018); Order No. 30 (Oct. 22, 2018) (ID terminating the investigation as to a single respondent); *unreviewed by* Comm'n Notice (Nov. 19, 2018). Specifically, the following thirty-five respondents have been found in default: Arlington Industries, Inc. of Waukegan, Illinois; Ourway US Inc. of City of Industry, California; Print After Print, Inc. d/b/a OutOfToner.com of Phoenix, Arizona; GPC Trading Co. Limited d/b/a GPC Image of Kowloon, Hong Kong; ACM Technologies, Inc. of Corona, California; Ourway Image Tech. Co., Ltd., Ourway Image Co., Ltd., and Zhuhai Aowei Electronics Co., Ltd., all of Zhuhai, China; Acecom, Inc.—San Antonio d/b/a InkSell.com of San Antonio, Texas; Bluedog Distribution Inc. of Hollywood, Florida; i8 International, Inc. d/b/a Ink4Work.com of City of Industry, California; Ink Technologies Printer Supplies, LLC of Dayton, Ohio; Linkyo Corp. d/b/a SuperMediaStore.com of La Puente, California; CLT Computers, Inc. d/b/a Multiwave and MWave of Walnut, California; Imaging Supplies Investors, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Reno, Nevada; Online Tech Stores, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Grand Rapids, Michigan; Fairland, LLC d/b/a ProPrint of Anaheim Hills, California; 9010–8077 Quebec Inc. d/b/a Zeetoner of Quebec, Canada; World Class Ink Supply, Inc. of Woodbury, New Jersey; EIS Office Solutions, Inc. and Zinyaw LLC d/b/a TonerPirate.com, both of Houston, Texas; eReplacements, LLC of Grapevine, Texas; Garvey's Office Products, Inc. of Niles, Illinois; Master Print Supplies, Inc. d/b/a HQ Products of Burlingame, California; Reliable Imaging Computer Products, Inc. of Northridge, California; Frontier Imaging Inc. of Compton, California; Hong Kong BoZe Company Limited d/b/a Greensky of New Kowloon, Hong Kong; Apex Excel Limited d/b/a ShopAt247 of Rowland Heights, California; Billiontree Technology USA Inc. d/b/a Toner Kingdom of City of Industry, California; Kuhlmann Enterprises, Inc. d/b/a Precision Roller of Phoenix, Arizona; FTrade Inc. d/b/a ValueToner of Staten Island, New York; V4INK, Inc. of Ontario, California; Do It Wiser LLC d/b/a Image Toner of Alpharetta, Georgia; Global Cartridges of Burlingame, California; and Kingway Image Co., Ltd. d/b/a Zhu Hai Kingway Image Co., Ltd. of Zhuhai, China.

On November 28, 2018, Print-Rite and Aster each moved for summary determination that their respective

accused products do not infringe the asserted patents. On the same date, Ninestar filed an unopposed motion for leave to file a motion for summary determination that its accused products do not infringe the asserted patents. All of the active respondents' motions were contingent on the ALJ construing the asserted claims to require a pivotable coupling member. Also, on the same date, Canon moved for summary determination of infringement with respect to all of the respondents' accused products, both active and defaulting. Canon's motion was contingent on the ALJ construing the asserted claims to require a coupling member that does not need to pivot or incline. On December 10, 2018, Canon stated in its response to the two pending summary determination motions that it would not oppose the motions if the ALJ construed the asserted claims to require a pivotable coupling member. On the same date, OUII filed a response supporting all of the motions for summary determination of non-infringement, including Ninestar's motion for leave to file its motion for summary determination of non-infringement.

On February 28, 2019, the ALJ issued her *Markman* Order (Order No. 38) construing the asserted claims to require a pivotable coupling member. On March 6, 2019, Ninestar moved, based on the *Markman* Order's claim construction, for summary determination of non-infringement. On March 8, 2019, Canon stated in its response to Ninestar's motion that it would not oppose the motion based on the *Markman* Order.

On March 13, 2019, the ALJ issued the subject ID (Order No. 40) granting each motion for summary determination of non-infringement. In the subject ID, the ALJ also denied Canon's motion for summary determination of infringement as moot. On March 25, 2019, Canon and the Active Respondents each petitioned for review of the subject ID. On April 1, 2019, Canon and the Active Respondents each filed a response in opposition to the other party's petition for review. On the same date, OUII filed a response in opposition to each petition for review.

On May 6, 2019, the Commission determined to review the ID and the underlying *Markman* Order in their entirety and requested the parties to respond to certain questions concerning the issues under review. On May 14, 2019, Canon filed its written submission in response to the Commission questions. Canon stated that it does not seek relief against the defaulting respondents unless the *Markman* Order's construction requiring a pivotable coupling member is modified.

Having reviewed the record of the investigation, including Order No. 40 and the *Markman* Order, the parties' briefing, and Canon's response, the Commission has determined to affirm the subject ID. Accordingly, the Commission finds no violation of section 337. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.
Issued: May 20, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–10848 Filed 5–23–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 17, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Middle District of Florida in the lawsuit entitled *United States of America* v. *BKF Capital Group, Inc.,* Civil Action No. 8:18–cv–01863–VMC–TGW.

The Consent Decree resolves the United States' claims set forth in its complaint against BKF Capital Group, Inc. (''Defendant'') for cost recovery under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') relating to the release or threatened release of hazardous substances into the environment at Cattle Dipping Vat A (Site No. OT–59A) in Polk County, Florida, and Cattle Dipping Vats C and D (Site Nos. OT–59C and OT–59D) in Highlands County, Florida (together, the ''Vat Sites'') within the Avon Park Air Force Range (''APAFR''). Under the terms of the proposed consent decree, Defendant will reimburse $725,000 of the costs incurred by the United States Air Force in connection with response actions at the Vat Sites. In return, the United States agrees not to sue or take administrative action against Defendant under Section 107(a) or Section 113 of CERCLA with regard to the Vat Sites.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *BKF Capital Group, Inc.,* D.J. Ref. No. 90–11–3–11242. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendix and signature pages, the cost is $3.00.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–10941 Filed 5–23–19; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services

[NARA–2019–023]

Freedom of Information Act (FOIA) Advisory Committee Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act

(FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on June 6, 2019, from 10 a.m. to 1 p.m. EDT. You must register for the meeting by midnight EDT June 3, 2019.

ADDRESSES: National Archives and Records Administration (NARA); 700 Pennsylvania Avenue NW; William G. McGowan Theater, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road—OGIS; College Park, MD 20740–6001, by telephone at 202–741–5770, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: This is the fourth meeting of the third committee term. The Committee will hear academic research about FOIA and review the work of the committee's three subcommittees, working on records management, FOIA vision, and time/volume. We will post meeting materials online at *https://www.archives.gov/ogis/foia-advisory-committee/2018-2020-term/meetings.*

Procedures: The meeting is open to the public. Due to building access restrictions, you must register through Eventbrite in advance if you wish to attend. You will also go through security screening when you enter the building. To register, use this link: *https://foia-advisory-committee-meeting.eventbrite.com.* We will also live-stream the meeting on the National Archives' YouTube channel at *https://www.youtube.com/user/usnationalarchives,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202–741–5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Laurel B. McClean,

Acting Committee Management Officer.

[FR Doc. 2019–10977 Filed 5–21–19; 4:15 pm]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on NuScale

The ACRS Subcommittee on NuScale will hold meetings on June 18–20, 2019, at U.S. Nuclear Regulatory Commission, Two White Flint North, Conference Room T2D10, 11545 Rockville Pike, Rockville, MD 20852.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Tuesday, June 18–Thursday, June 20, 2019—8:30 a.m. Until 5:00 p.m. Each Day

The Subcommittee will review the staff's evaluation of Chapter 3, ''Design of Structures, Systems, Components and Equipment,'' Chapter 6, ''Engineered Safety Features,'' Chapter 15, ''Transient and Accident Analyses,'' and NuScale Power's topical report TR–0516–49417, ''Evaluation Methodology for Stability Analysis of the NuScale Power Module.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff, NuScale and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Michael Snodderly (Telephone 301–415–2241 or Email: *Michael.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on December 7, 2018 (83 FR 26506).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Paula Dorm (Telephone 301–415–7799) to be escorted to the meeting room.

Dated: May 17, 2019.

Lawrence Burkhart,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2019–10840 Filed 5–23–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Plant License Renewal

The ACRS Subcommittee on Plant License Renewal will hold a meeting on June 21, 2019, at U.S. Nuclear Regulatory Commission, Two White Flint North, Conference Room T2D10, 11545 Rockville Pike, Rockville, MD 20852.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Friday, June 21, 2019—8:30 a.m. until 5:00 p.m.

The Subcommittee will review the Turkey Point subsequent License Renewal. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or Email: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on December 7, 2018 (83 FR 26506).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Paula Dorm (Telephone 301–415–7799) to be escorted to the meeting room.

Dated: May 17, 2019.

Lawrence Burkhart,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2019–10834 Filed 5–23–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–047; NRC–2016–0119]

Tennessee Valley Authority; Clinch River Nuclear Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Early site permit application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice once each week for four consecutive weeks for an application from Tennessee Valley Authority (TVA), for an early site permit (ESP) for the Clinch River Nuclear Site located in Oak Ridge, Tennessee.

DATES: The ESP application was received on May 12, 2016 and supplemented with Revision 2 on January 18, 2019.

ADDRESSES: Please refer to Docket ID NRC–2016–0119 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0119. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mallecia Sutton, telephone: 301–415–0673, email: *Mallecia.Sutton@nrc.gov* or Allen Fetter, telephone: 301–415–8556, email: *Allen.Fetter@nrc.gov.* Both staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

TVA (the applicant) has filed an application for an ESP for the Clinch River Nuclear Site located in Oak Ridge, Tennessee (ADAMS Accession No. ML16139A752), under Section 103 of the Atomic Energy Act of 1954, as amended, and part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' TVA filed Revision 2 of the application dated January 18, 2019 (ADAMS Accession No. ML19030A485). Through the application, which is currently under review by the NRC staff, the applicant seeks an ESP separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in an application for a CP or COL. The information submitted by the applicant includes certain administrative information, as well as technical information submitted pursuant to 10 CFR 52.24(a) and 10 CFR 51.105(a). These notices are being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

II. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No.
ESP application Cover Letter ...	ML19030A485
ESP application Administrative Information.	ML18003A298
ESP application Site Safety Analysis Report.	ML19030A358
ESP application Environmental Report.	ML19030A478
ESP application Emergency Plan.	ML18003A485
ESP application Exemptions and Departures.	ML19030A479
ESP application Enclosures	ML19030A568

Dated at Rockville, Maryland, this 13th day of May, 2019.

For the Nuclear Regulatory Commission.

Jennivine K. Rankin,

Acting Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2019–10126 Filed 5–23–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revised 664th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on June 5–7, 2019, Two White Flint North, 11545 Rockville Pike, ACRS Conference Room T2D10, Rockville, MD 20852.

Wednesday, June 5, 2019, Conference Room T2D10

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Reactor Oversight Program (ROP) Enhancements Project (Open)—The Committee will have Briefings by and discussion with representatives of the NRC staff and other stakeholders regarding the ROP Enhancements Project.

10:15 a.m.–12:15 p.m.: Appendix D to NEI–9607 and Associated Draft Regulatory Guide for Digital Upgrades under 10 CFR 50.59 (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the subject topic.

1:15 a.m.–5:30 p.m.: NuScale Design Certification Application Chapters 3.9.2, 14, 19, and 21 (Open/Closed))—The Committee will have briefings by and discussion with representatives of the NRC staff and NuScale regarding the subject chapters. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

5:30 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

Thursday, June 6, 2019, Conference Room T2D10

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

10:15 a.m.–12:00 p.m.: Open Design Items (Open/Closed)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the subject topic. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

2:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

Friday, June 7, 2019, Conference Room T2D10

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports/Retreat (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports and retreat items. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on December 7, 2018 (83 FR 26506). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and

television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Ms. Paula Dorm, ACRS Audio Visual Technician (301–415–7799), between 7:30 a.m. and 3:45 p.m. (Eastern Time), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: May 21, 2019.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2019–10870 Filed 5–23–19; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Administrative Appeals

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information under its regulation on Rules for Administrative Review of Agency Decisions. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by June 24, 2019.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974.

A copy of the request will be posted on PBGC's website at *https://www.pbgc.gov/prac/laws-and-regulations/information-collections-under-omb-review.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026; faxing a request to 202–326–4042; or, calling 202–326–4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4040). The Disclosure Division will email, fax, or mail the information to you, as you request.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–326–4400, extension 3559. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 3559.

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under section 4021 of ERISA or employer liability under sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or email. For appeals of benefit determinations, PBGC has optional forms for filing appeals and requests for extensions of time to appeal.

The existing collection of information was approved under OMB control number 1212–0061 (expires August 31, 2019). On March 21, 2019, PBGC published in the **Federal Register** (at 84 FR 10554) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of this collection of information for three years without change. 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.

PBGC estimates that an average of 600 appellants per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information is about 20 minutes and $55.67 per appellant, with an average total annual burden of 212 hours and $33,440.

Issued in Washington, DC.

Hilary Duke,

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

[FR Doc. 2019–10952 Filed 5–23–19; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice; correction.

SUMMARY: The Office of Personnel Management published a document in the **Federal Register** of May 17, 2019, concerning adjusted present value factors applicable to retirees under the Civil Service Retirement System (CSRS) who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage; to retiring employees who elect the alternative form of annuity, owe certain redeposits based on refunds of contributions for service ending before March 1, 1991, or elect to credit certain service with nonappropriated fund instrumentalities; or, for individuals with certain types of retirement coverage errors who can elect to receive credit for service by taking an actuarial reduction under the provisions of the Federal Erroneous Retirement Coverage Correction Act. The document referenced a different, separate notice and cited incorrect publication dates for the other notice.

FOR FURTHER INFORMATION CONTACT: Karla Yeakle, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

Correction:

In the **Federal Register** of May 17, 2019, in FR Doc. 84 FR 22525, on page 22526, in the second column, the notice cross references another notice that revises the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335. It states that the Federal Employees' Retirement System (FERS) Normal Cost notice was published May 17, 2019. It was actually published May 20, 2019.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–10851 Filed 5–23–19; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice, correction.

SUMMARY: The Office of Personnel Management published a document in the **Federal Register** of May 17, 2019, concerning adjusted present value factors applicable to retirees who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage, and to retiring employees who elect the alternative form of annuity or elect to credit certain service with nonappropriated fund instrumentalities. The document referenced a different, separate notice and cited incorrect publication dates for the other notice.

FOR FURTHER INFORMATION CONTACT: Karla Yeakle, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of May 17, 2019, in FR Doc. 84 FR 22527, on page 22528, in the first column, the notice cross references another notice that revises the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335. It states that the Federal Employees' Retirement System (FERS) Normal Cost notice was published May 17, 2019. It was actually published May 20, 2019.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2019–10850 Filed 5–23–19; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85896; File No. SR–CboeBZX–2019–004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the VanEck SolidX Bitcoin Trust

May 20, 2019.

On January 30, 2019, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of SolidX Bitcoin Shares (''Shares'') issued by the VanEck SolidX Bitcoin Trust (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on February 20, 2019.[3]

On March 29, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received 25 comment letters on the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in detail in the Notice,[8] the Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] Each Share would represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets would consist of bitcoin, and the Trust would be responsible for custody of the Trust's bitcoin.[10] SolidX Management LLC would be the sponsor of the Trust (''Sponsor''). The Bank of New York Mellon would be the Administrator, transfer agent, and the custodian with respect to cash of the Trust. Foreside Fund Services, LLC would be the marketing agent in connection with the creation and redemption of baskets of Shares. Van Eck Securities Corporation would provide assistance in the marketing of the Shares.[11]

According to the Exchange, the investment objective of the Trust would be for the Shares to reflect the performance of the price of bitcoin, less the expenses of the Trust's operations. The Trust would not be actively managed and would not engage in activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of bitcoin.[12] The Administrator would generally use the closing price set for bitcoin by the MVIS Bitcoin OTC Index (''MVBTCO'') to calculate the Fund's net asset value (''NAV'') on each business day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. E.T.[13]

According to the Exchange, the MVBTCO represents the value of one bitcoin in U.S. dollars at any point in time. The Exchange represents that the MVBTCO calculates the intra-day price of bitcoin every 15 seconds and a closing price as of 4:00 p.m. E.T., each

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85119 (Feb. 13, 2019), 84 FR 5140 (Feb. 20, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85475 (Mar. 29, 2019), 84 FR 13345 (Apr. 4, 2019). The Commission designated May 21, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2019-004/srcboebzx2019004.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice, *supra* note 3.

[9] *See* BZX Rule 14.11(e)(4) (permitting the listing and trading of ''Commodity-Based Trust Shares,'' defined as a security (a) that is used by a trust which holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity).

[10] *See* Notice, *supra* note 3, 84 FR at 5141.

[11] *See id.*

[12] *See id.*

[13] *See id.* at 5147. In the event that the Sponsor determines that this valuation method has failed, the Sponsor will determine the bitcoin market price on the valuation date according to a set of alternative methods to be used in the following order: (a) The mid-point price of the bid/ask spread as of 4:00 p.m. E.T. obtained by the Sponsor from any bitcoin over-the-counter (''OTC'') platform that is part of the MVBTCO index; (b) the volume-weighted average price over the 24-hour period ending at 4:00 p.m. E.T. as published by a public data feed that is calculated based upon a volume-weighted average bitcoin price obtained from the major U.S. dollar-denominated bitcoin exchanges and that the Sponsor determines is reasonably reliable; and (c) the Sponsor's best judgment of a good faith estimate of the bitcoin market price. Greater detail concerning the alternative pricing procedures if the MVBTCO cannot be utilized as the basis for NAV calculations can be found in the Notice. *See id.*

weekday and that the intra-day levels of the MVBTCO incorporate the real-time price of bitcoin based on executable bids and asks derived from constituent bitcoin OTC platforms that have entered into an agreement with MV Index Solutions GmbH to provide such information.[14] According to the Exchange, the intra-day price and closing level of the MVBTCO are calculated using a proprietary methodology collecting executable bid/ask spreads and calculating a mid-point price from these U.S.-based bitcoin OTC platforms.[15]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2019–004 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[16] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[17] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [18]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[19] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the Exchange has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin? What are commenters' views of the Exchange's assertion that the trading volume in bitcoin futures makes the market for bitcoin futures a regulated market of significant size related to bitcoin? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade in the bitcoin futures market to manipulate the Shares? What are commenters' views on whether it is likely that trading in the Shares would be the predominant influence on prices in the bitcoin futures market?

2. What are commenters' views on the relationship between the bitcoin futures market and the bitcoin spot market? For example, what is the relative size of these markets, and where does bitcoin price formation occur? Does the market, spot or futures, in which price formation occurs affect commenters' analysis of whether it is reasonably likely that someone attempting to manipulate the Shares would have to trade in the bitcoin futures market, or that trading in the Shares would be the predominant influence on prices in the bitcoin futures market? To what extent, if at all, do recent developments in the bitcoin futures market—namely, the cessation of new bitcoin futures contract trading on the Chicago Futures Exchange—affect commenters' analysis of these questions?

3. What are commenters' views on whether the trading relationship between the market for bitcoin futures contracts and the proposed Trust, which would hold physical bitcoins, would be similar to, or different from, the relationship between the market for freight futures contracts and the Breakwave Dry Bulk Shipping ETF (cited by the Exchange in the Notice),[20] which directly holds futures contracts traded on that market? What are commenters' views on how these similarities or differences might affect an analysis of whether it is reasonably likely that someone attempting to manipulate the Shares would have to trade in the bitcoin futures market, or that trading in the Shares would be the predominant influence on prices in the bitcoin futures market?

4. What are commenters' views on the Trust's proposal to value its bitcoin holdings based on an index—the MVBTCO—that is calculated through a proprietary, non-public methodology that uses the privately reported bid/ask spreads of an unidentified set of U.S.-based market-makers in the OTC marketplace, which, the Exchange says, has no formal structure and no open-outcry meeting place? Is the use of a non-public, proprietary index to value holdings based on OTC activity an appropriate means to calculate the NAV of an exchange-traded product (''ETP'')? What are commenters' views on whether determining NAV based on the index value at 4:00 p.m. E.T. might, or might not, create an opportunity for manipulation of the NAV or of the Shares? What are commenters' views on the assertion in the Notice that, according to the Sponsor, the MVBTCO's methodology reduces the possibility of an attempt to manipulate the price of bitcoin as reflected by the MVBTCO? What are commenters' views on the Sponsor's assertion, as described by the Exchange in the Notice, that ''the OTC desks have a better measure of the market than any exchange-specific reference price, whether individually or indexed across multiple exchanges''?

5. What are commenters' views on the Exchange's representation that it will have in place a comprehensive surveillance sharing agreement with each of the OTC platforms that constitute the MVBTCO prior to the Shares listing on the Exchange? What are commenters' views on the Exchange's assertion that the regulated nature of each of the OTC platforms that make up the MVBTCO, the notional volume of trading and liquidity available on these platforms, the principal-to-principal nature of these platforms, and comprehensive surveillance sharing agreements with each of the OTC platforms (in addition to the Exchange's standard surveillance procedures) are sufficient to prevent fraudulent and manipulative acts and practices in the Shares? What are commenters' views on the extent to which each of these OTC platforms is regulated? What are commenters' views on the extent to which each of these OTC platforms can, or does, conduct surveillance of bitcoin trading activity?

[14] According to the Exchange, each OTC constituent platform or ''OTC Trading Desk'' will offer constant, executable bids and offers of at least $250,000 worth of bitcoin, and the MVBTCO value will be based on these bids and offers. The Exchange represents that it will have in place a comprehensive surveillance sharing agreement with each of these OTC Trading Desks prior to the Shares listing on the Exchange. *See id.* at 5145, n.35.

[15] According to the Sponsor, the MVBTCO's methodology decreases the influence on the MVBTCO of any particular OTC platform that diverges from the rest of the data points used by the MVBTCO, which reduces the possibility of an attempt to manipulate the price of bitcoin as reflected by the MVBTCO. *See id.* at 5146.

[16] 15 U.S.C. 78s(b)(2)(B).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Notice, *supra* note 3.

[20] *See id.* at 5142–45.

6. What are commenters' views on the size, liquidity, transparency, number and nature of market participants, and price discovery in the OTC market for bitcoin, both on an absolute basis and relative to the bitcoin spot market as a whole? What are commenters' views on whether the volume of U.S. dollar trading of bitcoin—which excludes bitcoin trading against other sovereign currencies or digital assets—is a meaningful or appropriate measure of bitcoin market volume?

7. The Exchange states that the Trust does not intend to report its OTC trading. What are commenters' views on how the Trust's unreported OTC trades may affect the calculation of the Trust's NAV and the ability of market makers to engage in arbitrage?

8. What are commenters' views on each of the set of alternative means by which the Trust proposes to value its holdings in the event that the Sponsor determines that the MVBTCO, or another alternate pricing mechanism, has failed, is unavailable, or is deemed unreliable? What are commenters' views on whether any of these pricing mechanisms, primary or alternate, would be affected by, or resistant to, manipulative activity in bitcoin markets?

9. What are commenters' views on the assertion by the Exchange that the dissemination of information on the Trust's website, along with quotations for and last-sale prices of transactions in the Shares and the intra-day indicative value (or ''IIV'') and NAV of the Trust, will help to reduce the ability of market participants to manipulate the bitcoin market or the price of the Shares and that the Trust's arbitrage mechanism will facilitate the correction of price discrepancies in bitcoin and the Shares? What are commenters' views on whether the liquidity of the OTC bitcoin market is sufficient to support efficient arbitrage between the price of the Shares and the spot price of bitcoin?

10. The Exchange represents that it has entered into a comprehensive surveillance-sharing agreement with the Gemini Exchange and is working to establish similar agreements with other bitcoin venues. What are commenters' views on whether the Gemini Exchange is a regulated market of significant size? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would also have to trade on the Gemini Exchange? What are commenters' views on whether trading in the proposed ETP would be the predominant influence on prices in the Gemini Exchange? What are commenters' views on whether the Exchange could enter into surveillance-sharing agreements with regulated spot markets of significant size related to bitcoin?

11. What are commenters' views of the Exchange's assertions that bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; that the geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin; that trading on inside information regarding bitcoin is unlikely; that the fragmentation across bitcoin markets, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity unlikely; that manipulation of the price on any single venue would require manipulation of the global bitcoin price to be effective; that a substantial OTC bitcoin market provides liquidity and shock-absorbing capacity; that bitcoin's ''24/7/365 nature'' [21] provides constant arbitrage opportunities across all trading venues; and that it is unlikely that any one actor could obtain a dominant market share?

12. What are commenters' views of the Exchange's assertions that transacting in the Shares will be geared toward more sophisticated institutional investors and will be cost-prohibitive for smaller retail investors? What are commenters' views regarding whether broker-dealers are likely to offer fractional shares in the Trust to retail investors, permitting retail investment with a smaller financial commitment? What are commenters' views of the Exchange's assertions that the Sponsor believes that demand from new, larger investors accessing bitcoin through investment in the Shares will broaden the investor base in bitcoin, which could further reduce the possibility of collusion among market participants to manipulate the bitcoin market, in light of the possibility that broker-dealers may offer fractional shares to their customers?

13. What are commenters' views on the Exchange's assertion that a minimum of 100 Shares outstanding at the time of commencement of trading will be sufficient to provide adequate market liquidity? What are commenters' views on whether the 100-share minimum would affect the arbitrage mechanism? What are commenters' views on the Exchange's assertion that, even though the Trust would not comply with the minimum number of shares outstanding required by Exchange rules, the policy concerns underlying that requirement would be otherwise mitigated in the case of the Trust, because the lower number of Shares is merely a function of the price of the Shares and will have no effect on the creation and redemption process or on arbitrage?

14. What are commenters' views of whether the Trust's proposed insurance coverage would affect trading in the Shares or in the underlying bitcoins? What are commenters' views regarding the Trust's proposed security, control, and insurance measures?

[21] *See id.* at 5142 n.11, 5156 n.46.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[22]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 14, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 28, 2019.

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–2019–004 on the subject line.

[22] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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–2019–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–004 and should be submitted by June 14, 2019. Rebuttal comments should be submitted by June 28, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–10858 Filed 5–23–19; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85892; File No. SR–NASDAQ–2019–004]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New MIDP Routing Option Under Rule 4758 and Make Conforming Changes to Rule 4703(e)

May 20, 2019.

I. Introduction

On January 31, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new MIDP routing option under Nasdaq Rule 4758 and make conforming changes to Nasdaq Rule 4703(e). The proposed rule change was published for comment in the **Federal Register** on February 19, 2019.[3] On April 3, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On May 10, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85113 (February 12, 2019), 84 FR 4885.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85498, 84 FR 14171 (April 9, 2019). The Commission designated May 20, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange: (1) Provided clarification and additional details regarding the operation of the MIDP routing option; (2) provided additional arguments supporting the proposed rule change; and (3) made technical and conforming changes. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-004/srnasdaq2019004-5485246-185147.pdf.*

II. Description of the Proposal

The Exchange proposes to adopt MIDP, a new order routing option under Nasdaq Rule 4758(a)(1)(A).[7] The MIDP routing option would allow Nasdaq members to seek midpoint liquidity on Nasdaq and other markets on the Nasdaq system routing table.[8] The MIDP routing option would be available only for a non-displayed order [9] with a midpoint pegging order attribute.[10] The Exchange would accept an order with the MIDP routing option (''MIDP order'') only with a time-in-force of Market Hours DAY or IOC, and a MIDP order could not be flagged to participate in any of the Nasdaq crosses.[11]

As proposed, a MIDP order would check the Nasdaq system for available shares and any remaining shares would then be routed to destinations on the system routing table that support midpoint eligible orders.[12] A MIDP order to buy (sell) would be routed with a limit price that is at the lesser (greater) of: (1) The current NBO (NBB); or (2) the order's entered limit price (if applicable).[13] If shares remain unexecuted after routing, the order would return to Nasdaq and check the Nasdaq system for available shares, with remaining shares posted on the Nasdaq book as a non-displayed order with a midpoint pegging order attribute (unless

[7] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi).

[8] *See id.; see also* Amendment No. 1, *supra* note 6, at 4.

[9] *See* Nasdaq Rule 4702(b)(3) (defining Nasdaq's non-displayed order type).

[10] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi). *See also* Nasdaq Rule 4703(d) (defining Nasdaq's midpoint pegging order attribute).

[11] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi). The Exchange proposes a conforming change to Nasdaq Rule 4758(a)(1), which currently provides that order routing is available during Nasdaq System Hours, to allow for the times-in-force applicable to the MIDP routing option (*i.e.,* Market Hours Day or IOC).

[12] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi). MIDP orders (including those that have a minimum quantity order attribute) would route sequentially and in their full amount to the various venues on the Nasdaq system routing table. *See* Amendment No. 1, *supra* note 6, at 5 n.7.

[13] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi). If the entered limit price of a buy (sell) MIDP order is less (greater) than the current midpoint price, the order would not be routed but would instead be posted on the Nasdaq book as a non-displayed order with a midpoint pegging order attribute, unless the order has a time-in-force of IOC, in which case the order would be cancelled. *See id.* Once on the Nasdaq book, if the NBBO moves and the order's limit price is equal to the midpoint of the NBBO (*i.e.,* the price of the resting order is not being updated to a new midpoint price), the order would not subsequently route. *See* Amendment No. 1, *supra* note 6, at 5 n.8. If the NBBO updates so that a resting MIDP order would be updated to a new midpoint price, it would be routed again and, if shares remain unexecuted after routing, the order would check the Nasdaq system for available shares with any remaining shares reposted to the Nasdaq book. *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi).

an IOC).[14] If a MIDP order has a time-in-force of IOC and there are unexecuted shares remaining after routing, the order would first check the Nasdaq system for available shares, and then any remaining shares would be cancelled.[15]

The Exchange also proposes to allow a member to use the minimum quantity order attribute [16] upon entry of a MIDP order.[17] If, upon entry, the size of a MIDP order is less than the minimum quantity designated by the member, the order would be rejected.[18] If, at any point during the routing process and prior to the MIDP order returning to post on the Nasdaq book, the remaining size of the order becomes less than the specified minimum quantity, the order would be cancelled back to the member.[19] If shares of a MIDP order with a minimum quantity order attribute remain unexecuted after routing, the order would return to Nasdaq and check the Nasdaq system for available shares with any remaining shares posted on the Nasdaq book (unless an IOC) as a non-displayed order with a midpoint pegging order attribute and the minimum quantity condition specified by the member upon entry of the order.[20] As noted above, if a MIDP order has a time-in-force of IOC and there are unexecuted shares remaining after routing, the order would first check the Nasdaq system for available shares, and then any remaining shares would be cancelled.[21]

The Exchange proposes to implement the proposal in the second quarter of 2019, and the Exchange represents that it will provide notice of the implementation date at least 30 days prior to implementation via an Equity Trader Alert.[22]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that the rules of a national securities 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the MIDP routing option would provide an additional mechanism for Nasdaq members to seek midpoint liquidity on Nasdaq and other markets.[25] The Commission also believes that allowing Nasdaq members to use the minimum quantity order attribute with the MIDP routing option would provide Nasdaq members with additional control over the execution of their MIDP orders. In particular, the Commission believes that allowing an order to have both the minimum quantity order attribute and the MIDP routing option would enable Nasdaq members to seek midpoint executions on Nasdaq and away venues while controlling the amount of order information provided through executions. Moreover, the Commission believes that cancelling a MIDP order if the order's remaining size is less than the specified minimum quantity (rather than continuing to route) would allow a Nasdaq member's minimum quantity instruction to be honored every time its MIDP order is routed to an away venue as a new order [26] and would further enable the member to control the amount of order information provided while the MIDP order is accessing liquidity at away venues.[27]

Based on the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

[14] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi).

[15] *See id.*

[16] *See* Nasdaq Rule 4703(e) (defining Nasdaq's minimum quantity order attribute).

[17] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi). The Exchange proposes a conforming change to Nasdaq Rule 4703(e), which currently provides that an order with a minimum quantity order attribute and a routing order attribute will be rejected. According to the Exchange, an order could not have both a minimum quantity order attribute and a routing order attribute due to limitations in the Nasdaq system, but the Exchange has made technical changes to allow an order to have both the minimum quantity order attribute and the MIDP routing option. *See* Amendment No, 1, *supra* note 6, at 7. As proposed, the minimum quantity order attribute could only be combined with the MIDP routing option and not with any other routing options. *See id.*

[18] *See* proposed Nasdaq Rule 4758(a)(1)(A)(xvi).

[19] *See id.* To reflect this order cancellation, the Exchange proposes a conforming change to Nasdaq Rule 4703(e), which currently provides that if, following a partial execution, the number of shares remaining in an order with a minimum quantity order attribute is less than the specified minimum quantity value, the minimum quantity value of the order will be reduced to the number of shares remaining.

[20] *See id.*

[21] *See id.*

[22] *See* Amendment No. 1, *supra* note 6, at 7.

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] As the Exchange noted, Cboe BYX Exchange, Inc. (''BYX'') and Cboe EDGA Exchange, Inc. (''EDGA'') each currently have two routing strategies (RMPT and RMPL) that utilize a midpoint peg order to check their respective systems for available shares, with any remaining shares sent to destinations on their system routing tables that support midpoint eligible orders. *See* Amendment No. 1, *supra* note 6, at 8 n.18; BYX Rule 11.13(b)(3)(Q); EDGA Rule 11.11(g)(12). Under those strategies, if any shares remain unexecuted after routing, they are posted on the exchange book as a midpoint peg order, unless otherwise instructed by the user. *See* Amendment No. 1, *supra* note 6, at 8 n.18; BYX Rule 11.13(b)(3)(Q); EDGA Rule 11.11(g)(12).

[26] According to the Exchange, each time a MIDP order is routed to an away venue it is treated as a new order. *See* Amendment No. 1, *supra* note 6, at 6 n.14.

[27] Also, the member may reenter a MIDP order with updated characteristics (*e.g.,* minimum quantity).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–004, and should be submitted on or before June 14, 2019.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange provided clarification and additional details regarding the operation of the MIDP routing option, provided additional arguments in support of the proposed rule change, and made various technical and conforming changes. The Commission believes that the changes made in Amendment No. 1 do not raise any material or novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[28] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASDAQ–2019–004), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–10859 Filed 5–23–19; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78s(b)(2).

[29] *Id.*

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. S7–13–12, OMB Control No. 3235–0698]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 (''Exchange Act'') in Connection with Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012) (''Order'').

On December 14, 2012, the Commission found it necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptions discussed in the Order. Among other things, the Order requires dually-registered broker-dealer and futures commission merchants (''BD/FCMs'') that elect to offer a program to commingle and portfolio margin customer positions in credit default swaps (''CDS'') in customer accounts maintained in accordance with Section 4d(f) of the Commodity Exchange Act (''CEA'') and rules thereunder, to obtain certain agreements and opinions from its customers regarding the applicable regulatory regime, and to make certain disclosures to its customers before receiving any money, securities, or property of a customer to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, under a program to commingle and portfolio margin CDS. The Order also requires BD/FCMs that elect to offer a program to commingle and portfolio margin CDS positions in customer accounts maintained in accordance with Section 4d(f) of the CEA and rules thereunder, to maintain minimum margin levels using a margin methodology approved by the Commission or the Commission staff.

The Commission estimates that 35 firms may seek to avail themselves of the conditional exemptive relief provided by the Order and therefore would be subject to the information collection. The Commission bases this estimate on the total number of entities that are dually registered as broker-dealers and futures commission merchants.

The Commission estimates that the aggregate annual time burden for all of the 35 respondents is approximately 22,517 hours calculated as follows:

(a) Based on information that the Commission receives on a monthly basis, the Commission estimates that each respondent will have, on average, 34 non-affiliate credit default swap customers. The Commission further estimates for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(1)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order will impose an initial, one-time average burden of 680 hours (34 non-affiliate customers times 20 hours per customer) per respondent and an aggregate burden of 23,800 hours for all 35 respondents (680×35). This burden is a third-party disclosure burden.

(b) The Commission estimates that each respondent will have, on average, 11 affiliate credit default swap customers and that for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(2)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with affiliate cleared credit default swap customers under paragraph IV(b)(2)(ii) of the Order will impose an initial, one-time burden of 220 hours per respondent (11 affiliate customers times 20 hours per customer) and an aggregate burden of 7,700 hours for all 35 respondents (220×35) . This burden is a third-party disclosure burden.

(c) The Commission estimates that for each affiliate cleared credit default swap customer a respondent will spend approximately 2 hours developing and reviewing the required opinion of counsel under paragraph IV(b)(2)(iii) of the Order. The Commission therefore

estimates that the burden associated with obtaining opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order will impose an initial, one-time burden of 22 hours per respondent (11 affiliate customers times 2 hours per customer) and an aggregate burden for all 35 respondents of 770 hours (22 × 35). This burden is a third-party disclosure burden.

(d) The Commission estimates that the burden associated with seeking the Commission's approval of margin methodologies under paragraph IV(b)(3) of the Order will impose an initial, one-time burden of 1,000 hours per respondent and an aggregate burden for all 35 respondents of 35,000 hours (1,000 × 35) . This burden is a reporting burden.

(e) The Commission estimates that the burden associated with disclosing information to customers under paragraph IV(b)(6) of the Order will impose an initial, one-time burden of 8 hours per respondent and an aggregate burden for all 35 respondents of 280 hours (8 × 35). This burden is a third-party disclosure burden.

The total aggregate one-time burden for all 35 respondents is thus 67,550 hours (32,550 third party disclosure + 35,000 reporting). Amortized over three years, the aggregate burden per year is approximately 22,517 hours.

The Commission estimates that each respondent will incur a one-time cost of $8,000 in outside legal counsel expenses in connection with obtaining opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order, calculated as follows: (20 hours to obtain opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order) × ($400 per hour for outside legal counsel) = $8,000. The one-time aggregate burden for all 35 respondents is thus $280,000 (8,000 × 35), or approximately $93,333 per year when amortized over three years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 20, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–10842 Filed 5–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–0015, OMB Control No. 3235–0021]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Rule 6a–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information provided for in Rule 6a–3 (17 CFR 240.6a–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Act'').

Section 6 of the Act sets out a framework for the registration and regulation of national securities exchanges. Under Rule 6a–3, one of the rules that implements Section 6, a national securities exchange (or an exchange exempted from registration based on limited trading volume) must provide certain supplemental information to the Commission, including any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Rule 6a–3 also requires the exchanges to file monthly reports that set forth the volume and aggregate dollar amount of certain securities sold on the exchange each month. The information required to be filed with the Commission pursuant to Rule 6a–3 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The Commission estimates that each respondent makes approximately 12 such filings on an annual basis. Each response takes approximately 0.5 hours. In addition, respondents incur shipping costs of approximately $20 per submission. Currently, 21 respondents (21 national securities exchanges) are subject to the collection of information requirements of Rule 6a–3. The Commission estimates that the total burden for all respondents is 126 hours and $5040 per year.

Compliance with Rule 6a–3 is mandatory for registered and exempt exchanges. Information received in response to Rule 6a–3 shall not be kept confidential; the information collected is public information. As set forth in Rule 17a–1 (17 CFR 240.17a–1) under the Act, a national securities exchange is required to retain records of the collection of information for at least five years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner,100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 20, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–10844 Filed 5–23–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–136, OMB Control No. 3235–0157]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form N–8F

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 (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–8F (17 CFR 274.218) is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests information about: (i) The investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of the investment company's business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

The Form takes approximately 5.2 hours on average to complete. It is estimated that approximately 135 investment companies file Form N–8F annually, so the total annual burden for the form is estimated to be approximately 702 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study.

The collection of information on Form N–8F is not mandatory. The information provided on Form N–8F is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 20, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–10843 Filed 5–23–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0271]

Patriot Capital IV (A), L.P.; Notice Seeking Exemption Under of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Patriot Capital IV (A), L.P., 509 South Exeter Street, Suite 210, Baltimore, MD 21202, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Patriot Capital III SBIC, L.P. provides equity financing to Avenger Flight Group, LLC, 1450 Lee Wagener Blvd., Fort Lauderdale, FL 33315.

The financing is brought within the purview of § 107.730(a)(2) of the Regulations because Patriot Capital III SBIC, L.P. is currently invested in Avenger Flight Group, LLC and because of its level of ownership, Avenger Flight Group, LLC is an Associate. Patriot Capital III SBIC, L.P. and Patriot Capital IV (A), L.P. are also Associates and Patriot Capital IV (A), L.P. is seeking to invest in Avenger Flight Group, LLC in the identical securities on the same relative proportions and at the same valuation and on the same terms and conditions as Patriot Capital III SBIC, L.P. Therefore, this transaction is considered financing an Associate, requiring a prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2019–10906 Filed 5–23–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0639]

Deerpath Funding, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0639 issued to Deerpath Funding, LP said license is hereby declared null and void.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2019–10907 Filed 5–23–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/02–0632 issued to Praesidian Capital Investors, LP said license is hereby declared null and void.

United States Small Business Administration.

Dated: February 8, 2019.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

Editorial Note: The Office of the Federal Register received this document for publication on May 21, 2019.

[FR Doc. 2019–10909 Filed 5–23–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small

Business Investment Act of 1958, as amended (''the Act''), under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 04/04–0306 issued to Peachtree II, L.P., said license is hereby declared null and void.

United States Small Business Administration.

Dated: February 8, 2019.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

Editorial Note: The Office of the Federal Register received this document for publication on May 21, 2019.

[FR Doc. 2019–10908 Filed 5–23–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Protecting Public Transportation Operators From the Risk of Assault

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice alerts transit agencies to the need to address the risk of transit operator assault when identified through the processes required under the Public Transportation Agency Safety Plan (PTASP) regulation. The PTASP regulation requires transit agencies to develop and implement Safety Management Systems (SMS) and associated processes for all elements of a public transportation system. In cases where transit agencies discover a risk of operator assault, the PTASP regulation requires agencies as part of their SMS processes to develop methods or processes to identify mitigations or strategies necessary as a result of the agency's safety risk assessment. The agency would use these methods or processes to reduce the likelihood and severity of occurrences of operator assault, based on the agency's analysis of the risk.

FOR FURTHER INFORMATION CONTACT: For general information, contact *PTASP_QA@dot.gov.* For program matters, contact Adrianne Malasky, Office of Transit Safety and Oversight, (202) 366–1783 or *Adrianne.Malasky@dot.gov.* For legal matters, contact Richard Wong, Office of Chief Counsel, (202) 366–4011 or *Richard.Wong@dot.gov.* Office hours are from 8:30 a.m. to 5:00 p.m. Eastern, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 3022(a) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94) directs FTA to issue a notice of proposed rulemaking (NPRM) on protecting public transportation operators from the risk of assault. Section 3022(b) requires that FTA in the proposed rulemaking consider the different safety needs of drivers of different modes, differences in operating environments, the use of technology to mitigate driver assault risks, existing experience, and the impact of the rule on future rolling stock procurements and vehicles currently in revenue service.

The recently promulgated PTASP regulation, 49 CFR part 673 (83 FR 34418 (July 19, 2018)), addresses the risk of transit operator assault and makes issuing a separate NPRM on this subject unnecessary. The PTASP regulation requires transit agencies to develop and implement SMS processes, which include identifying safety hazards, assessing the related safety risks, and then establishing methods of risk mitigation. Through these processes, transit agencies may discover various safety needs of transit workers, such as the risk of operator assault, based on their specific operating environments. Where instances of operator assault are identified, transit agencies should, as required by the PTASP regulation, take steps to identify mitigations or strategies necessary to reduce the likelihood and severity of occurrences of operator assault. The PTASP regulation itself is not included in this notice; an electronic version may be found on FTA's website at *www.transit.dot.gov/PTASP.*

In adopting SMS processes as part of the PTASP regulation, FTA took into account considerations consistent with Section 3022(b) of the FAST Act, because SMS requires steps tailored to the needs of each operating environment. The preamble to the PTASP regulation referenced future regulatory activities to address transit operator assault. After considering alternatives, FTA has determined that the PTASP regulation is the best approach to achieving the statutory objective of protecting public transportation operators from the risk of assault, and that any additional rulemaking would be redundant. This document also serves to provide notice of the termination of the associated Regulatory Identification Number for the NPRM, 2132–AB30.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2019–10281 Filed 5–23–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2004–16951]

Request for Comments of a Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 18, 2019. No comments were received.

DATES: Comments must be submitted on or before June 24, 2019.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, (202) 366–4834, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Exemptions for Air Taxi Operations.

OMB Control Number: 2105–0565.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Part 298 of Title 14 of the Code of Federal Regulations, Exemptions for Air Taxi Registration, establishes a classification of air carriers known as air taxi operators that offer on-demand passenger service. The regulation exempts these small operators from certain provisions of the Federal statute to permit them to obtain economic authority by filing a one-page, front and back, OST Form 4507, Air Taxi Operator Registration, and Amendments under Part 298 of DOT's Regulations.

DOT expects to receive 200 new air taxi registrations and 2,200 amended air taxi registrations each year, resulting in 2,400 total respondents. Further, DOT expects filers of new registrations to take 1 hour to complete the form, while it should only take 30 minutes to prepare amendments to the form. Thus, the total annual burden is expected to be 1,300 hours.

Affected Public: U.S. air taxi operators.

Number of Respondents: 2,400.

Frequency: On occasion.

Number of Responses: 2,400.

Total Annual Burden: 1,300 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC on May 21, 2019.

Lauralyn J. Remo,

Chief, Air Carrier Fitness, Office of Aviation Analysis.

[FR Doc. 2019–10899 Filed 5–23–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT–OST–2018–0210]

Traffic Safety and the 5.9 GHz Spectrum Conference

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The purpose of this notice is to inform the public that the U.S. Department of Transportation (DOT) is planning to hold a conference entitled Traffic Safety and the 5.9 GHz Spectrum on June 3, 2019 to seek input regarding Vehicle-to-Everything (V2X) Communications. This event is a critical element for the Department in identifying areas of common ground that can assist deployers and investors in V2X technologies in advancing the use of the 5.9 GHz spectrum for traffic safety and congestion mitigation. The Department seeks to gain a greater understanding of industry leaders' current and future investment strategies, as well as potential considerations for efficient use of spectrum that will foster greater opportunities for some level of interoperability and compatibility moving forward.

DATES: *Meeting:* The meeting will be held at U.S. DOT Headquarters, 1200 New Jersey Avenue SE, Washington, DC 20590, on Monday, June 3, 2019 from 1:00 p.m.–5:00 p.m. (Eastern Daylight Time). Further information concerning registration and the availability of the agenda can be found below in the **SUPPLEMENTARY INFORMATION** section.

Comments: The Department has reopened the docket for comments associated with this meeting, which will close on Monday July 8, 2019. See the **SUPPLEMENTARY INFORMATION** section below for more information about written comments.

FOR FURTHER INFORMATION CONTACT: *5.9GHzSpectrum@dot.gov;* Karen Van Dyke, 202–366–3180; Suzanne Sloan, 617–494–3282.

SUPPLEMENTARY INFORMATION:

Background

The Department has reviewed the comments that were recently submitted under the Request for Comments (RFC) on V2X Communications, DOT–OST–2018–0210, and understands the desire for greater stability on addressing the complex issues surrounding spectrum and use of the band. With over 75 connected vehicle projects in the U.S. alone, 54 currently operational, there is a need to identify a common path forward that ensures current deployments can continue without the risk of loss of investment and/or jeopardizing the intended safety and mobility benefits due to deployment delays.

Meeting Details

This conference is open to the general public by registration only. For those who would like to attend the conference, we request that you register no later than May 28, 2019. Please use the following link to register: [*https://www.eventbrite.com/e/59-ghz-spectrum-conference-tickets-61242857034*].

You must include:

- Name
- Organization
- Telephone number
- Mailing and email addresses
- Country of citizenship

The U.S. Department of Transportation is committed to providing equal access to this conference for all participants. If you need alternative formats or services because of a disability, please contact Karen Van Dyke or Suzanne Sloan (contact information above) with your request by close of business May 28, 2019.

Several days leading up to the conference, an email containing the agenda will be provided, as well as posted on *https://www.transportation.gov/v2x.* The Department will also be providing a livestream of the event, the link to which will be posted on *https://www.transportation.gov/v2x* shortly before the meeting. Further, the Department will include a transcript from the conference in the docket as soon as practicable following the conference.

Written Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

Comments should be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an associations, business, labor union, etc.). You should not include

information in your comment that you do not want to be made public You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/privacy.*

How do I submit confidential business information?

Any submissions containing Confidential Information must be delivered to OST in the following manner:

• Submitted in a sealed envelope marked ''confidential treatment requested'';

• Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and

• Submitted with a statement explaining the submitter's grounds for objecting to disclosure of the information to the public.

OST also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. In the event that the submitter cannot provide a non-confidential version of its submission, OST requests that the submitter post a notice in the docket stating that it has provided OST with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Will the agency consider late comments?

U.S. DOT will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the agency will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Issued this day of May 20, 2019, in Washington, DC under authority delegated at 49 CFR 1.99.

Diana Furchtgott-Roth,

Deputy Assistant Secretary for Research and Technology, U.S. Department of Transportation.

[FR Doc. 2019–10901 Filed 5–23–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Interagency Statement on Complex Structured Finance Transactions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of an information collection titled ''Interagency Statement on Complex Structured Finance Transactions.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before June 24, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

• *Email: prainfo@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0229, Office of the Comptroller of the Currency, 400 7th Street SW, suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0229'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0229, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection[1] following the close of the 30-day comment period for this notice by any of the following methods:

• Viewing Comments Electronically: Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0229'' or ''Interagency Statement on Complex Structured Finance Transactions.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

• Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance

[1] On February 5, 2019, the OCC published a 60-day notice for this information collection, 84 FR 1828.

Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks OMB to extend its approval of this information collection.

Title: Interagency Statement on Complex Structured Finance Transactions.

OMB Control No.: 1557–0229.

Description: The Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities [2] describes the types of internal controls and risk management procedures that the agencies (OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Securities and Exchange Commission) consider particularly effective in helping financial institutions identify and address the reputational, legal, and other risks associated with complex structured finance transactions. Those internal controls and risk management procedures form the basis of this information collection.

Affected Public: Businesses or other for-profit.

Type of Review: Regular.

Estimated Number of Respondents: 9.

Estimated Annual Burden: 225 hours.

Frequency of Response: On occasion.

On February 5, 2019, the OCC issued a notice for 60 days of comment concerning this collection. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 17, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–10832 Filed 5–23–19; 8:45 am]

BILLING CODE 4810–33–P

[2] 72 FR 1372 (January 11, 2007).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2019–0008]

Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: The OCC MDIAC will hold a public meeting on Wednesday, June 12, 2019, beginning at 1:00 p.m. Central Daylight Time (CDT).

ADDRESSES: The OCC will hold the June 12, 2019 meeting of the MDIAC at the Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Designated Federal Officer and Deputy Comptroller for Compliance Supervision, (202) 649–6862, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the MDIAC will convene a meeting at 1:00 p.m. CDT on Wednesday, June 12, 2019, at the Office of the Comptroller of the Currency, 500 Akard Street, Suite 1600, Dallas, Texas 75201. Agenda items will include current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by any one of the following methods:

- *Email to: MDIAC@OCC.treas.gov.*
- *Mail to:* Beverly Cole, Designated Federal Officer, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

The OCC must receive written statements no later than 5:00 p.m. EDT on Wednesday, June 5, 2019. Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Wednesday, June 5, 2019, to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the meeting. Members of the public may contact the OCC via email at *MDIAC@OCC.treas.gov* or by telephone at (202) 649–6862. Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government-issued identification to enter the building. Members of the public who are hearing impaired should call (202) 649–5597 (TTY) no later than 5:00 p.m. EDT on Wednesday, June 5, 2019, to arrange auxiliary aids such as sign language interpretation for this meeting.

Dated: May 20, 2019.

Joseph M. Otting,

Comptroller of the Currency.

[FR Doc. 2019–10830 Filed 5–23–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Consumer Protections for Depository Institution Sales of Insurance

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled ''Consumer Protections for Depository Institution Sales of

Insurance.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by June 24, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0220, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0220'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0220, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0220'' or ''Consumer Protections for Depository Institution Sales of Insurance.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC requests that OMB extend its approval of the following collection.

Title: Consumer Protections for Depository Institution Sales of Insurance.

OMB Control No.: 1557–0220.

Type of Review: Extension, without revision, of a currently approved collection.

Description: This information collection is required under section 305 of the Gramm-Leach-Bliley Act (GLB Act), 12 U.S.C. 1831x. Section 305 of the GLB Act requires the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the Agencies) to prescribe joint consumer protection regulations that apply to retail sales practices, solicitations, advertising, and offers of any insurance product by a depository institution or by other persons performing these activities at an office of the institution or on behalf of the institution (other covered persons). Section 305 also requires those performing such activities to disclose certain information to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured).

This information collection requires national banks, federal savings associations, and other covered persons involved in insurance sales, as defined in 12 CFR 14.20(f), to make two separate disclosures to consumers. Under 12 CFR 14.40, a national bank, federal savings association, or other covered person must prepare and provide orally and in writing: (1) Certain insurance disclosures to consumers before the completion of the initial sale of an insurance product or annuity to a consumer and (2) certain credit disclosures at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Consumers use the disclosures to understand the risks associated with insurance products and annuities and to understand that they are not required to purchase, and may refrain from purchasing, certain insurance products or annuities in order to qualify for an extension of credit.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Estimated Burden:

Estimated Number of Respondents: 527.

Total Estimated Burden Hours: 10,189 hours. This estimate was increased from 2,635. As the OCC does not track the number of disclosures under part 14, the number of similar disclosures under Regulation Z (12 CFR part 1026) was used as a proxy.

Comments: The OCC issued a notice for 60 days of comment concerning this collection on November 9, 2018, 83 FR 56150. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of the operation, maintenance, and purchase of services necessary to provide the required information.

[1] On November 9, 2018, the OCC published a 60-day notice for this information collection, 83 FR 56150.

Dated: May 17, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–10831 Filed 5–23–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications from individuals to be considered for selection as members of the Internal Revenue Service Advisory Council (IRSAC). Applications are currently being accepted for approximately 14 appointments that will begin in January 2020. IRSAC members are drawn from substantially diverse backgrounds representing a cross-section of the taxpaying public with substantial, disparate experience.

DATES: Written nominations must be received on or before June 10, 2019.

ADDRESSES: Nominations should be submitted to: Anna Millikan, IRS National Public Liaison, via email to *publicliaison@irs.gov.* Nominations may also be submitted via fax to 855–811–8021. Applications are available on the IRS website at *https://www.irs.gov/pub/irs-pdf/f12339.pdf.*

FOR FURTHER INFORMATION CONTACT: Anna Millikan at 202–317–6851 (not a toll-free number) or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Nominations of qualified individuals may come from individuals or organizations. They should describe and document the proposed member's qualifications for IRSAC. In particular, the IRSAC is seeking applicants with knowledge and background in one of the following areas:

Large Business & International: International tax expertise, experience as a certified public accountant working in or for a large, sophisticated organization, and/or experience working in-house at a major firm dealing with complex organizations.

Small Business & Self-Employed: Experience with online or digital businesses, experience with audit representation, experience educating on tax issues and topics, knowledge of passthrough entities, and/or knowledge of fiduciary tax.

Tax Exempt & Government Entities: Experience in tax exempt bonds and/or experience in employment tax and federal, state, local or Indian tribal governments.

Wage & Investment: Tax software and software industry experience, Volunteer Income Tax Assistance and Tax Counseling for the Elderly experience, experience marketing and applying industry benchmarks to operations, background in information technology financial services, with knowledge of technology innovations in public and private customer service sectors, and/or experience with S-corporations and partnership information returns.

The IRSAC serves as an advisory body to the Commissioner of Internal Revenue and provides an organized public forum for discussion of relevant tax administration issues between IRS officials and representatives of the public. The IRSAC proposes enhancements to IRS operations, recommends administrative and policy changes to improve taxpayer service, compliance and tax administration, discusses relevant information reporting issues, addresses matters concerning tax-exempt and government entities, and conveys the public's perception of professional standards and best practices for tax professionals.

This is a volunteer position. Travel expenses within government guidelines will be reimbursed. Appointed by the Commissioner of Internal Revenue with the concurrence of the Secretary of the Treasury, IRSAC members will serve three-year terms to allow for a rotation in membership which ensures that different perspectives are represented. In accordance with the Department of the Treasury Directive 21–03, a clearance process, including annual tax checks and a practitioner check with the IRS Office of Professional Responsibility, will be conducted. In addition, all applicants deemed ''Best Qualified'' shall undergo a Federal Bureau of Investigation fingerprint check.

The IRSAC is authorized under the Federal Advisory Committee Act, Public Law 92–463. The first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group (''CAG'')—was established in 1953 as a ''national policy and/or issue advisory committee.'' Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency.

All applicants will be sent an acknowledgment of receipt.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of the Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, the IRS extends particular encouragement to nominations from such appropriately-qualified candidates.

Dated: April 29, 2019.

John Lipold,

Chief, Relationship Management, IRS National Public Liaison, Designated Federal Official, IRSAC.

[FR Doc. 2019–10465 Filed 5–23–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0860]

Agency Information Collection Activity: Reimbursement of Adoption Expenses for Certain Veterans

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 23, 2019,

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0860'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615–9241.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Reimbursement of Adoption Expenses for Certain Veterans, VA Form 10–10152.

OMB Control Number: 2900–0860.

Type of Review: Extension of a currently approved collection.

Abstract: Section 260 of the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (Pub. L. 114–223) states that VA may use appropriated funds available to VA for the Medical Services account to provide, among other things, reimbursement of adoption expenses to a covered Veteran. ''Covered Veteran'' means a Veteran who has a service-connected disability that results in the inability of the Veteran to procreate without the use of fertility treatment. The term ''adoption reimbursement'' is defined at Public Law 114–223 section 260(a)(4) to mean reimbursement for the adoption-related expenses for an adoption that is finalized after the date of the enactment of the Act under the same terms as apply under the adoption reimbursement program of the Department of Defense, as authorized in Department of Defense Instruction 1341.09, including the reimbursement limits and requirements set forth in such instruction. This law was enacted on September 29, 2016, and funding for the program is authorized through September 30, 2018. VA's authority to provide reimbursement of qualifying adoption expenses to the same cohort described in Public Law 114–223 section 260 was subsequently renewed and extended in nearly identical form in section 236 of Division J, Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2018, Public Law 115–141 (March 23, 2018) (the ''2018 Act''). Under this most recent authority, VA's adoption expense reimbursement program remains subject to the funding period covered by the 2018 Act and the availability of appropriations. To implement this benefit, VA has developed VA Form 10–10152, paralleling DD 2675, which requires any Veteran requesting reimbursement of qualifying adoption expenses to submit the same types of evidence as required under the DoD policy, as mandated by Public Law 114–223 section 260. VA Form 10–10152 was previously approved by OMB through the PRA clearance process, and VA now seeks an extension of that approval of this information collection.

Affected Public: Individuals and households.

Estimated Annual Burden: 480 hours.

Estimated Average Burden per Respondent: 6 hours.

Frequency of Response: One time only.

Estimated Number of Respondents: 80.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–10966 Filed 5–23–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0523]

Agency Information Collection Activity: Loan Analysis

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Loan Guaranty Service, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 24, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0523'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354, or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0523'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Loan Analysis, VA form 26–6393.

OMB Control Number: 2900–0523.

Type of Review: Extension without change of a currently approved collection.

Abstract: The form will be completed by employees of lending institutions partially from information contained on other documents in the loan file. In addition, some items will be completed on the basis of mathematical calculations and underwriting judgement resulting from interpretation of VA credit standards (38 CFR 36.4337). VA employees will also be able to extract data from the completed form in order to expand the amount of information contained in VA's data bases; *i.e.,* income and indebtedness amounts for veteran-borrowers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 8153 on March 6, 2019 on page 8153.

Affected Public: Individuals and households.

Estimated Annual Burden: 125,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 250,000.

By direction of the Secretary.

Danny Green,

VA Interim Clearance Officer, Office of Quality, Performance, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–10942 Filed 5–23–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Agency Information Collection Activity Under OMB Review: Verification of VA Benefits

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Loan Guaranty Service, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 24, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0406'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0406'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Verification of VA Benefits, 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Extension without change of a currently approved collection.

Abstract: VA Form 26–8937 is designed to assist lenders and VA in the completion of debt checks in a uniform manner. The form restricts information requested to only that needed for the debt check and also eliminates unlimited versions of lender-designed forms.

Lenders ensure the completion of the upper portion of VA Form 26–8937, including that the veteran's authorization for release of the information, and forward it to the appropriate VA Officer. VA personnel perform the debt check, complete the balance of the form, and return it to the lender, who considers any repayment terms in evaluating the veteran's creditworthiness. Following the closing of any loan, the lender submits the form with the loan report and related documents for past closing review. The form is reviewed by a loan examiner to ensure that debt check requirements have been observed in each case.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 9214 Pages 9214–9215 (2 pages).

Affected Public: Individuals and households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 120,000.

By direction of the Secretary.

Danny Green,

VA Interim Clearance Officer, Office of Quality, Performance, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–10939 Filed 5–23–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0745]

Agency Information Collection Activity: Request for Certificate of Veteran Status

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Loan Guaranty Service, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 24, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0745'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0745'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Request for Certificate of Veteran Status, VA form 26–8261a.

OMB Control Number: 2900–0745.

Type of Review: Extension without change of a currently approved collection.

Abstract: VA Form 26–8261a is used by VA to determine an applicant's eligibility for a possible reduced down payment when obtaining a loan insured by the Federal Housing Administration (FHA), under the provisions of Section 203(b)(2) or 220(d)(a) of the National Housing Act as amended. FHA actually provides the benefit. However, VA is charged with determining if the veteran-applicant meets the basic eligibility requirements regarding length and character of service. If eligibility is established, VA issues the applicant a Certificate of Veterans Status that is then used when the borrower obtains an FHA insured loan. This certificate gives the borrower the possibility of a reduced down payment on an FHA backed loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 8153 on March 6, 2019, pages 8153 and 8154.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25.

By direction of the Secretary.

Danny Green,

VA Interim Clearance Officer, Office of Quality, Performance, Privacy and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–10940 Filed 5–23–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 101 May 24, 2019

Part II

Securities and Exchange Commission

17 CFR Parts 201 and 240

Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201 and 240

[Release No. 34–85823; File No. S7–07–19]

RIN 3235–AM13

Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules; proposed interpretations.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing a number of actions to address the cross-border application of certain security-based swap requirements under the Securities Exchange Act of 1934 (''Exchange Act'') that were added by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').

DATES: Submit comments on or before July 23, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–07–19 on the subject line.

Paper Comments

- Send paper comments to [ ], Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–07–19. 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/proposed.shtml*). Comments are also 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. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Carol M. McGee, Assistant Director, at 202–551–5870, regarding the proposed interpretive guidance related to security-based swap transactions that have been ''arranged'' or ''negotiated'' by personnel located in the United States and the proposed amendment to Exchange Act Rule 3a71–3; Devin Ryan, Senior Special Counsel and Edward Schellhorn, Special Counsel regarding the proposed amendment to Commission Rule of Practice 194; Joanne Rutkowski, Assistant Chief Counsel and Bonnie Gauch, Senior Special Counsel, regarding the proposed amendments to Exchange Act Rule 15Fb2–1 and proposed interpretive guidance related to Exchange Act Rule 15Fb2–4; and Joseph Levinson, Senior Special Counsel, regarding the proposed modifications to proposed Exchange Act Rule 18a–5; at 202–551–5777, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment guidance regarding the application of certain uses of the terms ''arranged'' and ''negotiated'' in connection with the cross-border application of security-based swap regulation under the Exchange Act, guidance regarding the certification and opinion of counsel requirements in Exchange Act Rule 15Fb2–4 and Rule 3a71–6, amendments to Exchange Act Rules 0–13, 3a71–3, 15Fb2–1, and Commission Rule of Practice 194, and modifications to proposed Rule 18a–5.

First, the Commission is proposing supplemental guidance to address how certain requirements under Title VII—related to security-based swap transactions that have been ''arranged'' or ''negotiated'' by personnel located in the United States—apply to transactions involving limited activities by those U.S. personnel. Separately, the Commission is requesting comment on two alternative proposals to amend Rule 3a71–3 under the Exchange Act to modify a provision addressing the cross-border application of the ''security-based swap dealer'' *de minimis* exception. Both of the alternative proposals for the amendment would add an exception to the rule's existing requirement that, for purposes of determining whether an entity must register as a security-based swap dealer, non-U.S. persons must count, as part of their *de minimis* calculations, security-based swap dealing transactions that have been ''arranged, negotiated, or executed'' by personnel located in a U.S. branch or office. The Commission also is proposing corresponding technical revisions to Exchange Act Rule 0–13 in conjunction with the proposed amendment. The Commission further is requesting comment on whether to provide other conditional exceptions for certain other requirements that apply to such ''arranged, negotiated, or executed'' transactions, including regulatory reporting and public dissemination requirements and security-based swap dealer business conduct requirements. Separately, the Commission is proposing to provide guidance regarding the certification and opinion of counsel requirements in Exchange Act Rule 15Fb2–4. The Commission is proposing to amend Exchange Act Rule 15Fb2–1 to provide additional time for a security-based swap dealer or major security-based swap participant (collectively defined as ''SBS Entity'') to submit the certification and opinion of counsel required under Rule 15Fb2–4(c)(1). In addition, the Commission is proposing to amend Rule of Practice 194 to exclude an SBS Entity, subject to certain limitations, from the prohibition in Exchange Act Section 15F(b)(6) with respect to an associated person who is a natural person who (i) is not a U.S. person and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person. Finally, the Commission is proposing certain modifications to proposed Exchange Act Rule 18a–5 to address the questionnaire or application for employment that an SBS Entity is required to make and keep current with respect to certain foreign associated persons.

I. Background

The Commission has proposed and finalized a number of rules to implement requirements under Title VII

of the Dodd-Frank Act [1] providing for the regulation of security-based swap activity. Several of those rules include provisions to address unique concerns raised by cross-border activity in security-based swaps, including:

- Exchange Act Rule 3a71–3, which, among other things, requires (1) non-U.S. persons to include security-based swap dealing transactions that have been ''arranged, negotiated, or executed'' using U.S. personnel [2] in their calculations under the *de minimis* exception to the ''security-based swap dealer'' definition,[3] and (2) registered security-based swap dealers to comply with business conduct requirements in connection with certain transactions that have been arranged, negotiated or executed by U.S. personnel.
- Regulation SBSR Rules 908(a)(1)(v) and 908(b)(5), which require regulatory reporting and public dissemination of security-based swap transactions ''arranged, negotiated, or executed'' using personnel located within the United States.
- Exchange Act Rule 15Fb2–4, which requires, among other things, that each nonresident security-based swap dealer and nonresident major security-based swap participant (each as defined in Exchange Act Rule 15Fb2–4, collectively ''nonresident SBS Entity'') registering with the Commission provide a certification and opinion of counsel regarding its willingness and ability to provide the Commission with prompt access to its books and records and submit to onsite inspection and examination by the Commission, on Schedule F to Forms SBSE, SBSE–A and SBSE–BD, as appropriate, which applicants use to provide the certification.
- Exchange Act Rule 15Fb6–2, and proposed Rule 18a–5, which together would require each registered SBS Entity, whether a U.S. or non-U.S. person, (1) to certify that it neither knows, nor in the exercise of reasonable care should have known, that any person associated with it who effects or is involved in effecting security-based swaps on its behalf is subject to a statutory disqualification and (2) to make and retain a background questionnaire to support this certification.

As discussed in more detail below, market participants and other commenters have raised concerns regarding possible disruptive effects of the above requirements, suggesting that the requirements would create significant operational burdens and impose unwarranted costs. Such costs and operational burdens may be exacerbated by differences between the Commission's rules in these areas and corresponding rules of the Commodity Futures Trading Commission (''CFTC'') in connection with the regulation of the swaps market. For these reasons, the Commission has determined that it is appropriate to reconsider its approach to these issues and consider whether those rules could be tailored in a manner that would continue to advance the objectives of Title VII while reducing associated costs and burdens and, where appropriate, minimizing differences from the approach taken by the CFTC.

In developing these proposals, the Commission has consulted and coordinated with staff of the CFTC and the prudential regulators,[4] in accordance with the consultation mandate of the Dodd-Frank Act.[5] The Commission also has consulted and coordinated with foreign regulatory authorities through Commission staff participation in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC (over-the-counter) derivatives.[6] Through these multilateral and bilateral discussions and the Commission staff's participation in various international task forces and working groups, the Commission has gathered information about foreign regulatory reform efforts and their effect on and relationship with the U.S. regulatory regime. The Commission has taken and will continue to take these discussions into consideration in developing rules, forms, and interpretations for implementing Title VII of the Dodd-Frank Act.

A. Application of Title VII to Transactions ''Arranged, Negotiated, or Executed'' Using Personnel Located Within the United States

1. Proposed Guidance, Exception, and Solicitation of Comment

The Commission is taking a number of steps to address continuing concerns that have been raised regarding the various uses of an ''arranged, negotiated, or executed'' test in the cross-border application of Title VII.

First, the Commission is proposing supplemental guidance regarding the types of activities by U.S. personnel that would—and would not—constitute ''arranging'' or ''negotiating'' security-based swap transactions for purposes of tests that are used to implement a number of Title VII requirements in the cross-border context.[7] Separately, the Commission is proposing two alternatives for a conditional exception from the ''arranged, negotiated, or execute'' test that forms part of the *de minimis* counting provisions of Exchange Act Rule 3a71–3. Both alternatives would provide an exception from the requirement that non-U.S.

[1] Public Law 111–203, 124 Stat. 1376 (2010). Unless otherwise indicated, references to Title VII in this release are to Subtitle B of Title VII.

[2] For purposes of this release, the term ''U.S. personnel'' means personnel located in a branch or office in the United States of an entity that is engaged in security-based swap activity, or by personnel of an agent of that entity.

[3] The term ''security-based swap dealer'' is defined in Exchange Act Section 3(a)(71), and further defined by Exchange Act Rules 3a71–1 through 3a71–5. Section 3(a)(71)(D) provides that the Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt a security-based swap dealer that engages in a *de minimis* quantity of security-based swap dealing.

[4] The term ''prudential regulator'' is defined in Section 1a(39) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(39), and that definition is incorporated by reference in Section 3(a)(74) of the Exchange Act, 15 U.S.C. 78c(a)(74). Pursuant to the definition, the Board of Governors of the Federal Reserve System (''Federal Reserve Board''), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the ''prudential regulators'') is the ''prudential regulator'' of a security-based swap dealer or major security-based swap participant if the entity is directly supervised by that regulator.

[5] Section 712(a)(2) of the Dodd-Frank Act provides in part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.''

In addition, Section 752(a) of the Dodd-Frank Act provides in part that ''[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps.''

[6] Staff participates in a number of international standard-setting bodies and workstreams working on OTC derivatives reforms. For example, Commission staff participates in the Financial Stability Board's Working Group on OTC Derivatives Regulation. Commission staff also participates in the International Organization of Securities Commissions (''IOSCO'')'s Committee on Derivatives, the joint Basel Committee on Banking Supervision (''BCBS'') and IOSCO Working Group on Margin Requirements' Monitoring Group and participates in international working groups that impact OTC derivatives financial market infrastructures, such as CPMI–IOSCO joint working groups assessing legal and regulatory frameworks for central counterparties and trade repositories and examining central counterparty resilience and recovery.

[7] The proposed guidance would address the application of ''arranged'' and ''negotiated'' criteria as used in connection with: Two provisions addressing the cross-border application of the *de minimis* exception to the ''security-based swap dealer'' definition, security-based swap dealer business conduct requirements, the regulatory reporting and public dissemination requirements of Regulation SBSR, and certain major security-based swap participant requirements. *See* part II, *infra*.

persons count, against the thresholds associated with the *de minimis* exception, their security-based swap dealing transactions with non-U.S. counterparties that were arranged, negotiated, or executed by U.S. personnel.[8] Finally, the Commission is soliciting comment as to whether to provide additional conditional exceptions from certain other requirements under Title VII that otherwise would apply to transactions ''arranged, negotiated, or executed'' by U.S. personnel.[9]

These actions—the proposed guidance, the proposed alternatives for a conditional exception from the ''arranged, negotiated, or executed'' *de minimis* counting provision, and the solicitation of comment regarding other possible exceptions from ''arranged, negotiated, or executed'' test used to implement Title VII—are intended to help appropriately tailor the application of Title VII to the U.S. market concerns raised by the transactions that do not involve U.S. counterparties but that nonetheless result from activity within the United States.

In proposing this guidance and exception, the Commission is mindful that the various uses of ''arranged, negotiated, or executed'' criteria are intended to serve important interests related to avoiding competitive disparities and market fragmentation, and to public transparency.[10] The use of the ''arranged, negotiated, or executed'' test in the context of the security-based swap dealer *de minimis* counting provision particularly plays an important role in helping to prevent entities from using booking practices to avoid registering as security-based swap dealers, despite being engaged in security-based swap dealing activity in the United States.[11] The Commission's proposals to mitigate the negative consequences potentially associated with the various uses of this type of test accordingly are designed to promote the important Title VII interests that the Commission advanced when it incorporated the test into the various cross-border rules.

2. Current Uses of ''Arranged, Negotiated, or Executed'' Criteria

Exchange Act Rule 3a71–3 provides in part that, when determining whether non-U.S. persons will be deemed to be security-based swap dealers—and hence subject to the Title VII requirements applicable to security-based swap dealers—non-U.S. persons must count, against the applicable *de minimis* threshold, their security-based swap dealing transactions with non-U.S. counterparties that were ''arranged, negotiated, or executed'' by personnel within the United States.[12] The rule separately requires that non-U.S. persons count dealing transactions with U.S. counterparties, and dealing transactions in which their performance under the security-based swap is guaranteed by a U.S. affiliate.[13]

Subsequent to incorporating the ''arranged, negotiated, or executed'' test into the *de minimis* counting standard, the Commission also incorporated the test into other rules addressing the cross-border application of Title VII. Regulation SBSR in part subjects transactions ''arranged, negotiated, or executed'' in the United States to regulatory reporting and public dissemination requirements.[14] Registered security-based swap dealers also are subject to certain business conduct standards with respect to transactions arranged, negotiated or executed by personnel within the United States.[15]

The use of ''arranged, negotiated, or executed'' criteria as part of the *de minimis* counting test reflects the Commission's view that a non-U.S. person that, as part of its dealing, ''engages in market-facing activity using personnel located in the United States'' would perform activities that fall within the security-based swap dealer definition ''at least in part in the United States.'' [16] When adopting that test and

[8] *See* Exchange Act Rule 3a71–3(b)(1)(iii)(C).

[9] Those requests particularly address the use of ''arranged, negotiated, or executed'' or equivalent criteria in connection with: The application of the *de minimis* counting standard of Exchange Act Rule 3a71–3(b)(1)(iii)(A) to certain dealing transactions involving counterparties that are foreign branches of registered security-based swap dealers, regulatory reporting and public dissemination requirements in Rules 908(a)(1)(v) and 908(b)(5) of Regulation SBSR, security-based swap dealer business conduct standards that are not exempted by Exchange Act Rule 3a71–3(c), and major security-based swap requirements in Exchange Act Rule 3a67–10.

[10] *See* notes 19 and 20, *infra.*

[11] *See* note 18, *infra.*

[12] *See* Exchange Act Rule 3a71–3(b)(1)(iii)(C). Rule 3a71–3(b) specifically addresses which cross-border security-based swap transactions must be counted against thresholds associated with the *de minimis* exception to the security-based swap dealer definition. Persons whose dealing activities exceed the *de minimis* thresholds will be required to register as security-based swap dealers once a compliance date is set. *See* Exchange Act Section 3(a)(71)(D); Exchange Act Rule 3a71–2.

The requirement that non-U.S. persons count transactions that have been arranged, negotiated or executed in the United States does not apply to non-U.S. persons that are international organizations such as the International Monetary Fund, the International Bank for Reconstruction and Development and the United Nations. *See* Exchange Act Rule 3a71–3(a)(4)(iii) and Rule 3a71–3(b)(1)(iii)(C).

[13] Overall, Rule 3a71–3 provides that non-U.S. persons (other than conduit affiliates as defined in paragraph (a)(1) of the rule) must count against the *de minimis* thresholds the following types of security-based swap dealing transactions: (i) Transactions entered into with U.S. persons (other than certain transactions involving foreign branches of the U.S. person); (ii) guaranteed transactions in which the counterparty has rights of recourse against a U.S. person affiliated with the non-U.S. person; and (iii) transactions that are arranged, negotiated or executed by personnel of the non-U.S. person located in a U.S. branch or office, or by personnel of an agent of the non-U.S. person located in a U.S. branch or office. *See* Exchange Act Rule 3a71–3(b)(1)(iii).

A non-U.S. person's transactions with foreign branches of registered security-based swap dealers need not be counted so long as the transaction was not arranged, negotiated or executed by U.S. personnel on behalf of the foreign branch. *See* Exchange Act Rules 3a71–3(b)(1)(iii)(A) (counting standard) and 3a71–3(a)(3) (definition of ''transaction conducted through a foreign branch''); *see also* note 81, *infra.*

The *de minimis* counting rule further provides that a person engaged in transactions that are required to be counted also must count certain transactions of its affiliates, other than affiliates that are registered as security-based swap dealers (and certain others). *See* Exchange Act Rules 3a71–3(b)(2), 3a71–4.

In addition, Rule 3a71–5, which provides an exception from the *de minimis* counting requirement for certain cleared anonymous transactions, is not available to transactions arranged, negotiated or executed by U.S. personnel. As discussed below, the proposed Rule 3a71–5 exception would not be relevant to the transactions subject to that proposed exception. *See* note 100, *infra.* The proposed guidance regarding what activity would trigger the ''arranged, negotiated, or executed'' test would be relevant to the application of the Rule 3a71–5 exception, however. *See* note 90, *infra.*

[14] In particular, Regulation SBSR Rule 908(a)(1)(v) requires regulatory reporting and public dissemination of transactions, connected with a non-U.S. person's security-based swap dealing activity, that are arranged, negotiated or executed by the U.S. personnel of the non-U.S. person, or by U.S. personnel of the non-U.S. person's agent. Rule 908(b)(5) further specifies that non-U.S. persons may be subject to regulatory reporting and public dissemination requirements in conjunction with security-based swap transactions arranged, negotiated or executed by U.S. personnel. *See also* note 80, *infra.*

[15] Exchange Act Rule 3a71–3(c) provides that security-based swap dealers are not subject to certain business conduct standards with regard to their ''foreign business,'' a term that incorporates additional definitions of ''U.S. business'' and ''transaction conducted through a foreign branch'' (*see* Exchange Act Rules 3a71–3(a)(3), (8) and (9)). The rule in effect applies business conduct requirements to certain security-based swap transactions of foreign security-based swap dealers, and certain transactions conducted through foreign branches of U.S. security-based swap dealers, only when the transactions were arranged, negotiated or executed by U.S. personnel. *See also* note 79, *infra.*

Equivalent criteria also have been incorporated into rules regarding the cross-border application of Title VII requirements applicable to major security-based swap participants. *See* note 82, *infra.*

[16] ''Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception,'' Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598, 8621 (Feb. 19, 2016) (''ANE Adopting Release''); *see also*

addressing alternative views suggested by commenters, the Commission stated that it was appropriate to impose Title VII requirements on such activity given, among other things, the focus of the ''security-based swap dealer'' definition on a person's dealing activity,[17] the risk that non-U.S. persons engaged in security-based swap dealing activity in the United States could avoid regulation under Title VII,[18] concerns about competitive disparities and possible market fragmentation absent such a test,[19] and the role of public transparency.[20]

3. Commission Consideration of Alternatives Relying on Registered Broker-Dealers and Banks

Before the Commission incorporated an ''arranged, negotiated, or executed'' test into the Rule 3a71–3(b)(1)(iii)(C) *de minimis* counting standard applicable to transactions involving two non-U.S. persons, certain commenters had expressed the view that other Exchange Act protections would obviate the need to use Title VII security-based swap dealer regulation to address regulatory concerns arising from non-U.S. persons' dealing activity using U.S. personnel. Some commenters particularly depicted the concerns raised by such U.S. market-facing activity as relating primarily to counterparty protection, and argued that it would be duplicative to apply Title VII security-based swap dealer requirements to that activity—on the grounds that agents acting on behalf of non-U.S. persons engaged in security-based swap dealing activity generally would be required to register as brokers and could be required to comply with relevant Exchange Act and Financial Industry Regulatory Authority (''FINRA'') requirements with respect to the security-based swap transactions that they intermediate.[21]

Commenters further sought to draw parallels between those circumstances and Exchange Act Rule 15a–6(a)(3), which provides an exemption from the broker-dealer registration requirement for a foreign broker-dealer that uses a registered broker-dealer to intermediate certain transactions.[22] Certain commenters particularly suggested that non-U.S. persons should not be required to count the transactions at issue against the security-based swap dealer *de minimis* thresholds subject to conditions such as: That the U.S. activity be conducted by a registered broker-dealer; or by a bank that complies with certain business conduct and books and records requirements; or that the non-U.S. person be registered in a jurisdiction that the Commission recognizes as comparable; or that the non-U.S. person be subject to Basel capital standards or be located in a G–20 jurisdiction.[23]

In rejecting those alternatives, the Commission stated its belief that ''the approach suggested by commenters is inconsistent with the comprehensive, uniform statutory framework established by Congress for the regulation of security-based swap dealers in Title VII.'' [24] Significantly, in the Commission's view, broker-dealer regulation does not apply to banks engaged in certain activities.[25] The Commission also emphasized that there are distinctions between the regulatory requirements applicable to broker-dealers and those applicable to security-based swap dealers.[26] The Commission further explained that the absence of a U.S. activity trigger for *de minimis* threshold calculations would create a strong incentive to move booking for transactions with non-U.S. persons to booking entities that are non-U.S. persons.[27]

id. at 8622 (''a non-U.S. person's market-facing activity in the United States suggests the type of involvement in the U.S. security-based swap market that may raise financial contagion, customer protection, market integrity, and market transparency concerns'').

[17] The statutory definition of ''security-based swap dealer'' encompasses the following activities: (1) Holding oneself out as a dealer in security-based swaps, (2) making a market in security-based swaps; (3) regularly entering into security-based swaps with counterparties as an ordinary course of business for one's own account; or (4) engaging in any activity causing oneself to be commonly known in the trade as a dealer in security-based swaps. *See* Exchange Act Section 3(a)(71)(A); *see also* ANE Adopting Release, 81 FR at 8614–15 & n.158 (further concluding that the appropriate analysis also considers whether a non-U.S. person is engaged in the United States in an amount above the *de minimis* thresholds in any of the activities set forth in the statutory security-based swap dealer definition or in the Commission's further definition of that term, and that the final rule's treatment of activity performed by an agent on behalf of a non-U.S. person in connection with its dealing activity was consistent with Exchange Act Section 30(c), which prohibits the application of Title VII requirements to a person that transacts a security-based swap business ''without the jurisdiction of the United States'').

[18] *See id.* at 8615. ''As long as a non-U.S. person limited its dealing activity with U.S. persons to levels below the dealer *de minimis* thresholds, it could enter into an unlimited number of transactions connected with its dealing activity in the United States without being required to register as a security-based swap dealer.'' *Id.*

[19] *See id.* at 8616. The Commission stated that if financial groups using non-U.S. persons to carry out dealing business in the United States can ''exit the Title VII regulatory regime without exiting the U.S. market with respect to their security-based swap dealing business with non-U.S.-person counterparties (including non-U.S.-person dealers),'' those non-U.S.-person dealers likely would incur fewer costs related to their U.S. dealing activity than U.S.-person dealers transacting with the same counterparties, and that non-U.S. person counterparties likely would incur lower costs and obtain better pricing by entering into security-based swaps with non-U.S. dealers that are not required to register as security-based swap dealers. The Commission added that U.S.-person dealers would be at a disadvantage as financial groups use their non-registered dealers to cross-subsidize the dealing activity of affiliated registered security-based swap dealers that engage in dealing activity with U.S.-person counterparties. *See id.*

[20] *See id.* at 8615 (stating that aside from mitigating counterparty and operational risks, Title VII security-based swap dealer requirements also ''advance other important policy objectives of security-based swap dealer regulation under Title VII, including enhancing counterparty protections and market integrity, increasing transparency, and mitigating risk to participants in the financial markets and the U.S. financial system more broadly'').

[21] *See id.* at 8617–18.

Exchange Act Section 15(a) requires persons who engage in brokerage activities involving securities to register with the Commission unless they can avail themselves of an exception from the registration requirement. The definition of ''broker'' in Exchange Act Section 3(a)(10), generally encompasses persons engaged in the business of effecting transactions in securities for the account of others, but does not encompass banks that are engaged in certain activities, which may include a significant proportion of banks' security-based swap dealing activity. *See* ANE Adopting Release, 81 FR at 8619.

The definition of ''security'' in the Exchange Act (*see* Exchange Act Section 3(a)(10)) encompasses security-based swaps. The Commission has provided time-limited exemptive relief, expiring February 5, 2020, from the application of certain Exchange Act requirements related to securities activities involving security-based swaps. *See* Exchange Act Release No. 84991 (Jan. 25, 2019), 84 FR 863 (Jan. 31, 2019).

[22] *See* ANE Adopting Release, 81 FR at 8618.

[23] *See id.* at 8619.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.* at 8620.

The Commission also addressed one comment that suggested that allowing U.S. personnel to rely on broker-dealer requirements would increase efficiency by permitting such personnel to ''be subject to a single set of regulatory compliance obligations with respect to both their underlying securities transactions and derivatives transactions.'' In response, the Commission noted that such efficiencies would be unavailable to banks that are excepted from the ''broker'' definition for certain activities, that any such intra-firm efficiencies would be accompanied by competitive disparities, and that Exchange Act and FINRA rules applicable to broker-dealers may incorporate ''similar requirements'' once relevant exemptions terminate. *See id.* at 8620.

The Commission further noted that concerns expressed by commenters could be mitigated in part by the availability of substituted compliance, which would permit non-U.S. person-dealers to comply with comparable foreign requirements as an alternative to complying with certain Title VII requirements. The Commission recognized, however, that substituted compliance may not be available for some requirements, and that the availability of substituted compliance would be contingent on the relevant foreign requirements being comparable to Title VII requirements. *See id.* at 8620.

4. Reconsideration of the Use of ''Arranged, Negotiated, or Executed'' Criteria

Although the ''arranged, negotiated, or executed'' test for *de minimis* counting has yet to be implemented, as the prerequisites for the registration of security-based swap dealers have not yet been finalized, the Commission believes that it is appropriate to reconsider the approach it adopted in 2016 in light of ongoing concern among market participants and other commenters, potential reconsideration by the CFTC of the cross-border application provisions under Title VII governing swap market participants and swaps activities, and regulatory developments in other jurisdictions.

First, market participants have continued to raise several concerns about the use of ''arranged, negotiated, or executed'' criteria. They argue that requiring a non-U.S. dealer to identify transactions that it arranges, negotiates or executes using personnel located in the United States for purposes of compliance with the rule poses significant operational challenges.[28] In addition, they express concern that foreign non-dealer counterparties will avoid interacting with personnel located in the United States if doing so would subject them to U.S. regulatory requirements, given the potential for duplication or conflict with foreign regulatory requirements and the concomitant burden.[29] To address these concerns, they state that they will be required to ''implement compliance systems that eliminate U.S.-located personnel from arranging, negotiating and executing the clients' non-U.S. transactions,'' which in turn will lead to market fragmentation, lower levels of security-based swap activity by foreign dealers in the U.S. market, and potentially lower levels of liquidity, globally and in the U.S. market.[30] These market participants argue that the risk that such transactions present to the U.S. financial market (and thus the benefit of subjecting such activity to the Commission's regulatory framework) is negligible and cannot justify the imposition of these requirements with their concomitant direct and indirect costs.[31]

The Treasury Department issued a report in October 2017 expressing the view that the Commission and the CFTC should ''reconsider the implications'' of applying Title VII rules—including the Commission's *de minimis* counting rules as well as other Commission and CFTC requirements—to certain transactions ''merely on the basis that U.S.-located personnel arrange, negotiate, or execute the swap, especially for entities in comparably regulated jurisdictions.'' [32] Since the publication of this report, market participants have reiterated their concerns. For example, two commenters jointly restated their concern that the test ''would discourage non-U.S. clients from interacting with U.S. personnel and impede risk management by expert trading personnel located in the U.S.'' and impose significant operational burdens, even though ''the benefits of applying additional requirements to [transactions captured by the test] are limited.'' [33]

The Commission further is aware of concerns that application of the counting rule could require a financial group to register multiple non-U.S. entities as security-based swap dealers solely because each of those entities makes use of affiliated persons based in the United States to arrange, negotiate or execute security-based swap transactions with non-U.S. counterparties at levels exceeding the *de minimis* threshold. This may incentivize such groups to relocate U.S. personnel (or the activities performed by U.S. personnel) abroad to avoid triggering security-based swap dealer registration—a result that may raise issues similar to those raised by the commenters described above, including increased fragmentation to the detriment of U.S. market participants, which could harm U.S. markets and the U.S. economy. These concerns may be particularly acute for non-U.S. financial groups with dealers located in jurisdictions for which the Commission has not made a substituted compliance determination.[34]

Additionally, commenters have continued to urge the Commission to harmonize its rules under Title VII with those of the CFTC, as the CFTC has largely implemented its regulatory framework for swaps and many, if not most, market participants that transact security-based swaps also transact swaps pursuant to the CFTC's rules.[35] Market participants have noted potential inefficiencies that may arise from differences between the Commission's and the CFTC's rules and guidance, including the operational challenges that face a dealer's trading desk that transacts in both swaps and security-based swaps, as different or overlapping requirements may apply

[28] *See* Institute of International Bankers (''IIB''), ''U.S. Supervision and Regulation of International Banks: Recommendations for the Report of the Treasury Secretary'' (Apr. 28, 2017) at 64–65 (''IIB Treasury Letter'') (''These systems will create barriers within entities and corporate groups based solely on the geographic location of personnel, to the detriment of globalized risk management and at increased cost to clients. Personnel-based tests are also cumbersome to administer, requiring entities to make seemingly arbitrary distinctions about permitted activities of personnel based on their geographic location at any time.''); *see also, e.g.,* Memorandum from Richard Gabbert, Counsel to Commissioner Hester M. Peirce, dated Nov. 30, 2018 (regarding a November 16, 2018 meeting with representatives of SIFMA), *available at https://www.sec.gov/comments/s7-05-14/s70514-4714190-176653.pdf;* Memorandum from Richard Gabbert, Counsel to Commissioner Hester M. Peirce, dated Nov. 30, 2018 (regarding a November 16, 2018 meeting with representatives of the International Swaps and Derivatives Association (ISDA)), *available at https://www.sec.gov/comments/s7-05-14/s70514-4714187-176649.pdf.*

[29] In particular, IIB noted concerns raised by the need under this test for foreign clients interacting with personnel located in the United States to ''amend[ ] their trading documentation,'' change their trading practices to account for public reporting requirements, and change their interactions with trading platforms and clearing houses in order to comply with the Commission's rules. *See id.* at 64.

[30] *See id.* at 65 (''The increased costs of compliance and changes to market behavior will impede the ability of non-U.S. dealers to invest and participate in U.S. markets and could lead to the elimination of a significant number of jobs for U.S.-located personnel.''); *see also* Securities Industry and Financial Markets Association (''SIFMA''), ''Capital Markets Report—Modernizing and Rationalizing Regulation of U.S. Capital Markets'' (Aug. 10, 2017) at 115 (''SIFMA Treasury Letter'') (arguing that the test should be modified ''[t]o encourage firms to hire U.S. front office personnel and promote global market liquidity'').

[31] *See* IIB Treasury Letter at 65 (''The costs of these rules far exceed any risk-mitigating benefit. For non-U.S. transactions, the presence of U.S.-located personnel in arranging, negotiating or executing does not result in risk flowing to the United States.''); SIFMA Treasury Letter at 120 (''The participation of U.S. personnel does not create risks justifying the imposition of Title VII requirements to these otherwise non-U.S. swaps.'').

[32] *See* Treasury Department, ''A Financial System That Creates Economic Opportunities: Capital Markets'' (Oct. 2017) at 133–36, *available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.*

[33] IIB and SIFMA, ''SEC–CFTC Harmonization: Key Issues under Title VII of the Dodd-Frank Act'' (June 21, 2018) at 5–6 (''IIB/SIFMA 6/21/18 Letter''), *available at https://www.sec.gov/comments/s7-05-14/s70514-3938974-167037.pdf.*

[34] Exchange Act Rule 3a71–6 permits registered non-U.S. security-based swap dealers to satisfy certain security-based swap dealer requirements—related to business conduct, supervision, chief compliance officers and trade acknowledgment and verification—by complying with foreign requirements that the Commission by order has determined are comparable to the analogous Title VII requirements.

[35] *See* IIB/SIFMA 6/21/18 Letter at 1; *see also* Futures Industry Association, ''Harmonization of SEC and CFTC Regulatory Frameworks,'' (Nov. 29, 2018) at 9, *available at https://www.sec.gov/comments/s7-08-12/s70812-4722398-176717.pdf* (encouraging the Commission and the CFTC to ''jointly propose and adopt rules reflecting a harmonized and unified approach to the cross-border application of the swaps and security-based swaps provisions of Title VII'').

depending on the specific product or products being traded in connection with a particular transaction.[36] Commenters specifically have urged the Commission to amend its rules to be consistent with the CFTC's approach, which would not require transactions arranged, negotiated, or executed in the United States to be counted toward the *de minimis* thresholds.[37] In the alternative, these commenters have suggested that the Commission consider an exception for such activity to the extent that it is carried out by U.S. personnel employed by an affiliate that is either a registered security-based swap dealer or a registered broker-dealer and the affiliated foreign dealer is ''subject to BCBS–IOSCO compliant capital and margin requirements.'' [38]

In October 2018, CFTC Chairman Giancarlo issued a document setting forth his views regarding possible modifications to the CFTC's cross-border application of its swap regulations.[39] Among other things, the Giancarlo White Paper suggests an approach to the regulation of transactions arranged, negotiated, or executed by personnel located in the United States on behalf of a foreign dealer.[40] The Giancarlo White Paper suggests that these transactions generally should be subject to U.S. requirements but also suggests that it may be appropriate to defer to the foreign jurisdiction's requirements if the foreign dealer is subject to regulation in a ''Comparable Jurisdiction.'' [41]

Finally, in recent years, foreign jurisdictions have continued to implement their own regulatory reforms of the OTC derivatives markets, making it important to explore possible ways to try to reduce conflicts, gaps, inconsistencies and overlaps between Title VII requirements and corresponding foreign requirements. For example, according to the Financial Stability Board (''FSB'') OTC Derivatives Working Group's 12th and 13th Progress Reports, only three FSB member jurisdictions had margin requirements for non-centrally cleared derivatives in force at the end of August 2016, while 16 FSB member jurisdictions had such margin requirements in force at the end of September 2018.[42]

In light of the foregoing, the Commission believes that it is appropriate to reconsider its approach to these transactions before foreign dealers and other foreign market participants are required to comply with requirements based on ''arranged, negotiated, or executed'' criteria, as used in Exchange Act Rule 3a71–3 and elsewhere to implement Title VII in the cross-border context, to enable the Commission to avoid or mitigate any negative effects that the test may create if firms were required to comply with it as adopted. First, the Commission preliminarily believes that it is appropriate to provide guidance to market participants regarding the types of market-facing activity that the ''arranged'' or ''negotiated'' criteria would not encompass. Second, the Commission preliminarily believes that it is possible that an alternative approach may better balance any risks posed by such transactions to the U.S. market against the market-fragmentation and operational risks of subjecting foreign dealers engaged in such transactions to the full range of Title VII regulatory requirements. Moreover, reconsideration of the Commission's approach would be consistent both with its statutory obligation to consult and coordinate with the CFTC and with both agencies' recent efforts to harmonize more closely, to the extent possible, their respective requirements under Title VII.[43] Finally, reconsideration would permit the Commission to evaluate whether the implementation of regulatory reforms in foreign jurisdictions may address some of the concerns that led the Commission to adopt the various uses of the ''arranged, negotiated, or executed'' test in connection with the cross-border application of Title VII.

For all of these reasons, the Commission preliminarily believes that it is appropriate to provide guidance about the scope of the ''arranged'' or ''negotiated'' criteria. The proposed guidance is designed to provide market participants with additional information regarding the types of conduct that would trigger the Title VII requirements that use those criteria, and hence provide improved clarity regarding the types of market-facing conduct that would not be subject to the relevant Title VII requirements.

Separately, the Commission is proposing an exception from the application of the ''arranged, negotiated, or executed'' test in connection with the *de minimis* counting requirement in Exchange Act Rule 3a71–3(b)(1)(iii)(C), and is soliciting comment regarding possible additional exceptions to the use of those criteria in Exchange Act Rules 3a71–3(b)(1)(iii)(A) (with regard to certain dealing transactions involving certain foreign branches of a registered security-based swap dealer), 3a71–3(c) (with regard to the cross-border application of security-based swap dealer business conduct requirements), 3a67–10 (with regard to the cross-border application of security-based swap dealer business conduct requirements), and Regulation SBSR Rules 908(a)(1)(v) and 908(b)(5) (relating to cross-border application of regulatory reporting and public dissemination requirements). The Commission preliminarily believes that the proposed exception to Rule 3a71–3(b)(1)(iii)(C) would reduce the market fragmentation and operational risks associated with the ''arranged, negotiated, or executed'' test, provide a possible framework for reducing divergence from the CFTC in connection with the treatment of these transactions, and appropriately recognize the role that foreign regulation may play in addressing certain risks that may arise from these transactions, while protecting the important interests that underpin that use of the ''arranged, negotiated, or executed'' test.

B. Proposed Guidance and Amendments Related to the Certification and Opinion of Counsel Requirements

In 2015, the Commission adopted rules regarding the registration of SBS Entities.[44] These rules include certain requirements specific to nonresident SBS Entities. In particular, Exchange Act Rule 15Fb2–4 requires, among other things, that each nonresident SBS Entity registering with the Commission certify that it can, as a matter of law, and will provide the Commission with prompt access to its books and records and

[36] *See* IIB/SIFMA 6/21/18 Letter at 1.

[37] *See id.* at 5.

[38] *Id.*

[39] *See* Chris Giancarlo, CFTC Chairman, ''Cross-Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-U.S. Regulation'' (Oct. 1, 2018) (''Giancarlo White Paper''), *available at https://www.cftc.gov/sites/default/files/2018-10/Whitepaper_CBSR100118.pdf.*

[40] *See* Giancarlo White Paper at 76.

[41] *See id.* at 79, 80–81.

[42] *See* FSB, ''OTC Derivatives Market Reforms: Twelfth Progress Report on Implementation'' (Jun. 29, 2017) at 2, *available at http://www.fsb.org/2017/06/otc-derivatives-market-reforms-twelfth-progress-report-on-implementation;* and FSB, ''OTC Derivatives Market Reforms: Thirteenth Progress Report on Implementation'' (Nov. 19, 2018) at 1, *available at http://www.fsb.org/wp-content/uploads/P191118-5.pdf.*

[43] *See* ''Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants,'' 83 FR 43510 (Aug. 27, 2018); ''Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,'' Exchange Act Release No. 84409 (Oct. 11, 2018), 83 FR 53007 (Oct. 19, 2018).

[44] *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964 (Aug. 14, 2015) (''Registration Adopting Release'').

submit to on-site inspection and examination by the Commission.[45] It also requires that the nonresident SBS Entity obtain and provide to the Commission an opinion of counsel to support this certification.[46] As the Commission stated when adopting these requirements, significant elements of an effective regulatory regime are the Commission's abilities to access registered SBS Entities' books and records and to inspect and examine the operations of registered SBS Entities.[47]

The certification and opinion of counsel requirements adopted by the Commission are designed to provide assurances that the Commission is able to access directly the books and records of a nonresident SBS Entity as provided under Sections 15F and 17 of the Exchange Act and the Commission's rules thereunder, and conduct on-site inspections and examinations of those records.[48] In support of these endeavors, the Commission has proposed recordkeeping rules that would require an SBS Entity to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBS Entity that are required to be preserved by the rules, or any other records of the SBS Entity subject to examination or required to be made or maintained pursuant to the Exchange Act that are requested by a representative of the Commission.[49]

The Commission is proposing guidance to Exchange Act Rule 15Fb2–4 regarding: (i) The foreign laws that must be covered by the certification and opinion of counsel; (ii) the scope of the books and records that are the subject of the certification and opinion of counsel, namely that the certification and opinion of counsel need only address: (1) Records that relate to the ''U.S. business'' (as defined in Exchange Act Rule 3a71–3(a)(8)) of the nonresident SBS Entity; and (2) financial records necessary for the Commission to assess the compliance of the nonresident SBS Entity with capital and margin requirements under the Exchange Act and rules promulgated by the Commission thereunder, if these capital and margin requirements apply to the nonresident SBS Entity; (iii) predication of a firm's certification and opinion of counsel, as necessary, on the nonresident SBS Entity obtaining prior consent of the persons whose information is or will be included in the books and records to allow the firm to promptly provide the Commission with direct access to its books and records and to submit to on-site inspection and examination; (iv) applicability of the certification and opinion of counsel to contracts entered into prior to the date on which the SBS Entity submits an application for registration pursuant to Section 15F(b); and (v) whether the certification and opinion of counsel submitted by a nonresident SBS Entity can take into account approvals, authorizations, waivers or consents provided by local regulators.

The Commission is also proposing to amend Exchange Act Rule 15Fb2–1 to provide additional time for a nonresident SBS Entity to submit the certification and opinion of counsel required under Exchange Act Rule 15Fb2–4(c)(1). The Commission is proposing to add new paragraphs (d)(2) and (e)(2) to Exchange Act Rule 15Fb2–1. Proposed paragraph (d)(2) would provide that a nonresident applicant that is unable to provide the certification and opinion of counsel required under Rule 15Fb2–4(c)(1) shall be conditionally registered, for up to 24 months after the compliance date for Rule 15Fb2–1, if the applicant submits a Form SBSE–C and a Form SBSE, SBSE–A, or SBSE–BD, as appropriate, that is complete in all respects but for the failure to provide the certification and the opinion of counsel required by Rule 15Fb2–4(c)(1). Proposed paragraph (e)(2) would provide that if a nonresident SBS Entity became conditionally registered in reliance on paragraph (d)(2), the firm would remain conditionally registered until the Commission acts to grant or deny ongoing registration, and that if the nonresident SBS Entity fails to provide the certification and opinion of counsel within 24 months of the compliance date for Rule 15Fb2–1, the Commission may institute proceedings to determine whether ongoing registration should be denied. As indicated in the Registration Adopting Release, once an SBS Entity is conditionally registered, all of the Commission's rules applicable to registered SBS Entities apply to the entity and it must comply with them.

The guidance regarding the certification and opinion of counsel requirements would also be relevant to Exchange Act Rule 3a71–6, which allows SBS Entities to comply with certain requirements under Section 15F of the Exchange Act through substituted compliance.[50] Paragraph (c)(2)(ii) of Rule 3a71–6 provides that substituted compliance applications by parties or groups of parties—other than foreign financial regulatory authorities—must include the certification and opinion of counsel associated with the SBS Entity registration requirements as if the party were subject to that requirement at the time of the request. Recognizing the expected time necessary for the Commission to consider substituted compliance applications it receives, the Commission welcomes submissions of such applications with respect to any of its final rules for which substituted compliance is potentially available. Consistent with this position, the Commission wishes to clarify that, during the pendency of this proposal, the Commission will consider all substituted compliance applications submitted by parties or groups of parties who are not foreign regulatory authorities even when not accompanied by a certification or opinion of counsel.[51] This clarification, however, does not mean that the Commission would grant any application for substituted compliance submitted by such parties or groups of parties before the required certification and opinion of counsel are filed.

C. Proposed Amendment to Commission Rule of Practice 194

Exchange Act Section 15F(b)(6) makes it unlawful for an SBS Entity to permit an associated person[52] who is subject to a statutory disqualification[53] to effect or

[45] *See* 17 CFR 240.15Fb2–4(c)(1)(i).

[46] *See* 17 CFR 240.15Fb2–4(c)(1)(ii). As discussed below, the Commission has incorporated these certification and opinion of counsel requirements into Exchange Act Rule 3a71–6, which governs applications for substituted compliance.

[47] *See* Registration Adopting Release, 80 FR at 48981.

[48] *See id.*

[49] *See* paragraph (j) of Exchange Act Rule 17a–4, and paragraph (g) of proposed Exchange Act Rule 18a–6 (Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194 (May 2, 2014) (''Recordkeeping and Reporting Proposing Release'')).

[50] Exchange Act Rule 3a71–6.

[51] The Commission's rules do not require that applications submitted by foreign regulatory authorities be accompanied by a certification or opinion of counsel. Exchange Act Rule 3a71–6(c).

[52] Exchange Act Section 3(a)(70) generally defines the term ''person associated with'' an SBS Entity to include (i) any partner, officer, director, or branch manager of an SBS Entity (or any person occupying a similar status or performing similar functions); (ii) any person directly or indirectly controlling, controlled by, or under common control with an SBS Entity; or (iii) any employee of an SBS Entity. *See* 15 U.S.C. 78c(a)(70). The definition generally excludes persons whose functions are solely clerical or ministerial. *Id.* The definition of ''person'' under Exchange Act Section 3(a)(9) is not limited to natural persons, but extends to both entities and natural persons. 15 U.S.C. 78c(a)(9) (''The term 'person' means a natural person, company, government, or political subdivision, agent, or instrumentality of a government.'').

[53] The term statutory disqualification as used in Exchange Act Section 15F(b)(6) parallels the definition of statutory disqualification in Exchange Act Section 3(a)(39)(A)–(F), 15 U.S.C. 78c(a)(39)(A)–(F). *See* ''Applications by Security-Based Swap Dealers or Major Security-Based Swap

be involved in effecting security-based swaps on behalf of the SBS Entity if the SBS Entity knew, or in the exercise of reasonable care should have known, of the statutory disqualification, ''[e]xcept to the extent otherwise specifically provided by rule, regulation, or order of the Commission.'' [54] In this regard, Exchange Act Section 15F(b)(6) gives the Commission the discretion to determine, by rule, regulation or order, that a statutorily disqualified associated person may effect or be involved in effecting security-based swaps on behalf of an SBS Entity, and/or to establish rules concerning the statutory prohibition in Exchange Act Section 15F(b)(6).[55] As outlined below, the Commission has taken several actions with respect to the prohibition in Section 15F(b)(6) of the Exchange Act in its implementation of Title VII of the Dodd-Frank Act.[56]

1. Registration Requirements for SBS Entities

On August 5, 2015, the Commission adopted registration requirements for SBS Entities.[57] Several aspects of the adopted rules relate to the statutory prohibition in Exchange Act Section 15F(b)(6). In particular, the Commission adopted Rule 15Fb6–2(a), which requires that an SBS Entity certify electronically on its Form SBSE–C that it neither knows, nor in the exercise of reasonable care should have known, that any person associated with that SBS Entity who effects or is involved in effecting security-based swaps on its behalf is subject to a statutory disqualification, unless otherwise specifically provided by rule, regulation or order of the Commission.[58] In addition, Rule 15Fb6–2(b) requires that, to support the certification required by Rule 15Fb6–2(a), the Chief Compliance Officer of an SBS Entity, or his or her designee, must review and sign a questionnaire or application for employment—that the SBS Entity is required to obtain pursuant to the relevant recordkeeping rule—which has been executed by each associated person who is a natural person and who effects or is involved in effecting security-based swaps on behalf of the SBS Entity. The questionnaire or application for employment, in turn, would serve to verify that the associated natural person is not subject to statutory disqualification.[59]

The Commission also included within the Registration Adopting Release guidance on the scope of the phrase ''involved in effecting security-based swaps,'' as that phrase is used in Exchange Act Section 15F(b)(6).[60] Specifically, the Commission stated that the term ''involved in effecting security-based swaps'' generally means engaged in functions necessary to facilitate the SBS Entity's security-based swap business, including, but not limited to the following activities: (1) Drafting and negotiating master agreements and confirmations; (2) recommending security-based swap transactions to counterparties; (3) being involved in executing security-based swap transactions on a trading desk; (4) pricing security-based swap positions; (5) managing collateral for the SBS Entity; and (6) directly supervising persons engaged in the above-described activities.[61]

2. Commission Rule of Practice 194

On December 19, 2018, the Commission adopted Rule of Practice 194, which provides, among other things, a process by which an SBS Entity could apply to the Commission to permit an associated person who is a natural person and who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity.[62] Rule of Practice 194 establishes a process by which the Commission can assess on a case-by-case basis whether to grant relief from the statutory prohibition in Exchange Act Section 15F(b)(6).

Rule of Practice 194 excludes associated persons that are not natural persons (defined herein as ''associated person entities'') from the statutory disqualification prohibition in Exchange Act Section 15F(b)(6).[63] As the Commission explained when adopting Rule of Practice 194, granting an automatic exclusion for associated person entities could reduce potential disruptions to the business of SBS Entities that could lead to possible market disruption.[64] The exclusion for associated person entities also results in consistency with the CFTC's approach with respect to the statutory prohibition for Swap Entities as set forth in CEA Section 4s(b)(6).[65]

3. Proposed Rule of Practice 194(c)(2)

As the Commission noted in adopting Rule of Practice 194, there may be instances where it is consistent with the public interest to permit an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity.[66] As discussed in greater detail below, the Commission is now proposing to amend Rule of Practice 194, by including proposed paragraph (c)(2), to exclude an SBS Entity, subject to certain limitations, from the prohibition in Exchange Act Section 15F(b)(6) with respect to an associated person who is a natural person who (i) is not a U.S. person and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person.

D. Proposed Exchange Act Rule 18a–5

In April 2014, the Commission proposed recordkeeping, reporting, and notification requirements applicable to SBS Entities, securities count requirements applicable to certain security-based swap dealers, and

Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps,'' Exchange Act Release No. 84858 (Dec. 19, 2018), 84 FR 4906 (Feb. 19, 2019) (''Rule of Practice 194 Adopting Release'').

[54] 15 U.S.C. 78o–10(b)(6). The statutory prohibition in Exchange Act Section 15F(b)(6) is substantially the same as the statutory provision for a swap dealer or major swap participant (collectively ''Swap Entities'') in Section 4s(b)(6) of the CEA, 7 U.S.C. 6s(b)(6).

[55] *See id.*

[56] On June 15, 2011, the Commission issued an order that, among other things, granted temporary relief from compliance with Exchange Act Section 15F(b)(6) for persons subject to a statutory disqualification who were, as of July 16, 2011, associated with an SBS Entity and who effected or were involved in effecting security-based swaps on behalf of such SBS Entity and allowed such persons to continue to be associated with an SBS Entity until the date upon which rules adopted by the Commission to register SBS Entities became effective. *See* ''Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps,'' Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287, 36301, 36305–07 (Jun. 22, 2011) (''June 2011 Temporary Exemptions Order''); *see also* ''Order Extending Certain Temporary Exemptions and a Temporary and Limited Exception Related to Security-Based Swaps,'' Exchange Act Release No. 75919 (Sept. 15, 2015), 80 FR 56519 (Sep. 18, 2015) (extending the June 2011 Temporary Exemptions Order).

[57] *See* Registration Adopting Release.

[58] *See* 17 CFR 240.15Fb6–2(a) and Form SBSE–C (17 CFR 249.1600c).

[59] *See* 17 CFR 240.15Fb6–2(b).

[60] *See* Registration Adopting Release, 80 FR at 48974, 48976.

[61] *See id.* at 48976.

[62] *See* Rule of Practice 194 Adopting Release, 84 FR at 4906–47; *see also* 17 CFR 240.194(a)–(i).

[63] *See* 17 CFR 240.194(c); *see also* Rule of Practice 194 Adopting Release, 84 FR at 4906.

[64] *See* Rule of Practice 194 Adopting Release, 84 FR at 4911.

[65] *See* 7 U.S.C. 6s(b)(6). The CFTC, with respect to statutorily disqualified associated persons of swap entities, limits the definition of associated persons of swap entities to natural persons. *See* 17 CFR 1.3. As a result, the prohibition in CEA Section 4s(b)(6) applies to natural persons (not entities) associated with a swap entity.

[66] *See* Rule of Practice 194 Adopting Release, 84 FR at 4908.

additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities.[67] The proposed requirements were modeled on existing broker-dealer requirements.[68] The Commission received a number of comments in response to these proposals.[69] Separately, the Commission proposed rules governing the cross-border treatment of recordkeeping and reporting requirements with respect to SBS Entities.[70] The Commission received comments in response to these cross-border proposals as well.[71]

In the Recordkeeping and Reporting Proposing Release, the Commission, among other things, proposed new Exchange Act Rule 18a–5 (patterned after Exchange Act Rule 17a–3—the recordkeeping rule for registered broker-dealers) to establish recordkeeping standards for firms without a prudential regulator that are registered with the Commission only as an SBS Entity (and not as a broker-dealer as well) and SBS Entities for which there is a prudential regulator (collectively, ''stand-alone and bank SBS Entities'').[72]

As part of that rulemaking, the Commission proposed to require that an SBS Entity make and keep current a questionnaire or application for employment for each associated person who is a natural person, that includes the associated person's identifying information, business affiliations for the past ten years, relevant disciplinary history, relevant criminal record, and place of business, among other things (hereinafter the ''questionnaire requirement'').[73] The Commission also proposed a definition of the term ''associated person'' that would include persons associated with an SBS Entity as defined under Section 3(a)(70) of the Exchange Act.[74] One commenter requested that the Commission modify the rule for foreign SBS Entities so that the questionnaire requirement would not apply to associated persons who effect or are involved in effecting security-based swap transactions with non-U.S. persons or foreign branches.[75] In a subsequent letter, this commenter also requested that the rule be modified to exclude from the questionnaire requirement an associated person employed or located in a non-U.S. branch, office, or affiliate of the firm in circumstances where: (1) Applicable non-U.S. law prohibits the firm from conducting background checks on the associated person and consent does not cure the prohibition or may not be a condition of employment; (2) the associated person is not subject to a statutory disqualification that the firm actually knows about; (3) the associated person does not effect and is not involved in effecting security-based swaps with U.S. counterparties on behalf of the firm; and (4) the associated person complies with applicable registration and licensing requirements in the jurisdiction(s) where he or she effects or is involved in effecting security-based swaps on behalf of the firm.[76]

As indicated in Exchange Act Rule 15Fb6–2, the questionnaire requirement is intended to serve as a basis for a background check of the associated person who is a natural person and who effects or is involved in effecting security-based swap transactions on the SBS Entity's behalf to verify that the person is not subject to statutory disqualification.[77] The Commission preliminarily believes that it is appropriate to provide flexibility with respect to the questionnaire requirement as applied to associated persons of stand-alone and bank SBS Entities. As discussed above in Section I.C.3., the Commission is proposing to add paragraph (c)(2) to Rule of Practice 194 in order to provide an exclusion from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to an associated person who is not a U.S. person and does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person, subject to certain conditions. Consistent with this proposal, the Commission is also proposing modifications to proposed Rule 18a–5 to provide that a stand-alone or bank SBS Entity is not required to make and keep current a questionnaire or application for employment executed by an associated person if the SBS Entity is excluded from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to such associated person.

The Commission also is proposing modifications to proposed Rule 18a–5 to address situations where the laws of a non-U.S. jurisdiction in which an associated person is employed or located may prohibit a stand-alone or bank SBS Entity from receiving, creating or maintaining a record of any of the information mandated by the questionnaire requirement.[78] The modifications would apply with respect to an associated person who is not a U.S. person and would provide that the stand-alone or bank SBS Entity need not record certain information mandated by the questionnaire requirement with respect to that person if the receipt of that information, or the creation or maintenance of records reflecting such information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located. The Commission emphasizes, however, that every SBS Entity must still comply with Section 15F(b)(6) of the Exchange Act and Rule 15Fb6–2 with respect to every associated person who effects or is involved in effecting security-based swaps on behalf of the SBS Entity absent an exclusion from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act.

II. Proposed Guidance Regarding the Meaning of ''Arranged'' and ''Negotiated'' in Connection With the Cross-Border Application of Title VII

A. Provision of ''Market Color''

1. Earlier Guidance

In adopting the Exchange Act Rule 3a71–3(b)(1)(iii)(C) ''arranged, negotiated, or executed'' *de minimis* counting standard applicable to transactions between two non-U.S. counterparties, the Commission addressed the types of activity that would—and would not—trigger that portion of the *de minimis* test. The Commission subsequently relied on the analysis underpinning that use of the ''arranged, negotiated, or executed'' test within the *de minimis* counting standard when the Commission adopted final rules incorporating those criteria

[67] *See* Recordkeeping and Reporting Proposing Release.

[68] *See id.,* 79 FR at 25196–97 (providing the rationale for modeling the proposed requirements on the relevant broker-dealer requirements).

[69] The comment letters are available at *https://www.sec.gov/comments/s7-05-14/s70514.shtml.*

[70] *See* ''Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,'' Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (''Cross-Border Proposing Release'').

[71] The comment letters are available at *https://www.sec.gov/comments/s7-02-13/s70213.shtml.*

[72] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25205.

[73] Paragraphs (a)(10)(i) and (b)(8)(i) of proposed Rule 18a–5.

[74] *Id.*

[75] *See* SIFMA letter to Kevin M. O'Neill, dated Sep. 5, 2014 (''SIFMA 9/5/14 Letter'') at 9, *available at https://www.sec.gov/comments/s7-05-14/s70514-10.pdf.*

[76] *See* Letter from IIB and SIFMA, dated Aug. 26, 2016 (''IIB/SIFMA 8/26/16 Letter''), *available at https://www.sec.gov/comments/s7-05-14/s70514-18.pdf.*

[77] *See* 17 CFR 240.15Fb6–2(b).

[78] *See* paragraphs (a)(10)(iii) and (b)(8)(iii) of Rule 18a–5, as proposed.

into the cross-border application of security-based swap dealer business conduct provisions,[79] and into the cross-border application of Regulation SBSR's regulatory reporting and public dissemination provisions.[80] The Commission previously incorporated those criteria into the portion of the security-based swap dealer *de minimis* exception related to transactions involving counterparties that are foreign branches of registered security-based swap dealers,[81] and also has incorporated those criteria into Title VII rules regarding major security-based swap participants.[82]

In discussing the ''arranged, negotiated, or executed'' test in the context of the *de minimis* counting standard applicable to transactions involving two non-U.S. counterparties, the Commission explained that the terms ''arrange'' and ''negotiate'' were intended to ''indicate market-facing activity of sales or trading personnel in connection with a particular transaction, including interactions with counterparties or their agents.'' [83] The Commission added that the term ''execute'' in the rule ''refers to the market-facing act that, in connection with a particular transaction, causes the person to become irrevocably bound under the security-based swap under applicable law.'' [84]

The Commission further distinguished market-facing activity by sales and trading personnel from activity by personnel who perform back-office functions that generally do not involve direct contact with counterparties. In doing so, the Commission identified types of activities that would not require counting of transactions against the *de minimis* thresholds, including: Processing trades and other back-office activities; designing security-based swaps without engaging in market-facing activity in connection with specific transactions; preparing underlying documentation including negotiating master agreements (''as opposed to negotiating with the counterparty the specific economic terms of a particular security-based swap transaction''); and clerical and ministerial tasks such as entering executed transactions on a non-U.S. person's books.[85]

In addition, the Commission stated that it generally viewed the test as requiring the counting of transactions arranged, negotiated or executed by, for example, ''personnel assigned to, on an ongoing or temporary basis, or regularly working in a U.S. branch or office.'' [86]

[79] Exchange Act Rule 3a71–3(c) excuses a registered security-based swap dealer from compliance with certain security-based swap dealer business conduct standards with respect to its foreign business. That rule incorporates a standard, via underlying definitions of ''foreign business,'' ''U.S. business'' and ''transaction conducted through a foreign branch'' (*see* Exchange Act Rules 3a71–3(a)(3), (8) and (9)), that uses ''arranged, negotiated, and executed'' terminology that functionally is equivalent to the ''arranged, negotiated, or executed'' standard incorporated by Rule 3a71–3(b)(1)(iii)(C).

In adopting Rule 3a71–3(c), the Commission particularly stated that the business conduct rules should apply to transactions that a foreign security-based swap dealer ''arranges, negotiates, or executes using personnel located in a U.S. branch or office,'' both to ''preserve customer protections for U.S. counterparties that would expect to benefit from the protection afforded to them by Title VII'' and to ''help maintain market integrity by subjecting the large number of transactions that involve relevant dealing activity in the United States to these requirements, even if both counterparties are non-U.S. persons.'' *See* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30065 (May 13, 2016) (''Business Conduct Adopting Release''). The Commission further stated that the business conduct rules need not be applied to a U.S. dealer's transactions that have been arranged, negotiated or executed through a foreign branch with a non-U.S. counterparty (or with another foreign branch counterparty), reasoning that ''Title VII is concerned with the protection of U.S. markets and participants in those markets, and it remains our view that imposing these requirements on a U.S.-person dealer when it arranges, negotiates, or executes through its foreign branch with another foreign branch or a non-U.S. person would produce little or no benefit to U.S. market participants.'' *Id.,* 81 FR at 30066.

[80] In incorporating an ''arranged, negotiated, or executed'' standard into Regulation SBSR Rules 908(a)(1)(v) and 908(b)(5), regarding the cross-border application of regulatory reporting and public dissemination requirements, the Commission stated that ''[c]onsistent with its territorial application of Title VII requirements, the Commission believes that, when a foreign dealing entity uses U.S. personnel to arrange, negotiate, or execute a transaction in a dealing capacity, that transaction occurs at least in part within the United States and is relevant to the U.S. security-based swap market,'' and that ''[a]s the Commission has stated previously, declining to apply Title VII requirements to security-based swaps of foreign dealing entities that use U.S. personnel to engage in ANE activity would have the effect of allowing such entities 'to exit the Title VII regulatory regime without exiting the U.S. market.' '' *See* Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 78321 (Jul. 14, 2016), 81 FR 53546, 53590–91 (footnote omitted).

[81] Exchange Act Rule 3a71–3(b)(1)(iii)(A) generally requires non-U.S. persons to count transactions with U.S. counterparties for purposes of the *de minimis* thresholds, but carves out transactions that constitute ''transactions conducted through a foreign branch of the counterparty.'' The definition of ''transaction conducted through a foreign branch'' in part requires that the transaction be ''arranged, negotiated, and executed on behalf of the foreign branch solely by persons located outside the United States.'' *See* Exchange Act Rule 3a71–3(a)(3)(i)(B).

When the Commission adopted that foreign branch-related *de minimis* counting requirement, the Commission concluded that the definition of ''transaction conducted through a foreign branch'' identifies the functions associated with foreign branch activity ''in a manner that appropriately focuses the exclusion for non-U.S. person's transactions toward situations in which the branch performs the core dealing functions outside the United States.'' *See* ''Application of 'Security-Based Swap Dealer' and 'Major Security-Based Swap Participant' Definitions to Cross-Border Security-Based Swap Activities; Republication'' Exchange Act Release No. 72472 (Jun. 25, 2014), 81 FR 47278, 47322 (Aug. 12, 2014) (''Cross-Border Adopting Release''). That is consistent with the analysis underlying the use of ''arranged, negotiated, or executed'' test in connection with the *de minimis* counting provisions of Rule 3a71–3(b)(1)(iii)(C), related to transactions between two non-U.S. persons, which was intended to prevent the conduct of an unregistered security-based swap dealing business in the United States. *See* notes 18 and 19, *supra.*

Unless specified otherwise, references to the application of the ''arranged, negotiated, or executed'' test in the context of *de minimis* counting refer both to the Rule 3a71–3(b)(1)(iii)(C) test regarding dealing transactions involving two non-U.S. persons, and the Rule 3a71–3(b)(1)(iii)(A) test regarding dealing transactions involving a counterparty that is the foreign branch of a registered security-based swap dealer.

[82] The rule implementing the ''major security-based swap participant'' definition generally requires consideration of a non-U.S. person's security-based swap positions with U.S. counterparties, but excludes positions that arise from transactions conducted through a foreign branch of a counterparty that is a registered security-based swap dealer. *See* Exchange Act Rule 3a67–10(b)(3)(i). This rule incorporates the Rule 3a71–3 definition of ''transaction conducted through a foreign branch,'' which makes use of ''arranged, negotiated, and executed'' criteria. In adopting that provision, the Commission noted its consistency with the security-based swap dealer *de minimis* counting provision related to transactions with counterparties that are foreign branches of registered security-based swap dealers. *See* Cross-Border Adopting Release, 79 FR at 47343.

U.S. and non-U.S. major security-based swap participants similarly are excluded from having to comply with certain business conduct requirements in connection with transactions conducted through a foreign branch, based on that same definition. *See* Exchange Act Rule 3a67–10(d). In adopting that provision, the Commission noted its consistency with the cross-border application of security-based swap dealer business conduct rules. *See* Business Conduct Adopting Release, 81 FR at 30069.

[83] *See* ANE Adopting Release, 81 FR at 8622.

[84] *See id.* The Commission added that the test also applies when U.S. persons direct other persons to arrange, negotiate or execute particular security-based swaps. ''In other words, sales and trading personnel of a non-U.S. person who are located in the United States cannot avoid application of this rule by simply directing other personnel to carry out dealing activity[.]'' The Commission further noted that the test includes transactions in which personnel located in a U.S. branch or office ''specify the trading strategy or techniques carried out through algorithmic trading or automated electronic execution of security-based swaps, even if the related server is located outside the United States.'' *Id.* at 8623.

[85] *See id.* at 8622.

[86] *Id.* at 8623. The Commission separately explained that the rule applies to security-based swap transactions that the non-U.S. person, in connection with its dealing activity, arranges, negotiates or executes, using personnel located in a U.S. branch or office, even when such transactions are in response to inquiries from a non-U.S. person counterparty outside business hours in the counterparty's jurisdiction and occur pursuant to product, credit and market risk parameters set by

Continued

On the other hand, the counting standard does not extend to transactions arranged, negotiated or executed ''by personnel assigned to a foreign office if such personnel are only incidentally in the United States,'' such as while attending an educational or industry conference.[87]

2. Proposed Supplemental Guidance

The Commission is proposing to provide supplemental guidance regarding the types of market-facing activity that would—and would not—constitute ''arranging'' or ''negotiating'' a security-based swap for purposes of the relevant Title VII requirements.[88] For the reasons discussed below, this proposed guidance would take the position that a person may provide ''market color'' in specific circumstances without that activity constituting ''arranging'' or ''negotiating'' security-based swap transactions for purposes of the ''arranged, negotiated, or executed'' test[89] that is used in connection with *de minimis* counting,[90] the cross-border application of business conduct rules,[91] regulatory reporting and public dissemination requirements,[92] and major security-based swap participant rules.[93] For purposes of this guidance, the term ''market color'' means background information regarding pricing or market conditions associated with particular instruments or with markets more generally, including information regarding current or historic pricing, volatility or market depth, and trends or predictions regarding pricing, volatility or market depth, as well as other types of information reflecting market conditions and trends.

The Commission believes that the earlier guidance, which focused on the presence of market-facing activities by U.S. personnel, provides a useful starting point for identifying the types of U.S. activity that should trigger the various uses of the ''arranged, negotiated, or executed'' test. The Commission nonetheless has come to recognize that there are significant variations among the types of market-facing activity that may occur in connection with security-based swap transactions, and that U.S. personnel in some circumstances may engage in activity that, although market-facing, reasonably may not be characterized as ''arranging'' or ''negotiating'' a security-based swap transaction—as those terms are understood generally and in the context of the relevant regulatory interests.

On one hand, U.S. personnel may actively market security-based swaps to counterparties on behalf of a firm. Those types of market-facing activity by U.S. personnel appropriately would trigger the various uses of the ''arranged, negotiated, or executed'' test, because otherwise those activities could cause a firm to engage in a dealing business in the United States without being subject to applicable Title VII requirements.

At the other end of the spectrum, U.S. personnel may engage in limited market-facing activity such as providing market-related information to counterparties in response to inquiries, or providing market data or other information that helps to set the price associated with a security-based swap transaction that otherwise is negotiated by non-U.S. personnel. When the remaining market-facing activity connected with a transaction occurs outside the United States, such limited market-facing activity by U.S. personnel standing alone does not trigger the concerns and regulatory interests that underpin the various uses of the ''arranged, negotiated, or executed'' test in connection with the transaction.[94]

Accordingly, the earlier reliance on the presence of market-facing activity may not sufficiently recognize circumstances in which the market-facing activity of U.S. personnel is so limited that it would not implicate the regulatory interests underlying the relevant Title VII requirements.[95]

For those reasons, the Commission is proposing guidance that U.S. personnel who provide market color in connection with security-based swap transactions—

management personnel outside the United States. *See id.* at 8623–24.

[87] *See id.* at 8623. The Commission stated that this should mitigate the burdens of determining whether a particular transaction needs to be counted. *See id.*

More generally, the Commission emphasized that the rule would avoid the need for the non-U.S. person to monitor the location of its counterparty's personnel or receive associated representations. *See id.* at 8621–22; *see also id.* at 8612–13 (discussing prior Commission proposal to address the cross-border application of the security-based swap dealer definition via a test that would have required counting of transactions that were solicited, negotiated, executed or booked in the United States by or on behalf of either counterparty).

[88] The Commission does not believe there is a reason to revisit its prior guidance regarding the scope of the term ''execute''; the Commission therefore is not providing any additional guidance regarding the interpretation of that term.

[89] Certain provisions applying Title VII security-based swap requirements in the cross-border context, such as the *de minimis* counting test in Rule 3a71–3(b)(2)(iii), incorporate ''arranged, negotiated, or executed'' terminology. Other cross-border provisions make use of the definition of ''transaction conducted through a foreign branch'' in Rule 3a71–3(a)(3), which incorporates the functionally equivalent ''arranged, negotiated, and executed'' terminology. This proposed guidance would apply to both uses of that terminology, as found in the rules discussed in notes 90 through 93, *infra,* and accompanying text.

[90] In connection with *de minimis* counting, this proposed guidance would apply to: (1) Exchange Act Rule 3a71–3(b)(1)(iii)(C), which requires the counting of security-based swap dealing transactions between non-U.S. counterparties that have been ''arranged, negotiated, or executed'' in the United States; (2) Exchange Act Rule 3a71–3(b)(2), which addresses the counting of affiliate transactions described by paragraph (b)(1) (which includes the (b)(1)(iii)(C) requirement); (3) Exchange Act Rule 3a71–5, which excepts certain cleared anonymous transactions from the individual counting requirement of paragraph (b)(1) of Rule 3a71–3 and from the affiliate counting requirement of paragraph (b)(2), but is unavailable to transactions ''arranged, negotiated, or executed'' by U.S. personnel; and (4) the *de minimis* counting requirement of Exchange Act Rule 3a71–3(b)(1)(iii)(A), requiring the counting of dealing transactions between dealing transactions involving a foreign branch of a registered security-based swap dealer and a non-U.S. counterparty (or another foreign branch). The regulatory interests underlying the Rule 3a71–3(b)(1)(iii)(C) and Rule 3a71–3(b)(1)(iii)(A) uses of arranged, negotiated and/or executed criteria to implement the *de minimis* counting requirement are similar (as are, derivatively, the Rule 3a71–3(b)(2) and Rule 3a71–5 uses). *See* note 81, *supra.*

[91] *See* note 79, *supra* (addressing Exchange Act Rule 3a71–3(c) business conduct exclusion).

[92] *See* note 80, *supra* (addressing Regulation SBSR Rules 908(a)(1)(v) and 908(b)(5), regarding the cross-border application of regulatory reporting and public dissemination requirements).

[93] *See* note 82, *supra* (addressing cross-border major security-based swap participant provisions of Exchange Act Rules 3a67–10(b)(3)(i) and 3a67–10(d)).

[94] Such limited U.S. market-facing activity of that type seems unlikely to implicate the regulatory interests underlying the various uses of the ''arranged, negotiated, or executed'' test for purposes of the security-based swap dealer *de minimis* counting requirement, or for purposes of the regulatory reporting and public dissemination requirements of Regulation SBSR, because the activity of the U.S. personnel standing alone would not appear comprehensive enough to pose a significant risk of allowing an entity to exit the Title VII regulatory regime without exiting the U.S. market.

That type of limited U.S. market-facing activity further seems unlikely to implicate the regulatory interests underlying the use of the ''arranged, negotiated, or executed'' test for purposes of the security-based swap dealer business conduct requirements for the same reason, and also because non-U.S. counterparties reasonably may not expect Title VII business conduct requirements to apply merely as the result of receiving technical information from U.S. personnel.

[95] When the Commission adopted the ''arranged, negotiated, or executed'' counting rule applicable to transactions between two non-U.S. counterparties, the Commission stated that ''to the extent that personnel located in a U.S. branch or office engage in market-facing activity normally associated with sales and trading, the location of those personnel would be relevant, even if the personnel are not formally designated as sales persons or traders.'' *See* ANE Adopting Release, 81 FR at 8622 n.224. Just as the ''arranged, negotiated, or executed'' test reasonably may be triggered by U.S. personnel that are not formally designated as sales persons or traders when they engage in arranging or negotiating activity, the Commission does not believe that the test invariably must be triggered by the presence of U.S. personnel who are designated as sales persons or traders when their activity is too limited to implicate the principles underlying the uses of the test.

in the form of information or data as described above, including market-related information regarding the pricing of particular instruments or background information regarding general market conditions—do not trigger the Title VII requirements that use an ''arranged, negotiated, or executed'' test, when the following circumstances exist:

- *No client responsibility*—The U.S. personnel have not been assigned, and do not otherwise exercise client responsibility in connection with the transaction.
- *No transaction-linked compensation*—The U.S. personnel do not receive compensation based on or otherwise linked to the completion of transactions on which the ''U.S. personnel'' provide market color.[96]

In those circumstances, U.S. personnel may provide information to counterparties, pursuant to the proposed guidance, regarding pricing or market conditions associated with particular instruments or with markets more generally, including information regarding current or historic market pricing, volatility or market depth, as well as general trends or predictions regarding those matters and information related to risk management. This should help promote the efficient use of such U.S. personnel without raising concerns that such activity constitutes ''arranging'' or ''negotiating'' a security-based swap transaction for purposes of the requirements under Title VII that incorporate the ''arranged, negotiated, or executed'' test—*i.e.,* requirements related to *de minimis* counting, the cross-border application of business conduct and regulatory reporting and public dissemination requirements, and the cross-border major security-based swap participant rules.[97]

Under the guidance, U.S. persons could provide market-based information in connection with security-based swap transactions—including but not limited to information regarding pricing, depth of market, and anticipated demand—in support of non-U.S. persons who actually arrange, negotiate and execute those transactions on behalf of their clients.

B. Solicitation of Comments

The Commission is soliciting comment regarding all aspects of this proposed guidance, including whether other approaches would be appropriate—as a supplement to or in lieu of the proposed guidance—to address particular types of market-facing activity that may not raise the concerns that underpinned the ''arranged, negotiated, or executed'' test. Commenters particularly are invited to address the following:

1. To what extent do non-U.S. persons that engage in security-based swap dealing activity with non-U.S. counterparties make use of U.S. personnel in a market-facing capacity in connection with that dealing activity? What specific types of market-facing activities do such U.S. personnel conduct?

2. Would the proposed guidance provide a workable approach for distinguishing between market-facing activity that falls within the scope of ''arranging'' and ''negotiating'' security-based swap transactions and that which does not? Would a different type of Commission action (*e.g.,* exemptive relief or some other approach) be more appropriate?

3. Would the proposed guidance appropriately apply to the use of the ''arranged, negotiated, or executed'' test in the context of *de minimis* counting, the cross-border application of regulatory reporting and public dissemination, and the cross-border application of business conduct requirements? If not, in which circumstances would the proposed guidance be more or less appropriate when applied to particular requirements?

4. Would the use of U.S. personnel solely to provide ''market color'' to the counterparties of non-U.S. dealers—such as by providing information regarding pricing or market conditions, including information regarding current or historic pricing, volatility or market depth, and trends or predictions regarding those matters—raise concerns regarding the uniform application of the Title VII security-based swap dealer regime and/or the ability of firms to conduct an unregistered security-based swap dealing business in the United States? Commenters particularly are invited to address any gaps in regulation that may result from guidance that excludes from the test transactions involving such market-facing activity in the United States from the ambit of the various requirements that make use of the ''arranged, negotiated, or executed'' test, including, *inter alia,* issues associated with the failure to apply security-based swap dealer requirements to those U.S. market-facing activities as a result of excluding certain transactions from the *de minimis* counting requirement.

5. Would the proposed guidance effectively distinguish the types of market-facing activity that appropriately should fall within the ''arranged, negotiated, or executed'' test from other types of market-facing activity? Alternatively, are different or additional standards appropriate to distinguish between those two types of activity? For example, should the ''arranged, negotiated, or executed'' test encompass activity by U.S. personnel that involves arranging or finalizing non-pricing aspects of the transaction, such as underlier, notional amounts or tenor, or otherwise play more than a peripheral role with regard to the completion of the transaction? In regard to these issues, commenters are invited to discuss current practices regarding the use of U.S. personnel to provide limited information such as ''market color,'' including the nature of the information provided, the time of day such information is provided, and the underliers typically associated with that type of activity.

6. Is the proposed distinction between market-facing activity that involves transaction-based compensation of U.S. personnel and market-facing activity that does not involve transaction-based compensation workable in light of existing compensation practices associated with such activity by U.S. personnel? Are there typical compensation practices that would raise interpretive issues regarding the application of the ''arranged, negotiated, or executed'' test under the guidance? Commenters particularly are requested to discuss firm-specific or other typical arrangements for compensating U.S. personnel of foreign dealing entities in circumstances where the U.S. personnel have some involvement with the firm's transactions with non-U.S. counterparties. Commenters further are requested to address whether firms may restructure their compensation arrangements to rely on this type of guidance, and whether the resulting alternative compensation practices

[96] The Commission understands that it is commonplace for firms to account for the overall profit or loss of the firm, or of a particular division or office, in calculating bonuses. The language regarding ''compensation based on or otherwise linked to the completion of transactions'' is not intended to extend to such profit-sharing arrangements or other compensation practices that account for aggregated profits, as such arrangements would not be expected to incentivize U.S. personnel in a similar manner or to a similar degree as compensation that is directly linked to the success of individual transactions.

[97] Nothing in this guidance would restrict the ability of firms to risk manage their security-based swap positions on a global basis.

Separately, in circumstances where the proposed guidance allows for market-facing activity by U.S. personnel without triggering the ''arranged, negotiated, or executed'' standard, the federal securities laws, including applicable antifraud provisions, still may apply to that activity depending on the particular facts and circumstances.

would incentivize U.S. personnel in a similar manner or to a similar degree as compensation that is linked directly to the success of individual transactions.

7. What other market practices, if any, should the Commission address in any guidance it provides regarding the scope of ''arranging'' and ''negotiating'' for purposes of the test?

8. If the Commission separately were to adopt rules providing for an exception from the application of the ''arranged, negotiated, or executed'' test to the security-based swap dealer *de minimis* counting requirement, pursuant to one of the alternatives being proposed (*see* part III, *infra*), in what circumstances would non-U.S. persons have an incentive to rely on the proposed guidance? For example—and depending on the contours of this guidance—is it possible that such guidance primarily would be used by a non-U.S. person that is not located in a ''listed jurisdiction''? [98] Is it possible that such guidance primarily would be used by a non-U.S. person that does not have a U.S. broker-dealer affiliate, or that would prefer to use non-affiliated personnel to engage in such market-facing activities?

9. Would the proposed guidance obviate the need for the more general exception to the ''arranged, negotiated, or executed'' test that the Commission is proposing (related to *de minimis* counting of transactions involving two non-U.S. counterparties)?

10. Are the limits to the proposed guidance sufficient to prevent non-U.S. counterparties that interact with such U.S. personnel from incorrectly presuming that the entire Title VII regulatory framework would apply to the transaction? If not, what additional limits could be appropriate to control that possibility?

11. Could the availability of the proposed market color guidance potentially affect the security-based swap booking practices of U.S. or non-U.S. dealing entities? For example, if this type of guidance were available, would a non-U.S. person that currently uses U.S. personnel to engage in dealing transactions with U.S. and non-U.S. counterparties have the incentive to prospectively book transactions with U.S. counterparties into a registered affiliate, so the non-U.S. person may avoid registering as a security-based swap dealer while still being able to use U.S. personnel to facilitate its dealing transactions with non-U.S. counterparties? If so, would bifurcating dealing books in this way limit the liquidity available to U.S. market participants?

III. Proposed Exception to Rule 3a71–3

A. Purpose

The Commission continues to believe that the use of the ''arranged, negotiated, or executed'' test appropriately applies the security-based swap dealer *de minimis* counting requirement in connection with transactions involving two non-U.S. counterparties. At the same time, based on the concerns that have been expressed regarding that use of the test, the Commission recognizes that in some circumstances this use of the test, among other possible outcomes, may cause financial groups to relocate U.S. personnel or relocate the activities performed by U.S. personnel, to avoid security-based swap dealer registration, and that such results have the potential to increase fragmentation and harm U.S. market participants and the U.S. economy.[99]

To address that concern, the Commission is soliciting public comment on two alternative proposals for a conditional exception from the use of the ''arranged, negotiated, or executed'' test in connection with that part of the *de minimis* counting requirement, set forth in Exchange Act Rule 3a71–3(b)(1)(iii)(C).[100] These alternative proposals are intended to protect the policy goals associated with security-based swap dealer regulation by focusing relevant requirements on the arranging, negotiating and executing activity occurring in the United States, while avoiding potentially problematic consequences—such as relocation of personnel outside the United States that may lead to fragmentation that reduces market access available to persons within the United States—that otherwise may be associated with that aspect of the counting requirement.[101]

The first alternative proposal (Alternative 1) conditionally would permit a non-U.S. person not to count the security-based swap dealing transactions at issue against the *de minimis* thresholds so long as all arranging, negotiating or executing activity within the United States is performed by personnel associated with an affiliated entity that is registered with the Commission as a security-based swap dealer. The second alternative proposal (Alternative 2) would be broader than the first alternative by also allowing for activity

[98] *See* part III.B.5, *infra* (addressing ''listed jurisdiction'' condition to availability of proposed conditional exception from use of ''arranged, negotiated, or executed'' test in connection with security-based swap dealer *de minimis* counting provisions).

[99] *See* part I.A.4, *supra.* The potential ramifications of this use of the ''arranged, negotiated, or executed'' test are linked in part to whether market participants in practice would relocate personnel or functions due to this use of the test, as well as to the actual effects of such relocations. Alternative practices by market participants—such as compliance with the counting requirement with no relocation of personnel or functions—may mitigate those ramifications and/or produce other ramifications. Similarly, it is possible that relocation of personnel or functions may not lead to the fragmentation and other consequences that have been described. The Commission is soliciting comment regarding the uses of U.S. personnel in connection with the transactions at issue, and the potential ramifications of not providing this type of exception. *See* parts III.D.1, III.D.2, *infra.*

[100] The proposed conditional exception to Rule 3a71–3(b)(1)(iii)(C) would have ramifications to the affiliate counting provisions of paragraph (b)(2) of Rule 3a71–3. Paragraph (b)(2) requires persons engaged in security-based swap transactions described in paragraph (b)(1) of the rule—which includes the transactions at issue—also to count certain dealing transactions of affiliates under common control, including transactions described in paragraph (b)(1)(iii) (unless, pursuant to Rule 3a71–4, the affiliate itself is a registered security-based swap dealer or a person in the process of registering as a security-based swap dealer). As a result, transactions subject to the proposed Rule 3a71–3(b)(1)(iii)(C) exception further would not be subject to the paragraph (b)(2) affiliate transaction counting requirement.

Also, Exchange Act Rule 3a71–5 excepts certain cleared anonymous transactions from the individual counting requirement of paragraph (b)(1) of Rule 3a71–3 (which includes the (b)(1)(iii)(C) requirement) and from the affiliate counting requirement of paragraph (b)(2), but the Rule 3a71–5 exception is unavailable to transactions arranged, negotiated, or executed by U.S. personnel. Because the proposed exception to (b)(1)(iii)(C) would prevent the transactions at issue from triggering either the (b)(1) or (b)(2) counting requirements, the Rule 3a71–5 exception would not be relevant to those transactions.

[101] In practice, the proposed exception would affect the set of dealing transactions that a non-U.S. person must include within the 12-month lookback for determining whether it can avail itself of the *de minimis* exception from the ''security-based swap dealer'' definition. Exchange Act Rule 3a71–2(a)(1) determines the availability of the *de minimis* exception based on whether a person's security-based swap dealing activity over the prior 12 months is below the applicable notional threshold, and the cross-border counting provisions of Exchange Act Rule 3a71–2(b) (including the ''arranged, negotiated, or executed'' provision of Rule 3a71–3(b)(1)(iii)(C)) partially determine which positions must be counted pursuant to Rule 3a71–2(a)(1).

The structure of the *de minimis* counting provisions also would make this proposed exception available to non-U.S. persons that are registered as security-based swap dealers. In particular, Exchange Act Rule 3a71–2(c) (in conjunction with paragraph (a) of that rule) provides that a security-based swap dealer may apply to withdraw its registration if it has been registered for at least 12 months and its dealing activity over the preceding 12 months is below the applicable *de minimis* thresholds. Because the proposed exception from the ''arranged, negotiated, or executed'' counting requirement of Rule 3a71–3(b)(1)(iii)(C) would cause the transactions at issues not to be counted against the applicable thresholds, a registered security-based swap dealer could rely on the exception to make use of the withdrawal provision. The Commission is soliciting comment regarding whether the proposed exception should be modified to make it unavailable to registered security-based swap dealers. *See* part III.D.10, *infra.*

in the United States to be performed by personnel associated with an affiliate that is registered with the Commission as a broker (or, as with the first alternative, that is registered as a security-based swap dealer). As discussed in further detail below, under either alternative the non-U.S. person and the affiliated registered entity would have to comply with certain conditions related to business conduct, trade acknowledgments, portfolio reconciliation, disclosure, records, and financial responsibility.

The proposed exception may be particularly relevant, for example, for financial groups that use one or more non-U.S. dealing entities to transact (*i.e.,* book transactions directly) with Canadian or Latin American counterparties, but that manage the trading or sales relationships with those counterparties out of an affiliated entity in the United States—whether for customer convenience, for more direct access to the market in which the underliers are traded, or for operational or other reasons. Under the proposed exception, transactions that are booked by the foreign dealing entity but arranged, negotiated or executed by personnel associated with an affiliated registered entity in the U.S. generally would not be counted toward the foreign entity's *de minimis* threshold, and the entity accordingly would not be required to register as a security-based swap dealer by virtue of those transactions.[102] Antifraud provisions of the federal securities laws and certain relevant Title VII requirements would continue to apply to the transaction—*e.g.,* transaction reporting and the prohibitions in Section 5(e) of the Securities Act of 1933 and Section 6(l) of the Exchange Act with respect to transactions with counterparties that are not eligible contract participants (''ECPs''). The Commission preliminarily believes that this approach would appropriately balance the application of Title VII requirements to any risks presented by the activity while reducing the likelihood of market fragmentation that otherwise might arise if the foreign dealing entity were subject to requirements that are not tailored to the associated risks.

As discussed below, although the proposed exception would subject arranging, negotiating and executing activity in the United States to certain Title VII requirements, the exception would not fully apply certain other requirements, such as financial responsibility requirements, in connection with security-based swaps resulting from that U.S. activity. On balance, the Commission preliminarily believes that the conditions that have been proposed for the exception would mitigate any potential negative consequences that otherwise might arise from tailoring the security-based swap dealer requirements that apply to those activities.

In making this proposal, the Commission is mindful that U.S.-based dealing entities may use this type of exception to structure their booking practices to manage the application of Title VII to their security-based swap dealing business—*e.g.,* by booking dealing transactions with non-U.S. counterparties into their non-U.S. affiliates, to reduce the application of Title VII security-based swap dealer requirements to those transactions. The Commission is soliciting comment regarding the potential effect of the proposed exception on booking practices, and further address those potential consequences as part of the economic analysis.[103]

B. Alternative 1—First Alternative Proposed Conditional Exception

The Commission is proposing to amend Exchange Act Rule 3a71–3 to incorporate a conditional exception from the ''arranged, negotiated, or executed'' counting standard under conditions that would apply a focused alternative method of regulation to the transactions at issue. The proposal recognizes that certain arranging, negotiating or executing activity involving U.S. personnel warrants Title VII oversight, but also recognizes that U.S. activity in connection with transactions between two non-U.S. persons may not implicate the same types of risks to U.S. persons and to U.S. markets as other types of dealing activity in the United States. The proposed exception hence is intended to more closely align the application of Title VII oversight to the U.S. market concerns associated with such transactions between non-U.S. persons.

Proposed new paragraph (d) of Exchange Act Rule 3a71–3 would incorporate this conditional exception.[104] Under Alternative 1, this paragraph (d) would except a non-U.S. person from having to count transactions arranged, negotiated or executed in the United States for purposes of the security-based swap dealer definition, subject to the following conditions:

- All such arranging, negotiating and executing activity in the United States would be conducted by personnel located in a U.S. branch or office in their capacity as associated persons of a majority-owned affiliate that is registered with the Commission as a security-based swap dealer;
- That registered security-based swap dealer would comply with specific requirements applicable to security-based swap dealers as if the entity were a counterparty to the non-U.S. person's counterparties;
- The Commission could access relevant books, records and testimony of the non-U.S. person, and the registered security-based swap dealer would be required to maintain records related to the transaction;
- The non-U.S. person would consent to service of process for any civil action brought by or proceeding before the Commission;
- The registered security-based swap dealer would provide certain disclosures to the counterparties of the non-U.S. person; and
- The non-U.S. person would be subject to the margin and capital requirements of a ''listed jurisdiction.''

For the reasons set forth below, the Commission preliminarily believes that an exception that incorporates those elements would apply security-based swap dealer requirements to arranging, negotiating or executing activity in the United States, allow for Commission access to related books and records, and eliminate incentives to alter transaction booking practices to avoid security-based swap dealer registration, in a manner that appropriately addresses the scope of the regulatory concerns raised by this type of U.S. activity.[105]

[102] Other dealing activity of that foreign entity, such entering into security-based swap transactions with U.S. person counterparties, may cause the entity to exceed the *de minimis* threshold and thus have to register as a security-based swap dealer. The foreign entity also would be subject to provisions requiring it to count certain dealing transactions of its affiliates. *See* notes 13 and 100, *supra* (addressing other prongs of the cross-border *de minimis* counting test).

[103] *See* parts III.D.9 (solicitation of comment), VII.A.7 (estimate of persons that may rely on proposed exception) and VII.B.1 (addressing costs and benefits of the proposed amendment), *infra.*

[104] Apart from adding a conditional exception as new paragraph (d) of Rule 3a71–3, proposed Alternative 1 (as well as proposed Alternative 2) would amend the introductory language of paragraph (b)(1)(iii)(C) of Rule 3a71–3, to specify that the ''arranged, negotiated, or executed'' counting requirement is subject to the conditional exception.

[105] The conditional exception would address only the Rule 3a71–3(b)(1)(iii)(C) requirement that non-U.S. persons count transactions that involve dealing activity in the United States. Rule 3a71–3 would continue to require non-U.S. persons to count all of their security-based swap dealing transactions with U.S. counterparties, and all of their security-based swap dealing transactions that are guaranteed by their U.S. affiliates.

The Commission preliminarily believes that this type of arranging, negotiating or executing conduct associated with security-based swap transactions also would generally constitute ''broker'' activity under the Exchange Act. Entities engaged in such conduct accordingly would be required to register with the Commission as brokers unless they can avail themselves of an exception from broker status, such as the exception for bank brokerage activity, or an exemption from broker registration.[106]

1. U.S. Activity Conducted by a Majority-Owned Registered Security-Based Swap Dealer Affiliate

Under Alternative 1, the arranging, negotiating and executing activity by U.S. personnel that otherwise would need to be counted but for the exception must be conducted by such personnel in their capacity as persons associated with an entity that is: (a) Registered as a security-based swap dealer, and (b) a majority-owned affiliate [107] of the non-U.S. person relying on the exception.[108]

By requiring that the U.S. arranging, negotiating or executing activity be conducted by U.S. personnel in their capacity as associated persons of a registered security-based swap dealer, the proposed condition would help ensure that the U.S. activity would be subject to key security-based swap dealer requirements under Title VII, including requirements regarding supervision, books and records, trade acknowledgments and verifications, and business conduct, among other things.[109]

The registered security-based swap dealer must be a majority-owned affiliate of the non-U.S. person relying on the exception. As discussed above, concerns have been expressed that the existing counting standard could lead financial groups to relocate their U.S.-based personnel to avoid triggering security-based swap dealer registration. To the extent that such groups make use of this exception in lieu of relocating U.S.-based personnel, the Commission would expect those groups to use affiliated entities to satisfy the conditions of the exception. Moreover, requiring that the arranging, negotiating or executing activity be performed by U.S. personnel associated with an affiliated registered security-based swap dealer would help guard against the risk that a financial group may seek to attenuate its responsibility for any shortcomings in the registered security-based swap dealer's compliance with the requirements applicable to registered security-based swap dealers.[110] The proposal makes use of a majority-ownership standard to achieve this goal—rather than other measures of affiliation such as a common control standard or alternative ownership thresholds—to help ensure that the financial group has a significant interest in the registered security-based swap dealer, including its compliance with the requirements applicable to security-based swap dealers (in addition to the non-U.S. person's interest in the registered security-based swap dealer complying with the conditions of the exception), to help promote appropriate compliance and oversight practices.[111]

Taken as a whole, those elements differentiate the proposal from the approach commenters previously suggested that would have excused the counting of such transactions when the relevant activity in the United States is performed by a registered broker-dealer or by a U.S. bank. When the Commission considered but rejected that type of approach in adopting the ''arranged, negotiated, or executed'' counting requirement, the Commission noted that the broker-dealer framework does not apply to banks engaged in certain activities, which may include a significant proportion of security-based swap dealing activity, and stated that such an approach would effectively supplant Title VII security-based swap dealer regulation for a majority of dealing activity carried out in the United States with a ''cobbled together'' grouping of other requirements.[112] Alternative 1, in contrast, would apply Title VII security-based swap dealer regulation to arranging, negotiating or executing activity in the United States, regardless of whether that activity is conducted by banks or non-banks, consistent with the uniform security-based swap dealer framework anticipated by Title VII.

2. Compliance With Specific Security-Based Swap Dealer Requirements

a. Conditions Regarding Application of Specific Requirements

The proposal would incorporate provisions related to how Title VII requirements would apply to the registered security-based swap dealer's activities conducted on behalf of its non-U.S. affiliate. As noted, Alternative 1 would be conditioned on any U.S. personnel who arrange, negotiate or execute security-based swap transactions in the United States acting in their capacity as an associated person of a registered security-based swap dealer. Security-based swap dealers in general must comply with a variety of obligations, including those related to: Financial responsibility; books, records and reports; trade acknowledgment and verification; supervision and chief compliance officers; and business conduct.[113] Security-based swap dealers

[106] *See generally* note 21, *supra* (addressing application of ''broker'' and ''security'' definitions in the security-based swap context).

[107] Proposed paragraph (a)(10) would define the term ''majority-owned affiliate'' to encompass a relationship whereby one entity directly or indirectly owns a majority interest in another, or where a third party directly or indirectly owns a majority interest in both, where ''majority interest'' reflects voting power, the right to sell, or the right to receive capital upon dissolution or the contribution of capital.

[108] *See* Alternative 1—proposed paragraph (d)(1)(i) of Rule 3a71–3. Exchange Act Section 3(a)(70) defines the term ''person associated with a security-based swap dealer or major security-based swap participant'' to encompass, *inter alia,* partners, officers, directors, employees and persons controlling, controlled by, or under common control with a security-based swap dealer or major security-based swap participant.

Exchange Act Rule 3a71–2(e) provides for the voluntary registration of a person that chooses to be a security-based swap dealer, regardless of whether that person engages in dealing activity that exceeds the *de minimis* thresholds.

[109] The relevant transactions also would remain subject to regulatory reporting and public dissemination requirements under Title VII. *See* note 52, *supra. But see* part III.D.10, *infra* (soliciting comment regarding whether to make a similar exception available in connection with the application of the ''arranged, negotiated, or executed'' test in connection with the regulatory reporting and public dissemination requirements of Regulation SBSR).

[110] The registered security-based swap dealer's non-compliance with the conditions of the exception would make the exception unavailable to the non-U.S. person.

[111] The Commission has used a majority-ownership standard as part of other rules implementing Title VII, including in a rule providing that inter-affiliate security-based swaps need not be considered in determining whether a person is a security-based swap dealer. *See* Exchange Act Rule 3a71–1(d).

[112] *See* ANE Adopting Release, 81 FR at 8619; *see also* part I.A.3, *supra.*

[113] *See generally* Exchange Act Section 15F. The Commission has adopted final rules to implement certain security-based swap dealer requirements under Section 15F. *See* Business Conduct Adopting Release, 81 FR 29960 (final rules addressing business conduct, supervision and chief compliance officer requirements); Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR 39808 (Jun. 17, 2016) (final rules addressing trade acknowledgment and verification requirements) (''Trade Acknowledgment Adopting Release'').

The Commission also has proposed rules to implement security-based swap dealer requirements regarding:

(1) Capital, margin and segregation (*see* Exchange Act Release No. 68071, 77 FR 70214 (Nov. 23, 2012) (''Capital, Margin and Segregation Proposing Release''); Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25254 (May 2, 2014));

(2) Recordkeeping and reporting (*see* Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194 (May 2, 2014) (''Recordkeeping and Reporting Proposing Release''));

(3) Risk mitigation, including requirements relating to portfolio reconciliation, portfolio compression and trading relationship

also are subject to regulatory reporting and public dissemination requirements.[114]

Absent additional conditions, however, the transactions that would be subject to the proposed exception would not necessarily be subject to certain of those security-based swap dealer requirements. In particular, several provisions of the Exchange Act and the rules thereunder impose obligations upon security-based swap dealers with regard to their activities that involve a ''counterparty.'' [115] For transactions subject to the proposed exception, however, the registered security-based swap dealer that engages in arranging, negotiating and executing activity in the United States would not be a contractual party to the security-based swaps resulting from that arranging, negotiating or executing activity, and therefore would not be a ''counterparty'' to the transaction.

The Commission accordingly is proposing to condition the exception on the registered security-based swap dealer complying with the following requirements ''as if'' the counterparties to the non-U.S. person relying on the exception also were counterparties to the registered security-based swap dealer: [116]

- Disclosure of risks, characteristics, material incentives and conflicts of interest. The registered security-based swap dealer must disclose information regarding the material risks and characteristics of the security-based swap, and regarding the material incentives or conflicts of interest of the security-based swap dealer, including the material incentives and conflicts of interest associated with the non-U.S. person relying on the exception.[117]
- Suitability of recommendations. The registered security-based swap dealer must comply with requirements regarding the suitability of any recommendations that its associated persons make.[118]
- Fair and balanced communications. The registered security-based swap dealer must comply with fair and balanced communication requirements.[119]
- Trade acknowledgment and verification. The registered security-based swap dealer must comply with trade acknowledgment and verification requirements.[120]
- Portfolio reconciliation requirements. The registered security-based swap dealer must comply with the portfolio reconciliation requirements applicable to security-based swap dealers for the security-based swap resulting from the transaction as if the security-based swap were being included in the security-based swap dealer's portfolio, but only the first time that the security-based swap would be reconciled by the security-based swap dealer.[121]

The Commission preliminarily believes that requiring the registered security-based swap dealer engaged in arranging, negotiating or executing activity in the United States to comply with the standards of conduct required by the above requirements in connection with the transactions at issue generally would not impose significant additional information-gathering or documentation burdens on that registered security-based swap dealer. At the same time, the Commission recognizes that certain of those requirements, particularly the disclosure and suitability requirements, in some cases may require the registered security-based swap dealer to undertake potentially significant additional efforts related to information-gathering and documentation. In the Commission's view, however, the customer protections provided by imposing those requirements would justify the associated burdens.

For example, disclosure of risks, characteristics, material incentives, and conflicts of interest will permit a counterparty to more effectively assess whether and under which terms to enter a transaction. Although the compliance burdens associated with that disclosure obligation may be significant, those burdens should be mitigated by the underlying provision stating that the requirement to disclose risks, characteristics, material incentives and conflicts of interest will apply only when the registered security-based swap dealer knows the identity of the counterparty at a reasonably sufficient time prior to execution of the transaction.[122]

The burden of complying with the suitability requirement, including obtaining the required counterparty information and making a suitability assessment using that information, similarly may be significant in some cases, but the Commission preliminarily believes that those burdens are justified by the importance of the counterparty protections provided by the suitability requirement.[123] The Commission further

documentation (*see* Exchange Act Release No. 84861 (Dec. 19, 2018), 84 FR 4614 (Feb. 15, 2019) (''Risk Mitigation Proposing Release'')); and

(4) The cross-border application of various Title VII requirements, including certain security-based swap dealer requirements (*see* Cross-Border Proposing Release, 78 FR 30968).

[114] *See generally* Regulation SBSR, 17 CFR 242.900 *et seq.*

[115] *See, e.g.,* Exchange Act Rule 15Fh–3(a) (eligible counterparty verification); Rule 15Fh–3(b) (disclosure of risks, characteristics, incentives and conflicts; Rule 15Fh–3(c) (daily mark disclosure); Rule 15Fh–3(d) (clearing rights disclosure); Rule 15Fh–3(e) (''know your counterparty'' requirement); Rule 15Fh-3(f) (suitability of recommendations); Rule 15Fh–3(g) (fair and balanced communications); Exchange Act Rule 15Fi–2(a) (trade acknowledgment and verification).

Certain of the Exchange Act provisions that underlie those rules also explicitly refer to activities involving a ''counterparty.'' *See* Exchange Act Section 15F(h)(3)(A) (eligible counterparty verification); Sections 15F(h)(3)(B)(i), (ii) (disclosure of risks, characteristics, incentives and conflicts); Section 15F(h)(3)(B)(iii) (daily mark disclosure).

[116] *See* Alternative 1—proposed paragraph (d)(1)(ii)(A) of Rule 3a71–3 (providing for ''as if'' compliance with certain specified requirements).

[117] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*1*) of Rule 3a71–3 (citing the requirements for the disclosure of risks, characteristics, incentives and conflicts in Exchange Act Sections 15F(h)(3)(B)(i), (ii) and Rule 15Fh–3(b) thereunder). The underlying Rule 15Fh–3(b) requirement states that disclosure is required only so long as the identity of the counterparty is known to the security-based swap dealer ''at a reasonably sufficient time prior to execution of the transaction'' to permit compliance.

The proposed condition specifies that the disclosure should address not only the material incentives and the conflicts of interest of the registered security-based swap dealer engaged in the arranging, negotiating or executing activity in the United States, but also those of the affiliated non-U.S. person relying on the exception, which is intended to allow the counterparty to the transaction to be appropriately informed regarding incentives and conflicts of interest relevant to the transaction.

[118] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*2*) of Rule 3a71–3 (citing the suitability requirements set forth in Rule 15Fh–3(f)).

[119] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*3*) of Rule 3a71–3 (citing the fair and balanced communications requirement set forth in Exchange Act Section 15F(h)(3)(C) and Rule 15Fh–3(g) thereunder).

[120] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*4*) of Rule 3a71–3 (citing the trade acknowledgment and verification requirement set forth in Exchange Act Rules 15Fi–1 and 15Fi–2).

[121] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*5*) of Rule 3a71–3 (citing the portfolio reconciliation requirement proposed to be set forth in Exchange Act Rule 15Fi–3). In practice, this condition would require the security-based swap dealer to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in the initial portfolio reconciliation for transactions for which it arranges, negotiates, or executes security-based swap transactions for its foreign affiliates. *See* Risk Mitigation Proposing Release (proposing Exchange Act Rule 15Fi–3).

[122] *See* Exchange Act Rule 15Fh–3(b).

[123] If the registered security-based swap dealer makes a recommendation in connection with the transaction—apart from a recommendation to a security-based swap dealer, swap dealer, major security-based swap participant, or major swap participant—the suitability rule would require the entity both to undertake reasonable diligence to understand the potential risks and rewards associated with a recommended security-based swap or trading strategy involving a security-based swap (*see* Rule 15Fh–3(f)(1)(i)), and to have a reasonable basis to believe that the recommended security-based swap or trading strategy involving a

Continued

notes that the suitability requirement would apply only when the registered security-based swap dealer makes a recommendation to the counterparty, and that the associated burdens may be lessened by the institutional suitability provisions of the requirement.[124] In this regard, moreover, we understand that in some cases, U.S. personnel currently manage trading or sales relationships with counterparties, and the registered security-based swap dealer accordingly may already possess the information needed to comply with obligations such as disclosure or suitability.[125]

The Commission is proposing to condition the exception on the registered security-based swap dealer complying with the trade acknowledgement and verification requirements to help assure that there are definitive written records of the terms of the resulting transactions and to help control legal and operational risks for the counterparties.[126]

The proposal to condition the exception on the registered entity complying with the portfolio reconciliation requirements as if it were the counterparty to the transaction, but only for the initial reconciliation, should help advance two goals: Helping to ensure the accuracy of the data reported to security-based swap data repositories (''SDRs''), and helping to facilitate the ability of registered SDRs to comply with requirements that they verify the information they receive.[127]

The Commission believes that the condition would promote those goals while imposing only minimal additional burdens on the registered entity, based in part on the understanding that the registered entity typically would have access to the necessary information because the registered entity is likely to report the transaction to the SDR on behalf of its non-U.S. affiliate (due to the registered entity being the only U.S. person involved in the transaction). Moreover, for these transactions the underlying proposed portfolio reconciliation rule focuses on there being reasonable policies and procedures in place,[128] meaning that the registered entity would not fall out of compliance with the condition merely because it has not been provided necessary counterparty information.

In addition, the Commission is conditioning the exception on the registered security-based swap dealer complying with fair and balanced communication requirements to promote investor protection, which prohibit registered entities from overstating the expected benefits or understating the expected risks of potential transactions in their communications with counterparties.[129]

Conversely, this proposed compliance condition would not extend to certain other ''counterparty''-related requirements applicable to security-based swap dealers. In part, the proposed exception would not be conditioned on compliance with ECP verification requirements [130] and ''know your counterparty'' requirements [131] because the Commission preliminarily believes that in some circumstances the registered security-based swap dealer would have limited interaction with the counterparty to the transactions at issue, making it difficult to obtain the information needed to satisfy those requirements. For example, compliance with the ''know your counterparty'' requirement would be expected to necessitate the creation of documentation that may be infeasible for the registered security-based swap dealer.[132] Compliance with the ECP verification requirement would require the registered security-based swap dealer to verify that a counterparty meets the eligibility standards for an ECP before entering into a security-based swap with that counterparty—which could be problematic in this context given the diverse set of circumstances in which the registered security-based swap dealer may arrange, negotiate or execute transactions subject to the exception. To be clear, however, although the Commission is not proposing to condition the exception on compliance with security-based swap dealer ECP verification requirements, existing limitations on entering into

security-based swap is suitable for the counterparty (*see* Rule 15Fh–3(f)(1)(ii)).

[124] In the case of recommendations to certain institutional counterparties, the security-based swap dealer may satisfy the counterparty-specific suitability requirement if it receives certain written representations and provides certain disclosures. *See* Rules 15Fh–3(f)(2) and (3).

[125] The Commission is soliciting comment regarding the practicability of requiring compliance with the suitability condition in the circumstances at issue. *See* part III.D.5, *infra.*

[126] *See generally* Trade Acknowledgment Adopting Release, 81 FR at 39809.

This proposed condition has parallels to Exchange Act Rule 15a–6(a)(3), which provides a conditional exemption from broker-dealer regulation for foreign broker-dealers in connection with certain activities that are intermediated (or ''chaperoned'') by registered broker-dealers. Under Rule 15a–6(a)(3)(iii)(A)(*2*), the registered broker-dealer must issue all required confirmations and statements. In the present context the Commission would expect the registered security-based swap dealer to use the same general techniques, to obtain requisite information to satisfy the trade acknowledgment and verification condition, as registered broker-dealers use to obtain the information needed to satisfy the Rule 15a–6 confirmation condition. Given that the registered-security-based swap dealer would be affiliated with the non-U.S. person relying on the exception, the use of common back office platforms may help facilitate transfer of that information.

As further discussed in Section IV, the Commission is mindful that foreign blocking laws, privacy laws, secrecy laws and other foreign legal barriers may limit or prohibit firms from providing books and records directly to the Commission, Similarly, such laws may impede the transfer of relevant records among affiliates for purposes of complying with the exception. The Commission preliminarily believes that the exception should not be available if such impediments to transferring information precluded compliance with the trade acknowledgement and verification condition, given those requirements' importance in providing for definitive records and controlling risks.

[127] In proposing the portfolio reconciliation requirements, the Commission explained that the requirements have been designed not only to help ensure that the counterparties to a transaction are and remain in agreement with respect to all material terms, but also to help ensure that the information reported to SDRs is complete and accurate. *See* Risk Mitigation Proposing Release, 84 FR at 4634. This objective is applicable to the transactions at issue because transactions that are arranged, negotiated, or executed by U.S. personnel of a registered security-based swap dealer are subject to Regulation SBSR based on that activity. *See* Regulation SBSR Rule 908(a)(1)(v).

The portfolio reconciliation requirement further may assist SDRs in satisfying their obligations under Section 13(n)(5)(B) of the Exchange Act and rule 13n–4(b)(3) thereunder to verify the terms of each security-based swap with both counterparties. *See* Risk Mitigation Proposing Release, 84 FR at 4633–4644.

[128] In the Risk Mitigation Proposing Release, the Commission proposed that, with respect to transactions with persons who are not SBS Entities, security-based swap dealers would be required to establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for those security-based swap transactions. As such, conditioning the exception on security-based swap dealers complying with the initial portfolio reconciliation requirements as if the security-based swap dealer were the counterparty to the transaction, will require that its required policies and procedures regarding reconciliation include transactions for which the security-based swap dealer arranges, negotiates or executes a security-based swap transaction on behalf of another person.

By contrast, the proposed rule expressly requires portfolio reconciliation to occur with respect to security-based swap transactions between two SBS Entities. *See* Risk Mitigation Proposing Release, 84 FR 4618–20.

[129] *See* Business Conduct Adopting Release, 81 FR at 30001–02 (''we believe the requirement promotes investor protection by prohibiting SBS Entities from overstating the benefits or understating the risks to inappropriately influence counterparties' investment decisions'').

[130] *See* Alternative 1—proposed paragraph (d)(1)(ii)(C)(*1*) of Rule 3a71–3 (citing the eligible contract participant verification requirement set forth in Exchange Act Section 15F(h)(3)(A) and Rule 15Fh–3(a)(1) thereunder); *see also* Business Conduct Adopting Release, 81 FR at 29978–79.

[131] *See* Alternative 1—proposed paragraph (d)(1)(ii)(C)(*4*) of Rule 3a71–3 (citing the ''know your counterparty'' requirement is set forth in Rule 15Fh-3(e)); *see also* Business Conduct Adopting Release, 81 FR at 29993–94.

[132] The scope of the ''know your counterparty'' requirement is in contrast the suitability requirements addressed above, which would apply only when the registered security-based swap dealer makes a recommendation.

security-based swaps with non-ECPs would remain in effect.[133]

In addition, the proposed exception would not be conditioned on compliance with clearing rights disclosure requirements,[134] because the transactions at issue would not be expected to be subject to the underlying clearing rights.[135] Finally, the proposed exception would not be conditioned on compliance with daily mark disclosure requirements [136] and with certain risk mitigation rules [137] because those requirements are predicated on there being an ongoing relationship between the security-based swap dealer and the counterparty that may not be present in connection with the transactions at issue, and further would be linked to risk management functions that are likely to be associated with the entity in which the resulting security-based swap position is booked.

Separately, although the Exchange Act and Commission rules apply certain requirements to security-based swap dealers that act as advisors or counterparties to special entities,[138] the Commission has defined the term ''special entity'' so as not to encompass non-U.S. persons.[139] Because the counterparties to the transactions that are the subject of this exception would not be U.S. persons, the special entity requirements would not apply to those transactions.

b. Application of Other Requirements

By virtue of being a registered security-based swap dealer, the entity engaged in arranging, negotiating or executing activity in the United States would have to comply with additional requirements applicable to security-based swap dealers, including, but not limited to requirements related to supervision, chief compliance officers, books and records and financial responsibility.

3. Commission Access to Relevant Books, Records and Testimony, and Related Obligations

Under the proposal, the non-U.S. person relying on the conditional exception would, upon request, promptly have to provide the Commission or its representatives with any information or documents within the non-U.S. person's possession, custody or control related to transactions under the exception, as well as making its foreign associated persons available for testimony, and providing assistance in taking the evidence of other persons, wherever located, related to those transactions.[140]

In addition, the registered security-based swap dealer engaged in that activity in the United States must create and maintain all required books and records relating to the transaction subject to the exception, including those required by Exchange Act Rules 17a–3 and 17a–4, or Rules 18a–5 and 18a–6, as applicable.[141] The condition further clarifies that this obligation would extend to books and records requirements related to the conditions, discussed above, requiring the registered security-based swap dealer to comply with Title VII requirements relating to: Disclosure of risks, characteristics, incentives and conflicts; suitability; fair and balanced communications; trade acknowledgment and verification; and portfolio reconciliation.[142]

The registered security-based swap dealer further must obtain from the non-U.S. person relying on the exception, and maintain, documentation encompassing all terms governing the trading relationship between the non-U.S. person and its counterparty relating to the transactions subject to this exception, including terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation, and dispute resolution.[143]

[133] *See* Exchange Act Section 6(l) (requiring security-based swaps with non-ECPs to be effected on a national securities exchange); Securities Act Section 5(e) (requiring registration of the offer and sale of security-based swaps to non-ECPs). The registered security-based swap dealer might use information obtained from its non-U.S. affiliate to verify that a counterparty to the security-based swap is in fact an ECP.

[134] *See* Alternative 1—proposed paragraph (d)(1)(ii)(C)(*3*) of Rule 3a71–3 (citing the clearing rights disclosure requirement set forth in Rule 15Fh–3(d)); *see also* Business Conduct Adopting Release, 81 FR at 29992–93.

[135] *See* Exchange Act Section 3C(g)(5) (addressing clearing rights of transactions that have been ''entered into'' by security-based swap dealers).

[136] *See* Alternative 1—proposed paragraph (d)(1)(ii)(C)(*2*) of Rule 3a71–3 (citing the requirement for the disclosure of daily marks set forth in Exchange Act Section 15F(h)(3)(B)(iii) and Rule 15Fh–3(c) thereunder).

[137] *See* Alternative 1—proposed paragraphs (d)(1)(ii)(C)(*5*)-(*6*) of Rule 3a71–3. Those paragraphs cross-reference requirements regarding the following:

(1) Security-based swap portfolio compression (proposed Exchange Act Rule 15Fi–4). The proposed portfolio compression rule would address processes whereby counterparties terminate or change the notional value of security-based swap in the portfolio between the counterparties.

(2) Security-based swap trading relationship documentation (proposed Exchange Act Rule 15Fi–5). The proposed trading documentation rule would address the trading relationship between counterparties, including terms addressing payment obligations, netting, default or termination events and allocation of reporting obligations.

[138] *See generally* Exchange Act Sections 15F(h)(4) and (5), and Exchange Act Rules 15Fh–3(a)(2), (3), 15Fh–4 and 15Fh–5.

[139] *See* Exchange Act Rule 15Fh–2(d); *see also* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30013 (May 13, 2016).

Exchange Act Section 15F(h)(4)(A)(iii) and Exchange Act Rule 15Fh–4(a)(3), which prohibit security-based swap dealers from engaging in any act, practice or course of business that is fraudulent, deceptive or manipulative, still would apply to those registered security-based swap dealers in connection with this exception, notwithstanding those provisions' basis in Section 15F(h)(4) (which mostly addresses a security-based swap dealer's obligations in dealing with special entities).

[140] *See* Alternative 1—proposed paragraph (d)(1)(iii)(A) of Rule 3a71–3. That proposed paragraph further would specify that the non-U.S. person must provide this information under request of the Commission or its representatives or pursuant to arrangements or agreements reached between any foreign securities authority, including any foreign government, and the Commission or the U.S. government.

Proposed paragraph (a)(11) of Rule 3a71–3 in general would define the term ''foreign associated person'' as a natural person domiciled outside the United States that is a partner, officer, director, branch manager or employee of the non-U.S. person taking advantage of the exception, or that controls, is controlled by or is under common control with that non-U.S. person.

[141] *See* Alternative 1—proposed paragraph (d)(1)(iii)(B)(*1*) of Rule 3a71–3. Under proposed books and records requirements, a registered security-based swap dealer would be required to comply with the books and records requirements of Exchange Act Rules 17a–3 and 17a–4 if it is dually registered as a broker-dealer, or the requirements of Rules 18a–5 and 18a–6 if it is not. *See generally* Recordkeeping and Reporting Proposing Release, 79 FR at 25298–302, 25307–13; Risk Mitigation Proposing Release, 84 FR at 4674–75.

Consistent with the provisions of those proposed books and records requirements, the registered entity would make and/or preserve the following types of records related to the transactions at issue: Records of communications; written agreements; copies of trade acknowledgments; records related to transactions not verified in a timely manner; documents related to compliance with security-based swap dealer business conduct standards; and documents related to compliance with portfolio reconciliation requirements. Other types of records addressed by those proposed books and records requirements—*e.g.,* inclusion of trades in financial ledgers—preliminarily would not appear to be required for the registered entity in connection with these transactions, as the registered entity would not have direct financial obligations under the transactions.

[142] *See* Alternative 1—proposed paragraph (d)(1)(iii)(B)(*1*) of Rule 3a71–3 (requiring creation and maintenance of books and records relating to the requirements specified in proposed paragraph (d)(1)(ii)(B)).

[143] *See* Alternative 1—proposed paragraph (d)(1)(iii)(B)(*2*) of Rule 3a71–3. These records are consistent with those required by the Commission's proposed trading relationship documentation rule. *See* Risk Mitigation Proposing Release, 84 FR at 4673–74 (proposing Exchange Act Rule 15Fi–5).

As discussed above in connection with the implementation of the trade acknowledgment and verification condition (*see* note 126, *supra*), the Commission is mindful that foreign blocking laws, privacy laws, secrecy laws and other foreign legal barriers may impede the transfer of relevant records among affiliates for purposes of complying with this condition. Here too, the Commission preliminarily believes that the exception should not be available

Continued

In addition, the registered security-based swap dealer would have to obtain from the non-U.S. person relying on the exception written consent to service of process for any civil action brought by or proceeding before the Commission, specifying that process may be served on the non-U.S. person in the manner set forth in the registered security-based swap dealer's current Form SBSE, SBSE–A or SBSE–BD, as applicable.[144]

Those proposed requirements—relating to Commission access to information of the non-U.S. person, the obligation of the registered security-based swap dealer to create and maintain information related to the transaction, and to obtain and maintain trading relationship documentation from the non-U.S. person, and the obligation of the non-U.S. person to consent to service of process—should help provide the Commission with a comprehensive view of the dealing activities connected with transactions relying on the proposed exception, and facilitate the Commission's ability to identify fraud and abuse in connection with transactions that have been arranged, negotiated or executed in the United States.[145]

The proposed condition related to access to information, documents or testimony further provides that if, despite the non-U.S. person's best efforts, the non-U.S. person is prohibited by applicable foreign law or regulations from providing such access to the Commission, the non-U.S. person may continue to rely on the exception until the Commission issues an order modifying or withdrawing an associated ''listed jurisdiction'' determination.[146] As discussed below, proposed provisions relating to the ''listed jurisdiction'' condition to the exception in part would permit the Commission to withdraw a listed jurisdiction determination if the jurisdiction's laws or regulations have had the effect of preventing the Commission or its representatives from accessing such information, documents and testimony.[147]

4. Disclosures to Counterparties

The proposed exception further would be conditioned on the registered security-based swap dealer notifying the counterparties of the non-U.S. person relying on the exception that the non-U.S. person is not registered as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable to the non-U.S. person in connection with the transaction, including provisions affording clearing rights to counterparties.[148] To promote effective disclosure, the registered security-based swap dealer would have to provide this information contemporaneously with and in the same manner (*e.g.,* oral, electronic or otherwise) as the arranging, negotiating or executing activity at issue.[149]

This proposed condition is intended to help guard against counterparties assuming that the involvement of U.S. personnel in a arranging, negotiating or executing capacity as part of the transaction would be accompanied by all of the safeguards associated with Title VII security-based swap dealer regulation. Because the disclosure must be provided contemporaneously with, and in the same manner as, the activity at issue (*e.g.,* via oral disclosure in the event that the market facing activity occurs via oral communications), the Commission does not believe that such disclosure reasonably could be provided via inclusion in standard trading documentation.

5. Applicability of Financial Responsibility Requirements of a Listed Jurisdiction

Finally, the proposed exception would be conditioned on the requirement that the non-U.S. person relying on the exception be subject to the margin and capital requirements of a ''listed jurisdiction'' when engaging in transactions subject to this exception.[150] The Commission conditionally or unconditionally may determine ''listed jurisdictions'' by order, in response to applications or upon the Commission's own initiative.[151]

if such impediments to transferring information precluded compliance with the condition requiring the registered entity to obtain trading relationship documentation, given the need for the Commission to have a comprehensive view of the dealing activities connected with transactions relying on the proposed exception, to facilitate the Commission's ability to identify fraud and abuse in connection with transactions that have been arranged, negotiated or executed in the United States.

[144] *See* Alternative 1—proposed paragraph (d)(1)(iii)(B)(*3*) of Rule 3a71–3. Form SBSE addresses applications for registration as security-based swap dealers or major security-based swap participants. Form SBSE–A addresses such applications by persons that are registered or registering with the CFTC as swap dealers. Form SBSE–BD addresses such applications by persons that are registered broker-dealers. These forms may be found at *https://www.sec.gov/forms.*

[145] The proposed conditions regarding Commission access to information of the non-U.S. person, and regarding the need for the non-U.S. person to consent to service of process, are similar to the access and consent to service conditions in Exchange Act Rule 15a–6(a)(3). Rule 15a–6 in part provides a conditional exemption from broker-dealer regulation for foreign broker-dealers in connection with certain activities that are intermediated by registered broker-dealers. That rule in part requires that a foreign broker-dealer provide the Commission (upon request or pursuant to agreements reached between any foreign securities authority and the Commission or the U.S. Government) with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located. *See* Exchange Act Rule 15a–6(a)(3)(i)(B), (c). The proposed conditions would modify the Rule 15a–6 access language to better describe the breadth of the access afforded under this condition—*e.g.,* the proposed condition requires that the information be provided ''promptly,'' and specifically references supervisory or enforcement memoranda of understanding and other arrangements with foreign authorities.

The proposed conditions regarding the obligation of the registered security-based swap dealer contains elements comparable to a condition of Rule 15a–6 that states that a registered broker-dealer must be responsible for maintaining required books and records relating to the transactions conducted pursuant to the exemption, including books and records required by applicable Exchange Act rules. *See* Exchange Act Rule 15a–6(a)(3)(iii)(A)(4). The proposal also incorporates language providing for the registered security-based swap dealer to obtain trading relationship documentation to further promote effective Commission access to relevant information.

[146] *See* Alternative 1—proposed paragraph (d)(1)(iii)(A) of Rule 3a71–3 (referring to listed jurisdiction withdrawal provisions of paragraph (d)(2)(iii)).

That continued reliance provision is limited to circumstances in which the failure to provide access is due to applicable foreign law or regulations. Accordingly, a non-U.S. person's failure to provide the Commission with required information for any reason other than prohibition by applicable foreign law or regulations would cause the person to be in violation of the conditions to the exception, making the exception unavailable to that person.

[147] *See* part III.B.5, *infra.*

[148] *See* Alternative 1—proposed paragraph (d)(1)(iv) of Rule 3a71–3; *see also* notes 134 and 135, *supra,* and accompanying text regarding clearing rights.

[149] This disclosure requirement would not apply if the identity of that counterparty is not known to that registered security-based swap dealer at a reasonably sufficient time prior to the execution of the transaction to permit such disclosure. *Id.* Circumstances in which the registered security-based swap dealer engaged in relevant activity may not know the identity of the counterparty could include circumstances in which the registered security-based swap dealer provides only execution services, and does not arrange or negotiate the transactions at issue, as well as circumstances where personnel in the United States specify a trading strategy or techniques carried out through algorithmic trading or automated electronic execution of security-based swaps. *See* also note 117, *supra* (discussing a similar carveout in connection with the security-based swap dealer requirements for disclosure of risks, characteristics, material incentives and conflicts of interest).

[150] *See* Alternative 1—proposed paragraph (d)(1)(v) of Rule 3a71–3 (cross-referencing proposed the data access provisions of proposed paragraph (d)(1)(iii)(A)).

[151] *See* Alternative 1—proposed paragraph (d)(1) of Rule 3a71–3.

Proposed paragraph (a)(12) of Rule 3a71–3 would define the term ''listed jurisdiction'' to mean any jurisdiction which the Commission by order has designated as a listed jurisdiction for purposes of the exception.

The proposed listed jurisdiction condition is intended to help avoid creating an incentive for dealers to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards. Absent this type of condition, the exception from the *de minimis* counting requirement could provide a competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to sufficient financial responsibility standards. More generally, the proposed condition is consistent with the belief the Commission expressed when it adopted the ''arranged, negotiated, or executed'' *de minimis* counting rule, that applying capital and margin requirements to such transactions between two non-U.S. persons can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally.[152]

Commenters to the Commission's proposal for the ''arranged, negotiated, or executed'' counting requirement suggested that potential concerns regarding that type of outcome could be addressed by conditioning a broker-dealer-based alternative to the counting rule on the non-U.S. entity being regulated in a ''local jurisdiction recognized by the Commission as comparable,'' or in a G–20 jurisdiction or in a jurisdiction where the entity would be subject to Basel capital requirements.[153] The Commission, however, does not believe that concerns regarding potential risks associated with this type of exception would adequately be addressed by a ''one size fits all'' approach that is linked simply to a jurisdiction's membership in the G–20 or compliance with Basel standards, with no further opportunity to consider relevant regulatory practices and requirements.[154]

In considering a jurisdiction's potential status as a ''listed jurisdiction''—whether upon the Commission's own initiative or in response to an application for an order—the Commission would consider whether the order would be in the public interest.[155] Factors would include consideration of the jurisdiction's applicable margin and capital requirements, and the effectiveness of the foreign regime's supervisory compliance program and enforcement authority in connection with those requirements, including in the cross-border context.[156]

The Commission further may by order, on its own initiative, modify [157] or withdraw a listed jurisdiction determination, after notice and opportunity for comment, if the Commission determines that continued listed jurisdiction status would not be in the public interest.[158] The Commission may base that modification or withdrawal on the factors discussed above regarding the foreign jurisdiction's margin and capital requirements and associated supervisory and enforcement practices.[159] The Commission may also consider whether the jurisdiction's laws or regulations have had the effect of preventing the Commission or its representatives from promptly being able to obtain information regarding the non-U.S. persons relying on the exception.[160] This latter provision reflects the importance of the proposed exception's information access condition,[161] and the conclusion that it would be appropriate to modify or withdraw listed jurisdiction status if, in practice, the Commission or its representatives have been prevented from accessing information required under the exception due to the jurisdiction's laws or regulations.[162]

Because listed jurisdiction determinations may be conditional or unconditional, the Commission may modify a determination, among other circumstances, when: (1) Certain market participants or classes of market participants in the jurisdiction are not required to comply with the financial responsibility requirements that

The proposal also specifies that applications for listed jurisdiction status may be made by parties or groups of parties that potentially would rely on the exception from the counting rule, and by any foreign financial authorities supervising such parties. The proposal further states that such applications must be filed pursuant to the procedures specified in Exchange Act Rule 0–13. *See* Alternative 1—proposed paragraph (d)(2)(i) of Rule 3a71–3. Rule 0–13 currently addresses substituted compliance applications, and the Commission is proposing to amend the caption of that rule and make certain additions to the text of that rule so that it also references ''listed jurisdiction'' applications.

[152] *See* ANE Adopting Release, 81 FR at 8616. The Commission further has stated:

Subjecting non-U.S. persons that engage in security-based swap dealing activity in the United States at levels above the dealer *de minimis* threshold to capital and margin requirements also should help reduce the likelihood of firm failure and the likelihood that that the failure of a firm engaged in dealing activity in the United States might adversely affect not only its counterparties (which may include other firms engaged in security-based swap dealing activity in the United States) but also other participants in that market.

Id. at 8617.

[153] *See* note 23, *supra,* and accompanying text.

[154] The Commission is mindful that a jurisdiction's membership in the G–20 or its compliance with Basel standards can be a positive indicator regarding the effectiveness of the jurisdiction's margin and capital regimes. At the same time, the Commission also recognizes that implementation and oversight practices may vary even among those jurisdictions. Accordingly, the Commission preliminarily believes that the proposed individualized ''listed jurisdiction'' assessment would provide us an appropriate degree of discretion to consider whether the jurisdiction has implemented appropriate financial responsibility standards and exercises appropriate supervision in connection with those standards, and whether the Commission as necessary could access relevant information.

[155] *See* Alternative 1—proposed paragraph (d)(2)(ii) of Rule 3a71–3.

[156] *See* Alternative 1—proposed paragraph (d)(2)(ii)(A), (B) of Rule 3a71–3.

[157] As discussed below, the Commission may modify a listed jurisdiction designation by broadening or narrowing the application of listed jurisdiction status in connection with a particular class of market participants or an individual market participant within that jurisdiction.

[158] *See* Alternative 1—proposed paragraph (d)(2)(iii) of Rule 3a71–3. The Commission preliminarily expects that any such notice would be via publication in the **Federal Register** and on the Commission's website, to allow all interested parties the opportunity to comment, including persons that are located in the jurisdiction at issue and are relying on the exception.

[159] *See* Alternative 1—proposed paragraph (d)(2)(iii)(A) of Rule 3a71–3 (cross-referencing paragraph (d)(2)(ii)).

[160] *See* Alternative 1—proposed paragraph (d)(2)(iii)(B) of Rule 3a71–3. These would include potential barriers to the Commission's ability to obtain testimony of the non-U.S. person's foreign associated persons, and to obtain the assistance of the non-U.S. person in taking the evidence of other persons. *Id.*

[161] As discussed, the proposed exception is conditioned in part on the non-U.S. person promptly making relevant information available to the Commission and its representatives. The access condition is intended to help ensure that the Commission and its representatives in practice can obtain a full view of the dealing activities connected with transactions at issue, to avoid impediments in identifying fraud and abuse in connection with transactions that have been arranged, negotiated or executed in the United States. *See* part III.B.3, *supra.*

[162] Given the importance of the proposed access condition, the Commission does not believe that persons from a foreign jurisdiction should be able to continue relying on the exception if the jurisdiction's law or regulations prevent the Commission from obtaining access to relevant information.

At the same time, the Commission's initial consideration of whether to designate a particular jurisdiction as a ''listed jurisdiction'' would focus on the jurisdiction's applicable margin and capital requirements and the foreign regime's supervisory compliance program and enforcement authority in connection with those requirements. This in part reflects the listed jurisdiction condition's core role in helping to ensure that non-U.S. persons that rely on the proposed exception are subject to adequate capital and margin requirements. More generally, this approach also reflects the expectation that, in practice, methods may be developed to help provide the Commission with access to requested information.

Separately, the Commission's decision to modify or withdraw listed jurisdiction status may be based on any other factor it determines to be relevant to whether continued status as a listed jurisdiction would be in the public interest. *See* Alternative 1—proposed paragraph (d)(2)(iii)(C) of Rule 3a71–3.

underpin the designation; (2) the jurisdiction's supervisory or enforcement practices oversee certain market participants or classes of market participants differently than others; or (3) the jurisdiction's barriers to data access apply to certain market participants or classes of market participants but not others. In practice, the Commission's use of this authority may cause the exception to be unavailable to certain groups of market participants in a jurisdiction, or to individual market participants.[163]

Preliminarily—based on the Commission's understanding of relevant margin and capital requirements in those jurisdictions—the Commission anticipates that the initial set of listed jurisdiction determinations may include some or all of the following jurisdictions: Australia, Canada, France, Germany, Hong Kong, Japan, Singapore, Switzerland, and the United Kingdom. The Commission is soliciting comment as to whether listed jurisdiction status may be appropriate for any of those jurisdictions, based on those jurisdictions' financial responsibility requirements and associated supervisory and enforcement programs.[164] The Commission further anticipates that it may issue a set of listed jurisdiction orders in conjunction with its final action on this proposal, including orders addressing the jurisdictions specified above. As discussed above, however, if the Commission determines that the laws or regulations of a listed jurisdiction have prevented the Commission from obtaining relevant information required pursuant to this exception in relation to any person in the listed jurisdiction availing itself of the exception, the Commission may modify or withdraw a listed jurisdiction designation for that reason.

''Listed jurisdiction'' applications may be expected to raise issues that are analogous to those that would accompany applications for substituted compliance in connection with margin and capital rules, in that both types of applications would require the Commission to consider the substance and implementation of foreign margin and capital standards.[165] Those two types of applications, however, would arise in materially distinct contexts. In particular, ''listed jurisdiction'' status would be relevant only with regard to non-U.S. persons whose dealing transactions with U.S.-person counterparties, if any, would be below the *de minimis* thresholds. This *de minimis* cap on its dealing transactions with U.S. persons likely would attenuate—although not eliminate—the potential effect of the firm's failure on U.S. persons and markets. Substituted compliance, in contrast, would address the margin and capital requirements applicable to registered security-based swap dealers that may engage in dealing transactions with U.S. counterparties in amounts above the *de minimis* thresholds, and whose failure is likely to pose greater direct threats to U.S. persons and markets. Substituted compliance accordingly would be predicated on the foreign margin and capital regime producing regulatory outcomes that are comparable to the analogous requirements under Title VII. Similarly, although the Commission will also consider, in connection with a substituted compliance determination, the effectiveness with which a regime administers its supervisory compliance program and exercises its enforcement authority, the different purposes of these proposed exclusions and a substituted compliance determination mean that the Commission may reach different conclusions regarding these issues when considering a substituted compliance determination than it does when considering listed status.

C. Alternative 2—Second Alternative Proposed Conditional Exception

Alternative 2 for the proposed conditional exception would share a number of elements with Alternative 1, but instead would allow the arranging, negotiating or executing activity in the United States to be conducted by an entity that is registered as a broker, without requiring that entity also to register as a security-based swap dealer.[166] Alternative 2 also would permit that conduct to be conducted by a registered security-based swap dealer, consistent with the Alternative 1.[167]

Certain proposed conditions to Alternative 2 would be the same as those of Alternative 1, while others would be modified to reflect the potential for the activity in the United States to be conducted by a registered broker that is not also registered as a security-based swap dealer. Alternative 2 accordingly would make use of broker regulation to provide for oversight of the transactions at issue while adding certain conditions to fill gaps in regulation that otherwise may arise absent the involvement of a registered security-based swap dealer. Those conditions should help mitigate the previously expressed concerns that a broker-focused approach may effectively supplant Title VII security-based swap dealer regulation for a majority of dealing activity carried out in the United States.[168]

1. U.S. Activity Conducted by a Majority-Owned Registered Broker Affiliate or by a Security-Based Swap Dealer Affiliate

Under Alternative 2, the U.S.-based arranging, negotiating and executing activity that otherwise would trigger the counting requirement must be conducted by the U.S. personnel in their capacity as persons associated with an entity that: (a) Is registered as a broker or a security-based swap dealer, and (b)

[163] For example, as discussed above in conjunction with the information access provision, if a non-U.S. person is prohibited by applicable foreign law or regulations from providing access to the Commission or its representatives, the non-U.S. person may continue to rely on the exception until the Commission issues an order modifying or withdrawing an associated ''listed jurisdiction'' determination. To the extent that such prohibitions apply in practice to a particular class of market participants, or to an individual market participant in that jurisdiction, a modification of a listed jurisdiction order may exclude that class of market participants or that individual market participant from reliance on the exception.

[164] *See* part III.D.3, *infra.*

[165] The Commission has proposed to make a mechanism for substituted compliance orders generally available in connection with security-based swap dealer requirements under Exchange Act Section 15F. *See* ''Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants'' (May 1, 2013), 78 FR 30968, 31207–08 (May 23, 2013) (proposing substituted compliance rule for section 15F requirements; since then a mechanism for substituted compliance has been adopted via Exchange Act Rule 3a71–6 in connection with business conduct and trade acknowledgment and verification requirements). Those Section 15F requirements include security-based swap dealer margin and capital requirements. Substituted compliance provides a mechanism by which a non-U.S. security-based swap dealer may satisfy its requirements under Title VII via compliance with analogous requirements of a foreign regime, contingent in part on the Commission deeming the scope and objectives of the relevant foreign requirements to be comparable to analogous Title VII requirements. As proposed, substituted compliance would not be available in connection with the Commission's segregation requirements.

[166] Alternative 2 would not be satisfied if this arranging, negotiating or executing activity is conducted by a bank that has not registered as a broker due to the Exchange Act's ''broker'' definition's exceptions for bank brokerage activity, unless the bank is registered as a security-based swap dealer.

[167] For the reasons set forth above (*see* note 106, *supra,* and accompanying text), the Commission believes that such a security-based swap dealer also generally would be required to register as a broker unless it can avail itself of an exception or exemption from broker registration.

[168] *See* part I.A.3, *supra.* Because Alternative 2 would not be satisfied by the use of a bank that is not registered as a broker, the Commission's previously expressed concerns regarding differences in oversight between brokers and banks should not be a concern here.

is a majority-owned affiliate of the non-U.S. person relying on the exception.[169]

Consistent with Alternative 1, the affiliation requirement is intended to help tailor the exception to reflect the proposed exception's objective of helping to avoid personnel relocation, and to also help ensure that the financial group has a significant financial interest in the registered entity's compliance with applicable requirements.[170]

2. Compliance With Certain Security-Based Swap Dealer Requirements

For a non-U.S. person to rely on Alternative 2, the registered broker or security-based swap dealer that conducts the arranging, negotiating or executing activity in the United States would be required to comply with certain security-based swap dealer requirements ''as if'': (a) The counterparties to the non-U.S. person relying on the exception also were counterparties to that entity, and (b) that entity were registered with the Commission as a security-based swap dealer (in the event the entity is registered only as a broker and not as a security-based swap dealer). As with Alternative 1, the Commission preliminarily believes that it would be appropriate to condition Alternative 2 on compliance by the registered entity with the following requirements applicable to security-based swap dealers: Disclosure of risks, characteristics, incentives and conflicts; suitability of recommendations; fair and balanced communications; trade acknowledgment and verification; and portfolio reconciliation.[171]

As discussed in connection with Alternative 1, those requirements would impose standards of conduct in connection with the transactions at issue, but would not be expected to impose significant additional information-gathering or documentation burdens on the registered entity.[172] While recognizing that certain of the Title VII security-based swap dealer requirements have similarities to the requirements applicable to broker-dealers, the Commission preliminarily believes that the arranging, negotiating or executing security-based swap activity of U.S. personnel should be carried out pursuant to standards of conduct imposed under Title VII, regardless of whether the ultimate counterparties are U.S. or non-U.S. persons.

Alternative 2, like Alternative 1, also would provide that the exception would not be conditioned on the registered entity's compliance with eligible contract participant verification, clearing rights disclosure, ''know your counterparty,'' daily mark disclosure and certain proposed risk mitigation requirements.[173] As discussed above, the fact that the proposal would not be conditioned on compliance with the ECP verification requirement would not affect existing limitations on entering into security-based swaps with non-ECPs.[174]

By virtue of being a registered broker, the registered entity also would be subject to all other applicable broker-dealer requirements under the federal securities laws and self-regulatory organization (''SRO'') rules.

3. Other Conditions

Consistent with Alternative 1, and for the same reasons, Alternative 2 further would encompass conditions related to: Commission access to books, records and testimony of the non-U.S. person relying on the exception; the registered entity's maintenance of trading relationship documentation; consent to service of process;[175] disclosures to counterparties; and the non-U.S. person being subject to the financial responsibility requirements of a listed jurisdiction.[176]

4. Carveout From *De Minimis* Counting Requirements

In adopting the ''arranged, negotiated, or executed'' counting requirement, the Commission recognized that arranging, negotiating or executing conduct by personnel in the United States could constitute dealing activity in the United States, regardless of the fact that the parties to the transactions are not U.S. persons.[177] To avoid ambiguity regarding whether a registered broker's U.S. activity under this alternative independently must be counted against the applicable *de minimis* thresholds—and hence potentially require the registered broker also to register as a security-based swap dealer—Alternative 2 would provide that the persons that engage in such conduct pursuant to the exception would not have to count the associated security-based swap transactions against the *de minimis* thresholds.[178] Absent such an exception, the Commission is concerned that Alternative 2 potentially would be ineffective due to the reluctance of entities that are not registered as security-based swap dealers to engage in the arranging, negotiating or executing conduct envisioned by the proposed alternative.

D. Solicitation of Comments Regarding the Proposed Amendment to Rule 3a71–3

The Commission requests comment on all aspects of the proposed amendment to Rule 3a71–3, including the following issues:

1. Involvement of U.S. Personnel in Arranging, Negotiating and Executing Transactions Between Non-U.S. Counterparties

To what extent do U.S. personnel participate in arranging, negotiating or executing activities in connection with security-based swap dealing transactions involving two non-U.S. counterparties? Commenters particularly are invited to address the following:

a. What particular services do U.S. personnel typically provide as part of such activities?

b. What types of information do U.S. personnel typically communicate to an affiliate's security-based swap counterparties in connection with such activities?

c. To what extent are U.S. personnel typically involved in negotiating pricing or other terms of security-based swaps in connection with such activities?

d. What is the typical mode of communication (*e.g.,* telephonic, written, in-person) used between those U.S. personnel and an affiliate's security-based swap counterparties in connection with such activities?

e. What types of instruments (*e.g.,* securities issued by U.S. persons)

[169] *See* Alternative 2—proposed paragraph (d)(1)(i) of Rule 3a71–3. Exchange Act Section 3(a)(18) defines the terms ''person associated with a broker or dealer'' and ''associated person of a broker or dealer'' to encompass, *inter alia,* partners, officers, directors, employees and persons controlling, controlled by, or under common control with a broker or dealer.

Alternative 2 shares, with Alternative 1, the definitions of ''majority-owned affiliate,'' ''foreign associated person'' and ''listed jurisdiction.''

[170] *See* part III.A, *supra.*

[171] *See* Alternative 2—proposed paragraphs (d)(1)(ii)(A), (B) of Rule 3a71–3.

[172] *See* part III.B.2.a, *supra.*

[173] *See* second alternative—proposed paragraph (d)(1)(ii)(C) of Rule 3a71–3; *see also* notes 130 through 137, *supra,* and accompanying text. Those particular Title VII requirements would be at issue only if the entity is registered as a security-based swap dealer.

[174] *See* note 133, *supra,* and accompanying text.

[175] Because the registered entity under Alternative 2 may be a registered broker, Alternative 2 allows for process to be served on the non-U.S. person in the manner set forth in the registered entity's Form BD (or, consistent with Alternative 1, in the manner set forth in the registered entity's Forms SBSD, SBSE–A or SBSE–BD).

[176] *See* Alternative 2—proposed paragraphs (d)(1)(iii) through (d)(1)(v), (d)(2) and (d)(3) of Rule 3a71–3; *see also* parts III.B.3—III.B.5, *supra.*

[177] *See* ANE Adopting Release, 81 FR at 8621.

[178] *See* Alternative 2—proposed paragraph (d)(4) of Rule 3a71–3.

typically underlie the security-based swaps that are the subject of such transactions involving arranging, negotiating or executing activity by U.S. personnel?

f. Are U.S. personnel involved in such arranging, negotiating or executing activities on behalf of non-U.S. persons that are not affiliates? If so, what services do U.S. personnel provide and what types of instruments are the subject of such activities by U.S. personnel on behalf of unaffiliated non-U.S. persons?

g. Are there particular categories of arranging, negotiating or executing activity that U.S. personnel typically perform, to facilitate a non-U.S. person's security-based swap dealing transactions with non-U.S. counterparties, that are so limited in scope that they may not trigger the concerns that led to the adoption of the ''arranged, negotiated, or executed'' counting standard?

h. To what extent do U.S. personnel typically provide the primary point of contact for managing sales and trading relationships with non-U.S. person counterparties on behalf of non-U.S. affiliates engaged in security-based swap dealing activity? Conversely, to what extent is the involvement of such U.S. personnel typically incidental to a relationship that the non-U.S. person dealer manages primarily from an office outside the United States, and what is the nature of any such incidental involvement?

i. To the extent U.S. personnel perform both types of functions—serving as a primary point of contact for some transactions and serving an incidental role for other transactions—are those functions determined on the basis of counterparty location, product characteristics, or on the basis of some other factors?

2. Implementation Issues Associated With the Existing ''Arranged, Negotiated, or Executed'' Counting Requirement

To what extent would a conditional exception from the ''arranged, negotiated, or executed'' counting requirement be appropriate to address implementation issues potentially associated with that requirement? Commenters particularly are invited to address the following:

a. What would be the expected consequences if the Commission does not adopt either proposed alternative for an exception to the *de minimis* counting requirement? For example, how many financial groups would expect to register one or more non-U.S. entities as security-based swap dealers absent an exception? How many non-U.S. entities would such financial groups typically expect to have to register in those circumstances? Conversely, how many financial groups would be expected to register non-U.S. entities as security-based swap dealers in the presence of this type of exception?

b. What contingency plans, if any, have such financial groups drawn up to address the potential consequences associated with compliance with the ''arranged, negotiated, or executed'' counting standard?

c. In practice, would such financial groups be expected to relocate U.S. personnel and/or relocate functions out of the United States to avoid having to count security-based swap transactions pursuant to the ''arranged, negotiated, or executed'' counting standard?

3. ''Listed Jurisdiction'' Condition and Definition, and Potential Effect of Barriers to the Transfer of Information

Would the proposed ''listed jurisdiction'' condition and associated definition appropriately prevent the proposed exception from permitting persons that engage in security-based swap dealing activity in the United States from booking transactions into affiliated non-U.S. booking entities that are not subject to adequate financial responsibility oversight or that would not allow for sufficient access to information by the Commission? Commenters particularly are invited to address the following:

a. What criteria should the Commission use to help ensure that non-U.S. persons relying on the exception are subject to adequate financial responsibility requirements?

b. Would it be appropriate, as commenters previously suggested, to exclude transactions that are arranged, negotiated or executed by U.S. personnel if the non-U.S. dealer is located in a G–20 jurisdiction or is subject to the margin and capital requirements of a Basel-compliant jurisdiction?

c. Would ''listed jurisdiction'' status be appropriate for the following jurisdictions: Australia, Canada, France, Germany, Hong Kong, Japan, Singapore, Switzerland, and the United Kingdom?

• In this regard commenters particularly are invited to address whether listed jurisdiction status would be warranted in light of those jurisdictions' applicable margin and capital requirements, and the effectiveness of those jurisdictions' supervisory compliance program and enforcement authority in connection with those requirements, including in the cross-border context.

• Commenters also are invited to address potential impediments to the Commission's ability to promptly access information or documents regarding the activities of persons in those jurisdictions, to obtain the testimony of non-U.S. persons that are associated with those persons, and to obtain the assistance of persons relying on the exception in taking the evidence of other persons, wherever located.[179]

d. What criteria should the Commission use to help ensure that it can access information from non-U.S. persons relying on the exception? Commenters also are invited to address how potential impediments to the cross-border transfer of information may affect compliance with the information access condition and other conditions to the exception, including the effect of any such impediments on the registered entity's ability to comply with conditions related to the trade acknowledgment and verification, and to the registered entity's obligation to obtain trading relationship documentation from its non-U.S. affiliate.

4. Appropriate Counterparty Protections

What conditions are appropriate to afford protections to the counterparties to the security-based swap transactions at issue, consistent with by Title VII and its implementing regulations? Commenters particularly are invited to address the following issues, and, to the extent possible, address similarities and differences between the activities implicated by the proposed exception and the activities that unregistered foreign broker-dealers may conduct pursuant to the exemption provided by Exchange Act Rule 15a–6:[180]

[179] As discussed above (*see* notes 160 through 162, *supra,* and accompanying text), although the Commission preliminarily does not expect to consider impediments to information access as part of initial listed jurisdiction determinations, the Commission may modify or withdraw listed jurisdiction status in the event that, in practice, the Commission or its representatives have been prevented from accessing information due to the jurisdiction's laws and regulations.

[180] Exchange Act Rule 15a–6 in part permits unregistered foreign broker-dealers to engage in certain activities in the United States in connection with major institutional investors represented by U.S. fiduciaries on an ''unchaperoned'' basis. *See* Rule 15a–6(a)(3). The Rule 15a–6(a)(3) exemption in part is conditioned on the requirement that a registered broker-dealer is responsible for effecting the resulting transactions, the requirement that an associated person of the registered broker-dealer be involved in all of the foreign entity's visits to defined U.S. institutional investors, and prohibitions against the involvement of statutorily disqualified foreign associated persons of the foreign-broker dealer.

Commission staff has provided statements regarding the operation of Rule 15a–6. For example, a 1997 staff no-action letter, *inter alia,* stated that

a. Do the alternatives for the proposed exception appropriately distinguish between certain security-based swap dealer requirements that will be applied to the arranging, negotiating or executing activity in the United States as a condition to the exception (*i.e.,* requirements related to disclosures of risks, characteristics, incentives and conflicts, suitability, fair and balanced communications, trade acknowledgement and verification, initial portfolio reconciliation, and books and records), and other requirements that the Commission is not proposing to apply to that activity as a condition to the exception (*i.e.,* requirements related to ECP verification, daily mark disclosure, clearing rights disclosure, ''know your counterparty'' and proposed risk mitigation requirements)?

b. To the extent that commenters believe that there should be changes to the proposed allocation of security-based swap dealer requirements between those that are conditions to the exception, and those that are not, please explain how those requirements should be allocated for purposes of the exception, and describe how that alternative allocation would address concerns raised by the activity of the registered entity. Please also describe the practical challenges raised by the Commission's proposed allocation, how a different allocation would address those challenges, and whether there are any inconsistencies in the proposed allocation.

c. To what extent would the transactions at issue be subject to requirements in foreign jurisdictions that are analogous to the Title VII requirements that are proposed to be applied as conditions to the exception? To what extent would the transactions at issue be subject to requirements in foreign jurisdictions that are analogous to the Title VII requirements that are *not* proposed to be applied as conditions to the exception? To what extent would analogous FINRA requirements apply to these transactions if the registrant is registered as a broker?

d. As an alternative to the proposed conditions to this exception, should this exception instead be subject to conditions that are styled after the staff guidance that describes conditions under which foreign broker-dealers may operate in the United States pursuant to Exchange Act Rule 15a–6(a)(3)? [181] In this regard the Commission notes that foreign broker-dealers relying on Rule 15a–6 differ from foreign dealers that would avail themselves of proposed exceptions in at least two respects: First, the former are permitted to engage in only limited activity inside the United States, while the latter would be arranging, negotiating, and executing transactions using U.S. personnel on an ongoing basis; second, the former exemption applies to transactions with U.S. persons while the latter exception would apply only to transactions with non-U.S. persons. How should those differences affect the scope of any relief provided and any conditions placed on that relief? Should compliance with any or all of the requirements that are a condition to the proposed exception be eliminated, either entirely or for certain ''sophisticated'' counterparties? If so, how should ''sophisticated'' be defined for these purposes? Should any eligible contract participant be considered ''sophisticated,'' or should ''sophisticated'' encompass only a counterparty that meets a higher standard, such as a standard similar to the standards applicable to: (1) Qualified institutional buyers under Rule 144A(a)(1)–(4) [182] under the Securities Act of 1933; (2) major institutional investors, as defined in Exchange Act Rule 15a–6 and discussed in subsequent staff guidance; or (3) the security-based swap dealer suitability requirement's institutional counterparty standard under Rule 15Fh–3(f)(4)? [183] Would this alternative type of approach appropriately balance the implementation concerns associated with the use of the ''arranged, negotiated, or executed'' test against the regulatory interests underlying the *de minimis* counting requirement?

e. Are additional conditions necessary to help ensure that the entity that engages in arranging, negotiating or executing activity in the United States appropriately would be subject to all relevant security-based swap dealer requirements, notwithstanding a lack of contractual privity with the counterparty to the transaction?

5. Issues Potentially Associated With Specific Conditions

Are there specific conditions to the proposed exception that may pose implementation issues, or that otherwise should be modified? Commenters particularly are invited to address the following:

a. *Suitability*—Are there any aspects of the suitability requirements applicable to security-based swap dealers that would raise implementation issues in the event that the entity engaged in arranging, negotiating or executing activity in the United States makes recommendations in connection with the transactions at issue? In this regard please describe the nature of the relationship between U.S. personnel operating pursuant to the exception and the foreign counterparties, and any challenges to obtaining the information necessary to comply with the suitability requirement. To what extent, if at all, is the suitability requirement necessary in light of the institutional nature of the market and the limited suitability requirements that apply to transactions with institutional counterparties? Could the concerns addressed by Rule 15Fh–3(f) be mitigated if the suitability condition to the exception were instead limited solely to the security-based swap dealer's compliance with Rule 15Fh–3(f)(2)(iii), which would require the security-based swap dealer to disclose that it is acting in its capacity as a counterparty, and is not undertaking to assess the suitability of the security-based swap or trading strategy for the counterparty?

b. *Disclosure of risks, characteristics, material incentives and conflicts of interest*—Are there implementation issues that may arise in connection with the proposed condition requiring the registered entity engaged in arranging, negotiating or executing activity in the United States to comply with requirements related to the disclosure of information regarding risks, characteristics, material incentives and conflicts of interest? Commenters particularly are invited to address whether there may be impediments related to the ability of the registered entity to disclose or gather information

the staff would not recommend enforcement action when foreign associated persons of a foreign broker-dealer: (i) Engaged in oral communications from outside the U.S. with certain U.S. institutional investors outside of U.S. trading hours, so long as the foreign associated persons do not accept orders (other than those involving foreign securities); and (ii) have in-person visits with certain ''major'' U.S. institutional investors, so long as those contacts do not exceed 30 days a year and the foreign associated persons do not accept orders. That letter also provided a staff statement regarding the meaning of ''major U.S. institutional investor.'' *See* Letter re Securities Activities of U.S.-Affiliated Foreign Dealers from Richard R. Lindsey, Director, Division of Market Regulation to Giovanni P. Prezioso, Cleary, Gottlieb, Steen & Hamilton, dated Apr. 9, 1997 (''Nine Firms Letter''), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/cleary040997.pdf.* Staff guidance regarding the operation of Rule 15a–6 is summarized in ''Frequently Asked Questions Regarding Rule 15a–6 and Foreign Broker-Dealers,'' *available at https://www.sec.gov/divisions/marketreg/faq-15a-6-foreign-bd.htm.*

In contrast to Rule 15a–6, which provides an exemption for foreign entities' transactions with activities involving *U.S. person* customers, the proposed exception to Rule 3a71–3 would permit foreign entities to make use of U.S. activity only in connection with security-based swaps with *non-U.S.* counterparties.

[181] *See* note 180, *supra.*

[182] *See* 17 CFR 230.144A.

[183] *See* note 180, *supra.*

regarding material incentives and conflicts of interest associated with the non-U.S. person relying on the proposed exception, and regarding how to address any such potential impediments. For example, should the disclosure requirement be limited to information regarding material incentives and conflicts of interest associated with the registered entity engaged in such activity in the United States?

c. *Disclosure that non-U.S. person is not registered*—Are there implementation issues that may arise in connection with the proposed condition requiring disclosure that the non-U.S. person relying on this exception is not registered with the Commission as a security-based swap dealer, and that certain Exchange Act security-based swap requirements may not be applicable? Commenters particularly are invited to address whether disclosure of less information or additional information would be appropriate, and to address whether alternative approaches regarding the timing and manner of disclosure would be appropriate.

d. *Trade Acknowledgment and Verification*—Should the Commission, as is proposed under Alternatives 1 and 2, condition the exception on the registered entity that engages in arranging, negotiating or executing activity in the United States complying with trade acknowledgment and verification requirements under Title VII as if they were a counterparty to the transaction? The trade acknowledgment and verification requirements apply in connection with a transaction in which a security-based swap dealer purchases or sells to any counterparty a security-based swap. For purposes of this exception, should the Commission treat the registered entity that arranges, negotiates, or executes a security-based swap as if it purchased or sold a security-based swap for purposes of the trade acknowledgment and verification requirements? Will a security-based swap dealer (under Alternative 1 or 2) or a registered broker-dealer (under Alternative 2) that provides limited services in connection with arranging, negotiating, or executing a transaction necessarily be able to comply with the trade acknowledgment and verification requirements as if it were a party to the transaction? Will the security-based swap dealer or registered broker-dealer necessarily have all the information required for a trade acknowledgment to which it is not a party? How will it obtain verification? Would there be potential impediments to the registered entity's ability to accurately reflect the terms of the transaction on the trade acknowledgement? Would it be sufficient to condition the exception on the broker-dealer complying with the transaction confirmation requirements of Exchange Act Rule 10b–10 as if the counterparty were the ''customer'' of the broker-dealer? [184] Would it be necessary to modify the information required to be confirmed under Exchange Act Rule 10b–10 to accommodate security-based swaps?

e. *Affiliation condition*—Are there implementation issues that would arise in connection with the proposed condition that would require the registered entity engaged in arranging, negotiating or executing activity in the United States to be a majority-owned affiliate of the non-U.S. person relying on the exception? Commenters particularly are invited to address the appropriateness of an affiliation condition, the potential use of alternatives to a majority-ownership standard in connection with the condition (*e.g.,* common control or ''wholly owned'' standards), and any technical or other implementation issues that may accompany the use of an affiliation standard.

f. *Portfolio reconciliation condition*—The Commission further requests comment regarding the proposed condition that would require the registered entity engaged in arranging, negotiating or executing conduct in the United States to perform the initial portfolio reconciliation required by proposed Exchange Act Rule 15Fi–3. Commenters particularly are invited to address implementation issues that may be associated with that proposed condition. Commenters also are invited to address the potential effectiveness of that proposed condition in helping registered security-based swap data repositories comply with their verification requirements.

6. Potential Additional Conditions

Should the proposed exception be subject to additional conditions? Commenters particularly are invited to address the following:

a. Should the exception be made unavailable in circumstances in which U.S. entities or their personnel manage the relationship with the non-U.S. counterparty to the transaction? Alternatively, should additional conditions (*e.g.,* compliance with ECP verification and ''know your counterparty'' requirements) be applied to the exception in those circumstances?

b. Should the exception be conditioned on the registered entity complying with ECP verification and ''know your counterparty'' requirements ''as if'' the counterparties to the non-U.S. person relying on the exception also were counterparties to the registered entity? In this regard, commenters are requested to discuss whether the registered entity reasonably would be expected to possess information regarding the counterparty to the transaction that is sufficient to permit compliance with those requirements.

c. Instead, should the treatment of ECP verification and ''know your counterparty'' requirements for purposes of the exception depend in part on whether the Commission also has issued ''market color'' guidance, as discussed in part II *supra.* For example, if the Commission issues ''market color'' guidance, would it be likely that non-U.S. persons would rely on the guidance when their U.S. personnel have only a peripheral involvement with the resulting transaction, and that non-U.S. persons would rely on the exception when their U.S. personnel engage with the counterparty more comprehensively? In that event, should the exception require compliance with the ECP verification and ''know your counterparty'' provisions, based on the assumption that the exception would be used when U.S. personnel have a comparatively comprehensive degree of engagement with the counterparty, which would allow for compliance with those conditions?

d. Alternatively, should the exception from the *de minimis* counting requirement be conditioned on ''as if'' compliance with those ECP verification and ''know your counterparty'' requirements, unless the registered entity has had no prior interactions with the counterparty, and there is no basis to believe that the registered entity would have further interactions with that counterparty?

e. Should the exception further be conditioned on the registered entity having to disclose information regarding clearing rights? Commenters particularly are invited to address the expected application of the underlying clearing rights provisions in Exchange Act Section 3C(g)(5) to the transactions at issue.

f. Should the proposed exception be conditioned on the non-U.S. person relying on the condition having some involvement in the registered entity's arranging, negotiating or executing activity to the extent practicable, to help prevent the counterparties to these transactions from misconstruing the role

[184] The transaction confirmation requirements apply when a broker-dealer ''effect[s] for or with any customer any transaction in, or [induces] the purchase or sale by such customer'' of securities. *See* Exchange Act Rule 10b–10(a).

of the registered entity and the application of Title VII safeguards to the transactions at issue.

g. Are there additional conditions that would be appropriate for incorporation into the exception?

7. Treatment of the Non-U.S. Person Relying on the Exception, Including Commission Access to Information

To what extent would the absence of direct security-based swap dealer regulation of the non-U.S. person relying on the proposed exception—notwithstanding its use of U.S. personnel to conduct security-based swap dealing activity—raise concerns regarding gaps in the application of Title VII to transactions arising from security-based swap dealing in the United States? [185] Commenters particularly are invited to address the following:

a. What issues may arise due to the lack of Commission regulation of communications between the non-U.S. person and its counterparties? Could this lack of regulation potentially facilitate improper practices in connection with dealing transactions that occur in part in the United States?

b. What issues may arise due to the lack of direct Commission financial responsibility regulation of the non-U.S. person? How significant are associated concerns regarding spillovers and contagion arising from reputational effects that an affiliate's failure may have on other affiliates within the same corporate group?

c. Do the proposed provisions to (a) require the non-U.S. person relying on the exception to promptly provide the Commission with information, documents and testimony in connection with the transaction, and (b) require the registered entity to obtain and maintain related books and records, adequately provide for transparency into the dealing activities associated with transactions subject to the exception? Should the rules provide further specificity regarding the procedures for withdrawing the exception in the event of impediments to such access? Should the exception incorporate a notice provision to require the non-U.S. person relying on the exception (or the registered entity engaged in arranging, negotiating or executing activity in the United States) to inform the Commission as to the transactions being conducted in reliance on the exception? Are there modifications that would allow the Commission to obtain the necessary access to books and records at a lower cost to the non-U.S. person and the registered entity?

d. For purposes of the access provisions of proposed paragraph (d)(1)(iii)(A) of Rule 3a71–3—which would require non-U.S. persons relying on the exception to promptly make their ''foreign associated persons'' available to the Commission for testimony—is the proposed ''foreign associated person'' definition in paragraph (a)(11) of the rule crafted appropriately? For example, should the proposed definition be limited so it applies only to persons who effect or who are involved in effecting security based swaps? If so, why?

8. Distinctions Between the Two Proposed Alternatives

Comparatively, to what extent would the two proposed alternatives for the conditional exception effectively address implementation concerns while continuing to preserve the principles that underpin the ''arranged, negotiated, or executed'' standard? Commenters particularly are invited to address the following:

a. Under the second alternative, what concerns may arise from applying Title VII business conduct requirements to brokers via condition in lieu of security-based swap dealer registration?

b. How would comparative security-based swap dealer capital requirements and broker-dealer capital requirements affect the implementation of the two alternatives? [186] Would those capital requirements limit the ability to use a stand-alone entity to engage in arranging, negotiating or executing conduct in the United States on behalf of a non-U.S. affiliate? Would those capital requirements affect the potential use of a registered entity that also engages in a separate security-based swap dealing business, or that is registered as a swap dealer or as a bank? [187]

9. Effect on Booking Practices

The Commission requests comment regarding how the availability of the proposed exception would be expected to affect prospective booking practices by industry participants. Commenters particularly are invited to address the following:

a. Would the proposed exception incentivize U.S.-based dealing entities to bifurcate their dealing books by prospectively booking security-based swap transactions with non-U.S. counterparties into non-U.S. affiliates, to avoid having that portion of their security-based swap businesses being subject to Title VII security-based swap dealer requirements? If so, what would be the expected extent of such booking practices? What would be the expected economic consequences? [188]

b. Are the proposed conditions appropriate to help guard against any negative consequences (*e.g.,* loss of business conduct protection, potential market fragmentation) that potentially would result from U.S.-based dealing entities using such booking practices to limit the application of Title VII to their dealing businesses involving non-U.S. counterparties? If not, what additional conditions—*e.g.,* restrictions on the availability of the exception when the counterparty relationship is managed by U.S. personnel rather than by non-U.S. personnel of the booking entity—would be appropriate to help prevent those negative consequences?

c. Would a differently tailored application of the counting requirements to cross-border transactions be appropriate, instead of or in addition to the alternatives being proposed in this release? For example,

[185] Absent additional Commission action, *see* part III.D.10, *infra,* under the proposed exception the regulatory reporting and public dissemination requirements of Regulation SBSR still would apply directly to the security-based swap, by virtue of the transaction having been arranged, negotiated or executed in the United States, *see* Regulation SBSR Sections 908(a)(1)(v) and 908(b)(5) (and, under alternative 2, by virtue of the transaction having been effected by or through a registered broker-dealer, *see* Regulation SBSR Section 908(a)(1)(iv)).

[186] The proposed capital requirements applicable to those entities would depend on whether they are a stand-alone nonbank security-based swap dealer, a security-based swap dealer that is dually registered as a broker-dealer, a bank security-based swap dealer, or stand-alone broker-dealer. *See* Capital, Margin and Segregation Proposing Release, 77 FR at 70333 (proposing capital requirements for nonbank security-based swap dealers, including security-based swap dealers dually registered as broker-dealers); 80 FR 74840 (Nov. 30, 2015) (adopting capital requirements for bank security-based swap dealers); 17 CFR 240.15c3–1 (prescribing capital requirements for broker-dealers). Those existing and proposed capital requirements are tailored, among other reasons, based on the different types of entities (*e.g.,* a bank, a security-based swap dealer, or a broker-dealer) and the activities those entities engage in. Therefore, two different types of entities may be subject to substantially different capital requirements.

[187] For example, would the security-based swap dealer capital requirements associated with Alternative 1 effectively limit the use of that alternative to situations in which the arranging, negotiating or executing activity is conducted through a registered security-based swap dealer that engages in a separate security-based swap dealing business (apart from conducting arranging, negotiating or executing activity on behalf of an affiliate), or that also engages in a swap dealing business, or that is a bank? Conversely, would Alternative 2 better accommodate the establishment of new registered entities to conduct arranging, negotiating or executing activity consistent with the conditions to the proposed exception?

[188] *See* part VII.A.7, *infra* (addressing potential number of U.S.-based dealing entities that may seek to use the exception in connection with those types of prospective booking practices).

should a non-U.S. person engaged in dealing activity be permitted to exclude certain transactions with a U.S.-person dealer from its *de minimis* calculations, subject to certain conditions? If so, please describe the conditions that should apply to such an exception. Alternatively, should a non-U.S. person engaged in dealing activity be permitted to avail itself of such an exception only to the extent that it is located in a ''listed jurisdiction''?

10. Availability to Registered Security-Based Swap Dealers

As proposed, the exception not only would affect the set of dealing transactions that non-registered persons would consider when evaluating whether they fall under the security-based swap dealer *de minimis* thresholds, but also would be relevant to non-U.S. persons that are registered as security-based swap dealers but that wish to withdraw their registration based on their dealing activity over the prior 12 months.[189] Should the exception be made unavailable to registered security-based swap dealers in connection with the potential withdrawal of registration? Commenters particularly are invited to address whether the rationale that underpins the proposed exception, related in large part to the consequences of actions that non-U.S. persons otherwise may take to avoid security-based swap dealer registration, would also be relevant in connection with non-U.S. persons that have registered with the Commission.

11. Other Uses of ''Arranged, Negotiated, or Executed'' Criteria

Should similar exceptions also be made available in connection with other Title VII requirements that in part rely on ''arranged, negotiated, or executed'' test? Commenters particularly are invited to address the following:

a. Regulation SBSR

Commenters are invited to address the application of ''arranged, negotiated, or executed'' criteria in connection with the cross-border application of the regulatory reporting and public dissemination requirements of Regulation SBSR. Regulation SBSR requires reporting and dissemination of transactions, connected with a non-U.S. person's security-based swap dealing activity, that have been ''arranged, negotiated, or executed'' by U.S. personnel of the non-U.S. person, or by U.S. personnel of the non-U.S. person's agent.[190] In adopting Regulation SBSR, the Commission determined that requiring those transactions to be reported to a registered swap data repository would ''enhance the Commission's ability to oversee relevant security-based swap activity within the United States as well as to evaluate market participants for compliance with specific Title VII requirements'' and monitor for fraudulent activity.[191] The Commission further stated that public dissemination of those transactions would ''contribute to price discovery and price competition in the U.S. security-based swap market'' by providing a ''more comprehensive view of activity in the U.S. market.'' [192]

The Commission is soliciting comment regarding those prior conclusions. Commenters particularly are invited to address whether the existing requirements related to the cross-border application of Regulation SBSR could cause non-U.S. person counterparties to avoid transacting with foreign dealers who use U.S. personnel to arrange, negotiate or execute security-based swap transactions.

In this regard, commenters are invited to address whether there should be any modifications to existing provisions of Regulation SBSR (and, if so, which) regarding the application of regulatory reporting and public dissemination requirements to transactions arranged, negotiated or executed in the United States. Commenters also are invited to provide their views as to whether, for a security-based swap where a non-U.S. person engages in dealing activity but relies on an exception from having to count that transaction against its *de minimis* threshold, Regulation SBSR should be amended to re-assign the duty to report that transaction from the non-U.S. person engaged in dealing activity to its affiliated U.S. entity (be it a registered broker-dealer or registered security-based swap dealer) that is conducting the arranging, negotiating or executing activity in the United States.

Commenters further are invited to comment on possible alternative compliance mechanisms for the regulatory reporting and public dissemination requirements. For example, should Regulation SBSR be amended to conditionally permit the transaction to be reported pursuant to the requirements of the foreign jurisdiction which applies its reporting requirements to the affiliated non-U.S. person? If so, what conditions should apply to such an approach (*e.g.,* limiting the approach to circumstances where that jurisdiction's reporting and dissemination requirements and practices meet certain criteria), and how should the Commission or market participants determine whether a jurisdiction meets any relevant criteria for this purpose? Alternatively, is the availability of substituted compliance in connection with the regulatory reporting and public dissemination requirements sufficient to address concerns regarding regulatory burdens potentially associated with this use of an ''arranged, negotiated, or executed'' test?[193]

b. Additional Title VII Requirements

Commenters also are invited to address the use of an ''arranged, negotiated, or executed'' test in connection with the cross-border application of certain security-based swap dealer business conduct requirements.[194] Here too, the Commission particularly requests comment regarding the potential relevance of Exchange Act Rule 15a–6(a)(3), which in part conditionally allows unregistered foreign broker-dealers to communicate with U.S. institutional investors and major institutional investors without having to register with the Commission as broker-dealers.[195] Would it be appropriate to provide conditional relief—akin to the proposed exception from the *de minimis* counting requirement or to the conditional broker-dealer registration exemption set forth in Rule 15a–6(a)(3)—from relevant business conduct requirements for registered foreign security-based swap dealers in security-based swap transactions with non-U.S. persons that the foreign dealers arrange, negotiate, or execute using personnel located within the United States? If so, should such relief be conditioned on the sophistication of the counterparty or its

[189] *See* note 101, *supra* (discussing application of proposal to registered security-based swap dealers).

[190] *See* Regulation SBSR Sections 908(a)(1)(v) and 908(b)(5); *see also* note 14, *supra.* Regulation SBSR was adopted pursuant to the regulatory reporting and public dissemination requirements set forth in Exchange Act Sections 13(m)(1)(C), 13(m)(1)(G) and 13A(a)(1).

[191] 81 FR at 53591.

[192] *Id.* at 53592.

[193] Rule 908(c) of Regulation SBSR provides that the Title VII requirements for regulatory reporting and public dissemination of security-based swaps may be satisfied by compliance with the rules of a foreign jurisdiction that the Commission has found to have requirements that are comparable to those of Title VII.

[194] Exchange Act Rule 3a71–3(c) states that a registered security-based swap dealer is not subject to certain business conduct requirements ''with respect to its foreign business.'' The ''foreign business'' definition (Rule 3a71–3(a)(9)) references the definition of ''U.S. business,'' which in relevant part includes transactions of foreign security-based swap dealers that have been arranged, negotiated or executed by personnel located in a U.S. branch or office. *See* Exchange Act Rule 3a71–3(a)(8)(i)(B).

[195] *See* note 180, *supra.*

advisor or compliance with any other conditions?

In addition, commenters are invited to address the application of ''arranged, negotiated, and executed'' criteria in connection with the exception from the *de minimis* counting requirement related to the dealing transactions of non-U.S. persons with counterparties that are foreign branches of registered security-based swap dealers.[196] To the extent that this counting test raises operational or other challenges, are these addressed by the guidance that the Commission has proposed to provide in Part II above regarding the scope of activity that is encompassed by the terms ''arranging'' and ''negotiating'' under the test? Alternatively, should the definition of ''transaction conducted through a foreign branch'' in Exchange Act Rule 3a71–3(b)(1)(iii)(A) be modified to incorporate exceptions similar to those being proposed here? Would such an exception from that aspect of the *de minimis* counting requirement potentially lead to unlimited involvement of U.S.-based personnel in such transactions? If so, how could the exception be tailored appropriately to avoid such a result?

Commenters also are invited to address the use of those criteria in connection with rules regarding the cross-border application of requirements applicable to major security-based swap participants.[197]

12. Additional Issues

The Commission further requests comment regarding any additional issues associated with the proposed exception, or regarding other potential approaches toward addressing issues associated with the ''arranged, negotiated, or executed'' counting standard.

IV. Proposed Guidance and Amendments Related to the Certification and Opinion of Counsel Requirements

A. Discussion

Since the adoption of the registration rules for SBS Entities,[198] the Commission staff has received a number of questions regarding the scope of the certification and opinion of counsel requirement in Exchange Act Rule 15Fb2–4.[199] Certain of these questions related to issues raised by foreign blocking laws, privacy laws, secrecy laws and other foreign legal barriers that may limit or prohibit firms from: (i) Providing books and records directly to the Commission; or (ii) submitting to an onsite inspection or examination by SEC staff.[200] Specifically, firms have requested guidance as to whether the certification and opinion of counsel may take into account different approaches available under foreign blocking laws, privacy laws, secrecy laws or other legal barriers that may facilitate firms' ability to provide books and records to the Commission and submit to an examination or inspection by Commission staff in a manner consistent with a particular foreign legal requirement.

The Commission recognizes that foreign blocking laws, privacy laws, secrecy laws or other legal barriers may vary in purpose and scope, among other aspects. For example, while some foreign laws may affect the ability of a Commission registrant to provide personal data to the Commission, other laws may prevent a Commission registrant from providing any information to the Commission or submitting to an onsite visit without specific authorization from the foreign government. In light of the differences among foreign laws, the Commission deems it appropriate to propose guidance to firms seeking clarification as to the Commission's requirements for the certification and opinion of counsel.

For example, firms have asked whether the required certification and opinion of counsel may take into account the ability in some jurisdictions for a firm to provide the Commission with access to books and records if the firm obtains the consent of the person whose information is documented in the books and records.[201] One commenter also asked that the Commission clarify that in certain circumstances the certification and opinion of counsel may be based on the assumption that the nonresident security-based swap dealer will provide the Commission access to its books and records through, and submit to on-site inspection and examination with the approval of, the relevant foreign regulatory authority.[202] In addition, firms have asked whether the certification and opinion of counsel should address only the laws of the ''home country'' of the nonresident SBS Entity (for example, its principal place of business or where it is incorporated), or if the Commission expects a nonresident SBS Entity to address applicable law in every jurisdiction in which the nonresident SBS Entity may conduct business or in which its counterparties, customers, or personnel may be located.[203] Firms also have asked if the certification and opinion of counsel are meant to cover Commission inspection and examination of books and records in the jurisdictions in which they are located.[204] The Commission has been considering these issues, and believes it would be appropriate to address certain of these concerns as described below.

The guidance set forth below regarding the certification and opinion of counsel requirements would also be relevant to Exchange Act Rule 3a71–6, which allows SBS Entities to comply with certain requirements under Section 15F of the Exchange Act through substituted compliance.[205] In particular, Paragraph (c)(2)(ii) of Rule 3a71–6 provides that substituted compliance applications by parties or groups of parties—other than foreign financial regulatory authorities—must include the certification and opinion of counsel associated with the SBS Entity registration requirements as if such party were subject to that requirement at the time of the request.[206] Recognizing

[196] *See* note 81, *supra.*

[197] *See* note 82, *supra.*

[198] *See* Registration Adopting Release.

[199] *See, e.g.,* IIB/SIFMA 8/26/2016 Letter; *see also* IIB 11/16/2016 Email.

[200] *See, e.g.,* Registration Adopting Release, 80 FR at 48981.

[201] *See, e.g.,* Memorandum from the Division of Trading and Markets regarding a April 3, 2018 meeting with representatives of Societe Generale, April 3, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-3405388-162169.pdf;* Memorandum from the Division of Trading and Markets regarding a April 4, 2018 meeting with representatives of Barclays, April 4, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-3405597-162172.pdf;* Memorandum from the Division of Trading and Markets regarding a April 11, 2018 meeting with representatives of UBS, April 11, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-3461169-162204.pdf;* Memorandum from the Division of Trading and Markets regarding a April 11, 2018 meeting with representatives of Morgan Stanley, April 11, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-4035093-168391.pdf;* Memorandum from the Division of Trading and Markets regarding a April 30, 2018 meeting with representatives of UBS, April 30, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-4042895-168865.pdf;* Memorandum from the Division of Trading and Markets regarding a June 4, 2018 meeting with representatives of Credit Suisse, June 5, 2018, *available at https://www.sec.gov/comments/s7-08-12/s70812-3785770-162712.pdf;* and Memorandum from the Division of Trading and Markets regarding a July 18, 2018 meeting with representatives of BNP Paribas, July 24, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-4107153-170272.pdf.*

[202] IIB/SIFMA 8/26/2016 Letter, at page 3.

[203] *See* note 201, *supra.*

[204] *See* IIB/SIFMA 8/26/2016 Letter, at page 2.

[205] Exchange Act Rule 3a71–6.

[206] Separately, paragraph (c)(3) of Rule 3a71–6 provides that foreign financial regulatory authorities may make substituted compliance requests only if they provide adequate assurances that no law or policy of any relevant foreign jurisdiction would impede the ability of any entity that is directly supervised by the foreign financial regulatory authority and that may register with the Commission as an SBS Entity to provide the

Continued

the expected time necessary for the Commission to consider substituted compliance applications it receives, the Commission welcomes submission of such applications with respect to any of its final rules for which substituted compliance is potentially available. Consistent with this position, the Commission wishes to clarify that, during the pendency of this proposal, the Commission will consider all such applications, including those submitted without a certification or opinion of counsel, by parties or groups of parties who are not foreign regulatory authorities.[207] This clarification, however, does not mean that the Commission would grant any application for substituted compliance submitted by such parties or groups of parties until the required certification and opinion are filed.

1. Foreign Laws Covered by the Certification and Opinion of Counsel Requirements

The Commission understands that the security-based swap market and the security-based swap dealing activities of many firms are global in scope. In this market, the business of any single security-based swap dealer, whether a resident or nonresident of the United States, may span multiple jurisdictions. The certification and opinion of counsel requirement was intended to address distinct challenges that may arise with respect to a nonresident SBS Entity that, unlike a resident SBS Entity, is incorporated or has its principal place of business outside the United States. In particular, the requirement is intended to provide a level of assurance regarding the Commission's access to relevant books and records of a nonresident SBS Entity and its ability to inspect and examine them.

Given the underlying objective of this requirement, the Commission is proposing to provide guidance that it would be appropriate for the certification and opinion of counsel to address only the laws of the jurisdiction or jurisdictions in which the nonresident SBS Entity maintains the covered books and records as described in part IV.B.2, *infra* (''covered books and records''). Under this proposed guidance, the certification and opinion of counsel would not need to cover other jurisdictions where customers or counterparties of the nonresident SBS Entity may be located or where the nonresident SBS Entity may have additional offices or conduct business. For example, if the nonresident SBS Entity maintains the covered books and records in the jurisdiction of its incorporation or principal place of business, the certification and opinion of counsel would address that jurisdiction. If the nonresident SBS Entity maintains its covered books and records in a jurisdiction or jurisdictions other than where it is incorporated or has its principal place of business (*e.g.,* in a jurisdiction where it maintains a foreign branch office that conducts its security-based swap activities), the certification and opinion of counsel should address such jurisdiction or jurisdictions, provided that the laws of the jurisdiction where the firm is incorporated or jurisdictions in which it is doing business would not prevent the Commission from having direct access to the covered books and records, nor prevent the nonresident SBS Entity from promptly furnishing them to the Commission or opening them up to the Commission for an on-site inspection or examination.

The Commission preliminarily believes that a certification and opinion of counsel from a nonresident SBS Entity that covers the laws of the jurisdiction or jurisdictions where its covered books and records are located, rather than the laws of all possible jurisdictions where its customers or counterparties may be located or where it may conduct business, would provide the Commission with a sufficient level of assurance that it will be able to access the relevant books and records of nonresident SBS Entities registered with it.

2. Clarification on Covered Books and Records

One commenter requested that the Commission clarify that the scope of the certification and opinion of counsel requirement applies only to ''U.S.-Related Records'' (as defined by the commenter) and, for a nonresident security-based swap dealer subject to the Commission's capital and margin regulations, ''Financial Records'' (as defined by the commenter).[208] The commenter also would limit the scope of the certification and opinion of counsel to on-site inspection and examination of books and records located at a U.S. branch or office of a nonresident security-based swap dealer or U.S. Related Records located at the nonresident security-based swap dealer's ''U.S.-Related Foreign Locations'' (as defined by the commenter).[209] Among other things, the commenter states that this would ensure Commission access to the types of records most relevant to the Commission's oversight responsibilities.[210]

The Commission believes that it would be beneficial to propose guidance on this issue to help firms that must comply with these rules understand the scope of what is covered by the certification and opinion of counsel. The Commission is proposing to provide guidance that the certification and opinion of counsel need only address: (1) Books and records that relate to the ''U.S. business'' of the nonresident SBS Entity (as defined in 17 CFR 240.3a71–3(a)(8)); and (2) financial records necessary for the Commission to assess the compliance of the nonresident SBS Entity with capital and margin requirements under the Exchange Act and rules promulgated by the Commission thereunder, if these capital and margin requirements apply to the nonresident SBS Entity.

While this formulation is similar to that suggested by commenters, the Commission preliminarily believes it would be appropriate to tie the scope of the books and records covered by the certification and opinion of counsel to a firm's ''U.S. business'' and relevant

Commission with prompt access to the entity's books or records, or to submit to on-site inspection and examination by the Commission. The above guidance regarding the application of the certification and opinion of counsel requirements also will inform the Commission's assessment of whether a foreign financial regulatory authority has provided such adequate assurances as part of a substituted compliance application.

[207] The Commission does not require that applications submitted by foreign regulatory authorities be accompanied by a certification or opinion of counsel. Exchange Act Rule 3a71–6(c)(3).

[208] *See* IIB/SIFMA 8/26/2016 Letter (proposing that ''U.S.-Related Records'' be defined to mean ''books and records relating to security-based swap transactions entered into by the non-resident security-based swap dealer after the effective date of its registration (i) with U.S. persons, (ii) for which the nonresident [security-based swap dealer's] obligations are guaranteed by a U.S. person or (iii) arranged, negotiated or executed on behalf of the non-resident [security-based swap dealer] by personnel located in a U.S. branch or office of the non-resident [security-based swap dealer] or its agent. Where [a security-based swap dealer] maintains such books and records in multiple locations, the [security-based swap dealer] would designate the location that is relevant for purposes of the certification and opinion;'' and ''Financial Records'' would be defined to mean ''books and records necessary for the Commission to assess the non-resident [security-based swap dealer's] compliance with Commission capital and margin requirements.'').

[209] *See id.* (proposing that ''U.S.-Related Foreign Locations'' be defined to mean ''non-U.S. branches and offices of the nonresident [security-based swap dealer] from which personnel arrange, negotiate or execute [security-based swap] transactions on behalf of the non-resident [security-based swap dealer] (i) with a counterparty that is a U.S. person or (ii) for which the non-resident [security-based swap dealer's] obligations are guaranteed by a U.S. person'').

[210] *Id.*

financial records, rather than to propose a new ''U.S. Related Records'' definition as suggested by the commenter. As the Commission explained in adopting a definition of ''U.S business'' in the Commission's Title VII cross-border rules, the intent is to encompass those transactions that appear particularly likely to affect the integrity of the security-based swap market in the United States and the U.S. financial markets more generally or that raise concerns about the protection of participants in those markets.[211] Accordingly, this approach would more effectively tailor the certification and opinion of counsel to the types of records the Commission would need to review, inspect or examine to determine compliance with applicable substantive requirements.

Even with such clarification, however, the Commission emphasizes that, as proposed, Exchange Act Rule 18a–6(g) would require that a nonresident SBS Entity must provide the Commission with direct access to its books and records—*i.e.,* the nonresident SBS Entity must ''furnish promptly to a representative of the Commission legible, true, complete, and current copies'' of its books and records, and permit on-site inspections and examinations of its books and records.[212] The guidance above with respect to the certification and opinion of counsel would not reduce or eliminate these obligations as they are independent of, and in addition to, the certification and opinion of counsel requirement.

3. Consents

Firms have noted that certain jurisdictions' laws may permit a firm to promptly provide books and records directly to the Commission and to submit to an on-site inspection and examination at the offices of the firm located in the jurisdiction if the firm obtains consent from the natural person whose information is documented in the books and records.[213] In this case, the Commission preliminarily believes that it would be appropriate for the firm's certification and opinion of counsel to be predicated, as necessary, on the nonresident SBS Entity obtaining the prior consent of the persons whose information is or will be included in the books and records to allow the firm to promptly provide the Commission with direct access to its books and records and to submit to on-site inspection and examination.[214]

As noted above, the security-based swap recordkeeping rules as proposed would require that a nonresident SBS Entity must provide the Commission with direct access to its books and records. This requirement exists independently of, and in addition to, the certification and opinion of counsel requirements. Thus if a nonresident SBS Entity intends to rely on consents, it should obtain such consents prior to registering as an SBS Entity so that it will be able to provide Commission staff with direct access to its books and records while it is conditionally registered. The certification and opinion of counsel, if provided at a later date, would be able to rely on those consents in effect when they are provided. In addition, if a nonresident SBS Entity certifies that it may rely on consents, it should continue to obtain consents on an ongoing basis so that it can continue to provide the Commission with access to books and records. In determining whether to rely on consent, a nonresident SBS Entity may also seek to explore whether an alternative basis exists under the foreign privacy laws that would permit the nonresident SBS Entity to collect and maintain the necessary data and to provide the information directly to Commission staff.

Before registering with the Commission, a nonresident SBS Entity should assess whether it would be able to meet these obligations and take appropriate steps to ensure that, if registered, it will be able to comply with them. For example, if a nonresident SBS Entity is unable to obtain consent from a customer or counterparty whose information will be documented in a book or record subject to these obligations or if a customer or counterparty provides a consent then later withdraws that consent, the firm may need to cease conducting a security-based swap business with that person in order to comply with the Exchange Act and the Commission's rules thereunder or to seek an alternative basis exists under the foreign laws that allows the nonresident SBS Entity to satisfy its obligations under the federal securities laws.

4. Open Contracts

Some firms have asked for clarification that the certification and opinion of counsel would not need to cover books and records related to open contracts,[215] and expressed concern it could require firms to re-negotiate those contracts.[216]

The Commission preliminarily believes that the certification and opinion of counsel need not address the books and records of security-based swap transactions that were entered into prior to the date on which a nonresident SBS Entity submits an application for registration pursuant to Section 15F(b) of the Exchange Act and the rules thereunder.[217] The Commission recognizes that there may be practical impediments to obtaining consents with respect to open contracts because, for example, the counterparty is in a dispute with the nonresident SBS Entity. Further, there may be questions of fairness to the extent that any potential application to open contracts could undermine the expectations that the parties had when entering into the security-based swap.

5. Commission Arrangements With Foreign Regulatory Authorities or Approvals, Authorizations, Waivers or Consents

Firms have noted that while local laws or rules in some foreign jurisdictions may prevent a nonresident SBS Entity from providing the Commission with direct access to its books and records or submitting to onsite inspections or examinations, in some cases the relevant foreign regulatory authority may have entered into a Memorandum of Understanding (''MOU'') or other arrangement with the Commission to facilitate Commission access to records of nonresident SBS Entities located in the jurisdiction.[218] Firms have requested guidance regarding whether the certification and opinion of counsel submitted by a nonresident SBS Entity can rely on MOUs or other arrangements foreign regulatory authorities may have entered into with the Commission to facilitate

[211] *See* Business Conduct Adopting Release, 81 FR at 30065.

[212] *See* proposed Rule 18a–6(g) and discussion in Recordkeeping and Reporting Proposing Release, 79 FR at 25220.

[213] *See* note 201, *supra.*

[214] The firm's opinion of counsel should, as necessary, address all relevant considerations involving consent.

[215] For purposes of this guidance, the term ''open contracts'' would include any contract entered into by the SBS Entity prior to the date on which an SBS Entity submits an application for registration which the SBS Entity continues to hold on its books and records and under which it may have continuing obligations.

[216] *See* notes 201 and 209, *supra.*

[217] *Cf.* Business Conduct Adopting Release, 81 FR at 29969, in which the Commission stated that the business conduct rules generally would not apply to any security-based swap entered into prior to the compliance date of the rules, and generally would apply to any security-based swap entered into after the compliance date of these rules, including a new security-based swap that results from an amendment or modification to a pre-existing security-based swap.

[218] *See* note 201, *supra.*

Commission access to records at the request of the SBS Entity.

The Commission preliminarily believes that it would be appropriate, under the factors discussed below, for the certification and opinion of counsel to take into account whether the relevant regulatory authority in the foreign jurisdiction has: (i) Issued an approval, authorization, waiver or consent; or (ii) entered into an MOU or other arrangement with the Commission facilitating direct access to the books and records of SBS Entities located in that jurisdiction, including the Commission's inspections and examinations at the offices of SBS Entities located in that jurisdiction, provided that such an approval, authorization, waiver, consent or MOU or arrangement is necessary to address legal barriers to the Commission's direct access to books and records of the SBS Entities in that jurisdiction.

However, consideration of such an approval or MOU would need to be consistent with the registration program that has been adopted by the Commission. Specifically, the Commission stated when adopting the registration rules that it must be able to access directly the books and records of nonresident SBS Entities and inspect and examine them without going through a third party, such as a foreign regulatory authority, to effectively fulfill its regulatory oversight responsibilities. Thus, it would not be appropriate to take into account such an approval or MOU if it contemplates that the nonresident SBS Entity must provide the covered books and records, as described in Section IV.A.2. above, to the foreign regulatory authority in order for that body then to provide them to the Commission.

At the same time, it would be appropriate to take into consideration an MOU or other arrangement that provided for consultation or cooperation with a foreign regulatory authority in conducting onsite inspections and examinations at the foreign offices of nonresident SBS Entities. The Commission also believes it would be consistent with its registration program if the Commission is required to notify the relevant foreign regulatory authority, as described in Section IV.A.1. above, of its intent to conduct an onsite inspection or examination and staff from the foreign regulatory authority can accompany the Commission when it visits the foreign office of the nonresident SBS Entity. However, it would not be consistent with the Commission's interpretation of the requirement to rely on an MOU or other arrangement if, whether by the terms of any relevant agreement, under provisions of local law, or in light of prior practice, consultation or cooperation with the foreign regulatory authority restricts the Commission's ability to conduct timely inspections and examinations of the books and records in the foreign office of the nonresident SBS Entity.

6. Proposed Amendment to Rule 15Fb2–1 Related to the Timing of Certification and Opinion of Counsel Required by Rule 15Fb2–4(c)(1)

As described in the SBS Entity Registration Adopting Release, an SBS Entity is conditionally registered with the Commission when it submits a complete application on Form SBSE, SBSE–A, or SBSE–BD, as appropriate, and the Form SBSE–C senior officer certifications.[219] To be complete, a Form SBSE, SBSE–A, or SBSE–BD would generally need to include the Schedule F certification and opinion of counsel. The Commission acknowledges that a nonresident SBS Entity may be unable to provide the certification or opinion of counsel required under Rule 15Fb2–4(c)(1) by the time the entity will be required to register because efforts to address legal barriers to the Commission's direct access to books and records are still ongoing. For example, the relevant regulatory authority in the foreign jurisdiction where the nonresident SBS entity maintains its covered books and records may be in the process of (i) issuing an approval, authorization, waiver or consent or (ii) negotiating an MOU or other arrangement with the Commission. The Commission recognizes that absent relief such nonresident SBS Entities will bear the cost of lowering or restructuring the market activity below the annual thresholds that would trigger registration requirements, an outcome that could create significant market disruptions.[220]

Accordingly, the Commission is proposing to amend Exchange Act Rule 15Fb2–1 to provide additional time for a nonresident SBS Entity to submit the certification and opinion of counsel required under Rule 15Fb2–4(c)(1). Specifically, the Commission is proposing new paragraphs (d)(2) and (e)(2) of Exchange Act Rule 15Fb2–1. Proposed paragraph (d)(2) would provide that a nonresident applicant that is unable to provide the certification and opinion of counsel required under Rule 15Fb2–4(c)(1) shall be conditionally registered for up to 24 months after the compliance date for Rule 15Fb2–1 if the applicant submits a Form SBSE–C and a Form SBSE, SBSE–A or SBSE–BD, as appropriate, that is complete in all respects but for the failure to provide the certification and the opinion of counsel required by Rule 15Fb2–4(c)(1). Proposed paragraph (e)(2) would provide that if a nonresident SBS Entity became conditionally registered in reliance on paragraph (d)(2), the firm would remain conditionally registered until the Commission acts to grant or deny ongoing registration, and that if the nonresident SBS Entity fails to provide the certification and opinion of counsel within 24 months of the compliance date for Rule 15Fb2–1, the Commission may institute proceedings to determine whether ongoing registration should be denied. As indicated in the Registration Adopting Release,[221] once an SBS Entity is conditionally registered, all of the Commission's rules applicable to registered SBS Entities will apply to the entity and it must comply with them. Further, this proposed relief would be available only for the duration of the 24 month period immediately following the compliance date for Rule 15Fb2–1.

B. Solicitation of Comments Regarding Proposed Guidance and Amendments Related to the Certification and Opinion of Counsel Requirements

The Commission requests comment on all aspects of the proposed guidance and amendments.

1. Foreign Laws Covered by the Certification and Opinion of Counsel Requirements

a. If the scope of the certification and opinion of counsel requirements are limited as described above, are there situations in which a nonresident SBS Entity will nonetheless be unable to provide the required certification and opinion of counsel because the laws of another jurisdiction prevent a nonresident SBS Entity from providing the Commission with access to its books and records? If so, in what jurisdictions?

b. Are there any other types of foreign laws, regulations or requirements that may prevent a nonresident SBS Entity from providing Commission staff with access to its books and records or impede the staff's ability to conduct onsite examinations?

c. Could there be a situation where the laws of a jurisdiction where customers, counterparties or employees of a nonresident SBS Entity may be located, but where the nonresident SBS Entity maintains no books and records, could impose a legal barrier that would limit or prohibit the nonresident SBS Entity's ability to either collect personal or transactional data regarding a customer, counterparty or employee or provide that

[219] 17 CFR 240.15Fb2–1(d).

[220] *See* Registration Adopting Release, 80 FR at 49008.

[221] Registration Adopting Release, 80 FR at 48970 n.52.

data directly to the Commission? If so, should a nonresident SBS Entity that has customers, counterparties or employees in such a jurisdiction also be required to include consideration of that jurisdiction or jurisdictions as part of its certification and opinion of counsel? In this situation, how could the Commission staff obtain adequate assurance that it would be able to access a nonresident registrant's books and records?

2. Clarification on Covered Books and Records

a. Does the proposed guidance adequately address the concerns raised by commenters? Would the guidance appropriately define the scope of the books and records covered by the certification and opinion of counsel to ''U.S. business'' as defined in Rule 3a71–3(a)(8) and the financial records of certain registrants? Should additional books and records be included? If so, which books and records and why? Alternatively, are there other books and records that should be excluded from the scope of what is covered by the certification and opinion of counsel? If so, which books and records and why?

b. Rather than using the U.S. business definition, should the Commission instead follow the approach suggested by the commenter—to establish definitions for ''U.S. Related Records,'' ''Financial Records,'' and ''U.S. Related Foreign Locations'' solely for the purpose of scoping records in or out of the requirements? If so why?

c. Would the proposed approach limit the Commission's ability to assess how a nonresident SBS Entity may address conflicts between the trades with a U.S. counterparty and other trades outside the U.S.? If so, are there any other methods the Commission could use to investigate those conflicts?

3. Consents

a. Does the proposed guidance adequately address the concerns raised by commenters?

b. Is reliance on consents a viable option to address not only data privacy, but secrecy and blocking laws or regulations?

c. Should the Commission allow nonresident SBS Entities to rely on consents if the person providing consent is able to later withdraw that consent? How do nonresident SBS Entities plan to address situations where a customer, counterparty, employee or other person later withdraws consent?

d. If a nonresident SBS Entity intends both to rely on consents as a basis for its certification and opinion of counsel and to delay the submission of the certification and opinion of counsel in reliance on proposed Rule 15Fb2–1(d)(2), should the nonresident SBS Entity be allowed to operate without consents in place until it provides the certification and opinion of counsel rather than when it is conditionally registered as contemplated by the proposed amendments?

e. If relying on consents as a basis for the certification and opinion of counsel, should a nonresident SBS Entity be required to notify the Commission, as well as make and keep current books and records to reflect these consents and whether a consent is later withdrawn?

f. Should nonresident SBS Entities obtain consents every time they enter into a new transaction with a counterparty or should a global consent in a master agreement be sufficient?

g. Is the consent mechanism a feasible long term solution for providing the Commission with direct access to an SBS Entity's books and records and submitting to onsite inspections and examinations? If not, what are the legal and regulatory challenges for a nonresident SBS Entity seeking to rely on consents? For example, how would nonresident SBS Entities subject to the European Union General Data Protection Regulation (''GDPR'') plan to address guidance that, due to the nature of the relationship between employees and employers, employee consent may not be considered to be freely given under the GDPR,[222] and that consent might prove not to be a feasible long term solution for transfers to third countries under the GDPR?[223] Are there any other factors that should be considered such as, for example, the jurisdiction and the type of law at issue (*e.g.,* privacy, secrecy, blocking statute, etc.)?

4. Open Contracts

a. Would the guidance adequately address the concerns raised by commenters? Is the date on which a nonresident SBS Entity submits a registration the appropriate point from which to apply the certification and opinion of counsel requirement?

b. Should nonresident SBS Entities nonetheless be required to provide Commission staff with aggregated information, such as the number of open contracts, the total dollar value of open contracts, or percentage of open contracts for which it may have or lack consent to provide information to regulators?

c. Should the proposed guidance also exclude contracts open on the date a nonresident SBS Entity submits a registration where there is no renegotiation of terms and the position is simply serviced until it rolls off the firm's books and records? If so, why? Would that impair the Commission's ability to adequately regulate nonresident SBS Entities?

5. Reliance on Commission Arrangements With Foreign Regulatory Authorities

a. Does the guidance adequately address the concerns that have been raised in this regard? If not, why not and what additional guidance is needed?

b. Should arrangements with foreign regulatory authorities contain any special language or terms to assure that Commission staff has direct access to a nonresident SBS Entity's books and records and the ability to conduct onsite inspections or examinations?

c. Are there situations in which multiple foreign regulatory authorities would enter into an MOU or other arrangement?

6. Proposed Amendment to Rule 15Fb2–1 Related to the Timing of Certification and Opinion of Counsel Required by Rule 15Fb2–4(c)(1)

a. Does 24 months from the compliance date for Rule 15Fb2–1 provide an appropriate time period to allow a nonresident SBS Entity to submit the required certification and opinion of counsel? Should the Commission shorten the time period? Should the Commission extend the time period? Should the Commission provide for a process by which an applicant can submit a request for an extension of time? For example, where good cause is shown, should the Commission or its staff be able to extend the time period upon request by a nonresident firm?

b. How would the 24 month period facilitate the ability of a nonresident SBS entity to submit the required certification and opinion of counsel when foreign blocking laws, privacy laws, secrecy laws and other foreign legal barriers exist in the jurisdiction where the offices of the nonresident SBS Entity are located? Are there circumstances other than those contemplated in Section IV under which a nonresident SBS Entity would be unable to submit the required certification and opinion of counsel? If so, would the 24 month period address such circumstances?

c. Proposed Rule 15Fb2–1(e)(2) provides that if an nonresident applicant is unable to provide the certification and opinion of counsel as required by Rule 15Fb2–4(c)(1) within the 24 month time period, the Commission may institute proceedings to determine whether ongoing registration should be denied. Should the Commission adopt a different approach in cases where a nonresident application fails to provide the certification or opinion of counsel within the 24 month time period? If so, please explain why and provide a description of the approach. For example, should the Commission consider the application incomplete if the nonresident applicant is unable to provide the required certification and opinion of counsel within the 24 month time period, thereby automatically terminating the applicant's conditional registration and eliminating the need for the Commission to institute proceedings to determine whether the application should be denied? In the alternative, should the Commission require nonresident applicants to certify that if they do not provide the certification and opinion of counsel within the 24 month period, they will withdraw from registration and cease any security-based swap dealing activities that otherwise would require registration within a specified period after the 24 month period expires?[224] If so, what period would be reasonable?

d. Should SBS Entities that conditionally register without signing the Schedule F certification and providing an opinion of counsel be required to disclose to counterparties the risk that the Commission

[222] *See* Article 29 Working Party, Guidelines on consent under Regulation 2016/679 (adopted Apr. 10, 2018), *available at http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=623051.*

[223] *See* European Data Protection Board, Guidelines 2/2018 on derogations of Article 49 under Regulation 2016/679 (adopted May 25, 2018), *available at https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf.*

[224] In other contexts, the Commission has permitted the registration of a person that was not immediately eligible to register as an investment adviser, subject to an undertaking that the person will withdraw from registration if it did not meet the registration requirements within a specified period of time. *See* Rule 203A–2(c) under the Investment Advisers Act of 1940.

may institute proceedings to deny registration if the firm is, after 24 months, still unable to file with the Commission a complete Schedule F certification and opinion of counsel? Should the Commission impose any additional requirements on nonresident SBS Entities that are conditionally registered pursuant to proposed Rule 15Fb2–1(d)(2)? If so, which requirements and why?

e. Alternatively, should the Commission eliminate the certification and opinion of counsel requirements and instead rely solely on the underlying obligations of the registered nonresident SBS Entity to comply with all applicable regulatory requirements? Why or why not?

f. As an another alternative, should the Commission publish a list of nonresident SBS Entities registered with it on the Commission's public website and note the conditional registration status of any nonresident SBS Entities that have not yet provided a Schedule F certification and opinion of counsel? Why or why not? Would provision of this type of information be beneficial to counterparties?

V. Proposed Amendment to Commission Rule of Practice 194

A. Overview of Proposed Rule of Practice 194(c)(2)

In furtherance of the goal of more closely harmonizing Commission rules with the approach followed under the CFTC regime, and based on renewed concerns raised by certain market participants,[225] the Commission is proposing new paragraph (c)(2) of Rule of Practice 194.[226] Proposed paragraph (c)(2) would provide an exclusion from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act for an SBS Entity with respect to an associated person who is a natural person who (i) is not a U.S. person[227] and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch[228] of a counterparty that is a U.S. person.[229]

However, an SBS Entity would not be able to avail itself of this exclusion if the associated person of that SBS Entity is currently subject to any order described in subparagraphs (A) and (B) of Section 3(a)(39) of the Exchange Act, with the limitation that an order by a foreign financial regulatory authority[230] as provided in subparagraphs (B)(i) and (B)(iii) of Section 3(a)(39) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located. By way of example, the limitation concerning an associated person of an SBS Entity who is currently subject to an order described in subparagraphs (A) and (B) of Exchange Act Section 3(a)(39) would include, among other things, situations where the associated person of an SBS Entity has been barred or suspended from being associated with a member of an SRO[231] or is subject to an order by the Commission barring or suspending such person from being associated with certain regulated entities, including, but not limited to, SBS Entities and broker-dealers.[232] As discussed further below, this provision is meant to address situations where the Commission, CFTC, a SRO (*e.g.,* FINRA), a registered futures association (the National Futures Association, ''NFA''),[233] or a foreign financial regulatory authority has affirmatively made a determination to not allow an associated person to participate in, for example, the security-based swap market, some other sector of the U.S. securities markets (*e.g.,* as broker-dealers or as investment advisers), some other sector of the U.S. financial market (*e.g.,* the U.S. swap market) or some sector of the foreign financial markets.

Additionally, the exclusion would only apply to associated persons who are natural persons, as the Commission has separately within Rule of Practice 194 provided an exclusion for an SBS Entity from the prohibition in Exchange Act Section 15F(b)(6) with respect to all associated person entities—regardless of whether the associated person entity is located within or outside of the U.S.[234]

B. Comments Received Requesting That the Commission Provide Relief

Both before and after the Commission adopted its SBS Entity registration rules, commenters requested that the Commission provide an exclusion from or, in the alternative, narrow the scope of, the prohibition in Exchange Act Section 15F(b)(6) with respect to associated persons of SBS Entities who are not U.S. persons and who do not interact with U.S. persons.[235]

For example, in connection with the Commission proposing registration requirements for SBS Entities, a commenter stated that it was concerned that the statutory disqualification requirements in Exchange Act Section 15F(b)(6) would apply to a foreign registered SBS Entity on an entity-level, as opposed to as a transaction-level requirement, without regard to the identity of the counterparty and, therefore, would be applicable to all associated persons of the foreign registered SBS Entity that effect or are involved in effecting security-based swap transactions.[236] The commenter noted that this would result in situations where non-U.S. associated persons of non-U.S. SBS Entities who do not interact with U.S. customers would be subject to the statutory disqualification requirements in Exchange Act Rule 15Fb6–2(b) and, as a result, non-U.S. associated persons of non-U.S. SBS Entities would be required to submit to U.S. background checks for statutory disqualification purposes.[237] In support of the commenter's request that the Commission re-categorize the statutory disqualification requirements as a transaction-level requirement, the commenter noted that the Commission's current approach diverges from that adopted by the CFTC,[238] as well as the Commission's treatment of ''foreign

[225] *See* note 243, *supra.*

[226] As discussed above, Exchange Act Section 15F(b)(6) provides that the Commission may establish exceptions to its statutory prohibition by ''rule, regulation, or order.'' 15 U.S.C. 78o–10(b)(6). In addition, Exchange Act Section 15F(b)(4) provides the Commission with authority (other than certain inapplicable exceptions specified in Exchange Act Section 15F(b)(4)(d) and (e)) to ''prescribe rules applicable to security-based swap dealers and major security-based swap participants.'' 15 U.S.C. 78o–10(b)(4).

[227] The term ''U.S. Person'' is defined in Exchange Act Rule 3a71–3(a)(4). *See* 17 CFR 240.3a71–3(a)(4).

[228] The term ''transaction conducted through a foreign branch'' is defined in Exchange Act Rule 3a71–3(a)(3). *See* 17 CFR 240.3a71–3(a)(3).

[229] This relief, however, is not relevant to an associated person effecting or involved in effecting security-based swaps, to the extent that such person's ''functions are solely clerical or ministerial,'' given that such persons are excluded from the definition of associated person under to 15 U.S.C. 78c(a)(70)(B) and, therefore, not subject to the prohibition in Section 15F(b)(6).

[230] *See* 15 U.S.C. 78c(a)(52) (defining the term ''foreign financial regulatory authority'' to include, among other regulatory authorities, ''foreign securities authorities'' as defined in Exchange Act Section 3(a)(50) (15 U.S.C. 78c(a)(50)).

[231] *See* 15 U.S.C. 78c(a)(26) (defining the term ''self-regulatory organization'').

[232] *See, e.g.,* 15 U.S.C. 78c(a)(39)(A) and (B)(i)(II).

[233] *See* 7 U.S.C. 21.

[234] *See* 17 CFR 240.194(c); *see also* part I.C.3, *supra* (discussing the Rule of Practice 194 Adopting Release, 84 FR at 4906).

[235] *See, e.g.,* Letter from IIB, dated Aug. 21, 2013 (''IIB 8/21/13 Letter'') at 20, *available at https://www.sec.gov/comments/s7-02-13/s70213-46.pdf; see also* IIB/SIFMA 6/21/18 Letter at 2, 4, *available at https://www.sec.gov/comments/s7-05-14/s70514-3938974-167037.pdf;* IIB/SIFMA 8/26/16 Letter, at 3–5; Letter from SIFMA, dated Dec. 16, 2011 (''SIFMA 12/16/11 Letter'') at 8, *available at https://www.sec.gov/comments/s7-40-11/s74011-4.pdf.*

[236] *See* Registration Adopting Release, 80 FR at 48977 nn.109–11 (citing IIB 8/21/13 Letter at 20).

[237] *See* IIB 8/21/13 Letter at 20.

[238] *See id.* at 20 (noting that the CFTC does not apply its statutory disqualification requirements to associated persons of its registrants who engage in activity outside the United States and limit such activity to customers located outside the United States).

associated persons'' of foreign broker-dealers.[239] The commenter also stated that a transaction-level approach would preserve the Commission's resources to better serve customer protection interests within the United States, and that the Commission's interests in protecting foreign customers are limited, while ''foreign regulators have a strong interest in regulating such activity.'' [240] Finally, the commenter opined that limiting background checks to personnel interacting with U.S. persons would also help eliminate potential conflicts with local privacy laws, which in some cases may prohibit background checks for foreign employees.[241]

In response to the commenter, the Commission explained that the requirements in Rule 15Fb6–2(b) regarding questionnaires or applications and background checks are important elements of each SBS Entity's determination with respect to whether its associated persons that effect or are involved in effecting security-based swap transactions are subject to statutory disqualifications. The Commission also stated that it was not convinced, at the time, of the need or basis to provide an exclusion for SBS Entities from the statutory disqualification requirements with respect to certain of their associated persons, and made a determination to treat the statutory disqualification requirements as entity-level requirements, as opposed to a transaction-level requirement, applicable to all associated persons of the registered foreign SBS Entity that effect or are involved in effecting security-based swap transactions.[242]

More recently, market participants have raised the same concerns expressed in the comment letters outlined above.[243] For example, commenters have argued that, because most of the CFTC's rules have been in effect for several years, greater harmonization would ''help facilitate prompt implementation of the Commission's Title VII regime with minimal disruption to the SBS market and robust protections and lower costs for investors and other end-users.'' [244] Relatedly, the Commission also received comments requesting that the Commission harmonize aspects of its Rule 15Fb6–2(b) with the CFTC's regulations or allow for substituted compliance.[245] As discussed above, Rule 15Fb6–2(b) requires an SBS Entity to obtain a questionnaire or application for employment—documents that are required under paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5—which would serve as a basis for a background check to verify that an associated person is not subject to statutory disqualification. However, as discussed below in Section VI.A., the proposed modification to proposed Rule 18a–5 would provide that a stand-alone or bank SBS Entity is not required to make and keep current a questionnaire or application for employment executed by an associated person if the SBS Entity is excluded from the statutory disqualification prohibition in Exchange Act Section 15F(b)(6) with respect to such associated person (*e.g.,* the exclusion from the statutory disqualification prohibition in Section 15F(b)(6) provided by proposed Commission Rule of Practice 194(c)(2)).

C. Proposed Rule of Practice 194(c)(2)

Proposed Rule of Practice 194(c)(2) would more closely harmonize the Commission's rules with the CFTC's approach to statutory disqualification as it applies to the activities of non-domestic associated persons of CFTC registered Swap Entities. Under CEA Section 4s(b)(6), which parallels Exchange Act Section 15F(b)(6), and CFTC staff's related guidance [246] Swap Entities are not required to comply with the prohibition in CFTC Regulation 23.22(b) with respect to non-domestic associated persons who deal only with non-domestic swap counterparties.[247] Absent such relief, a Swap Entity would be subject to the prohibition in CFTC Regulation 23.22(b) even with respect to an associated person who engages in activity from a location outside the United States and even when such person limits their activity to counterparties located outside the United States.[248]

In proposing Rule of Practice 194(c)(2), the Commission is seeking to balance harmonization with the approach to regulating the activities that non-domestic associated persons of Swap Entities engage in under the CFTC regime and the attendant benefits and cost savings against the potential effect of certain risks, including financial, counterparty, compliance, and reputational risks of having statutorily disqualified associated persons effecting or involved in effecting security-based swap transactions for registered SBS Entities.

Given the high degree of integration between the swap and security-based swap markets,[249] more closely aligning with the existing baseline for disqualification of swap dealer personnel could result in certain benefits, such as reducing regulatory complexity and lessening costs on market participants that are dually-registered as Swap Entities with the CFTC. For example, as a result of the proposed exclusion, SBS Entities dually-registered as Swap Entities with the CFTC could experience economies of scope in employing non-U.S. natural persons in their swap and security-based swap businesses.[250] As discussed in the Rule of Practice 194 Adopting Release, the Commission estimates that approximately 46 out of 50 entities likely to register with the Commission as security-based swap dealers are already registered with the CFTC as

[239] *See id.* (citing Rule 15a–6(b)(2) and stating that the Commission, in that rule, limited the definition of ''foreign associated person'' to those associated persons of a foreign broker or dealer who participate in the solicitation of certain U.S. investors).

[240] *Id.*

[241] *See id.*

[242] *See* Registration Adopting Release, 80 FR at 48978.

[243] *See, e.g.,* note 28, *supra.*

[244] IIB/SIFMA 6/21/18 Letter at 1.

[245] *See* IIB/SIFMA 8/26/16 Letter, at 3–5 (requesting that the Commission exclude associated persons employed or located in a non-U.S. branch or office of an SBS Entity or an affiliate from the requirement in Rule 15Fb6–2(b) to prepare and maintain a questionnaire or application for employment executed by such associated person where certain conditions are met, including that the associated person does not effect and is not involved in effecting security-based swaps with U.S. counterparties on behalf of the SBS Entity); *see also* IIB/SIFMA 6/21/18 Letter, at 2.

[246] Under the CFTC's and the NFA's current process for granting relief from CEA Section 4s(b)(6)—which is available through no-action relief granted by CFTC staff with respect to persons that are not exempt from Section 4s(b)(6) pursuant to CFTC Regulation 23.22(b)—a swap entity may make an application to the NFA, the sole registered futures association, to permit an associated person of a Swap Entity subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap entity. *See* CFTC Letter No. 12–15, at 5–8 (Oct. 11, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrletter general/documents/letter/12-15.pdf.*

[247] *See* CFTC Letter No. 12–43 (Dec. 7, 2012) at 2–4, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/12-43.pdf.* Specifically, CFTC staff stated in the letter, in relevant part, that staff's no-action position was limited to associated persons who effect or are involved in effecting swaps from a location outside of the United States, its territories or possessions, and limit such activities to counterparties located outside the United States, its territories or possessions. CFTC staff also noted that the no-action positions provided in this letter represent the positions of CFTC staff only, and do not necessarily represent the positions of the CFTC or its Commissioners.

[248] *See id.* at 4.

[249] *See* part VII.D, *infra* (noting that the swap and security-based swap markets involve largely the same group of dealers and most of the same counterparties).

[250] *See* part VII.D.1, *infra.*

swap dealers.[251] The proposed exclusion should, at least to some extent, reduce the likelihood of security-based swap dealers exiting the security-based swap business and, as a result, not registering with the Commission, which could affect competition in the provision of security-based swap dealing services.

Absent the proposed exclusion, SBS Entities would be unable to have an associated person subject to a statutory disqualification, who would be permitted to effect certain swap transactions under the CFTC's approach, also effect security-based swap transactions, unless the SBS Entity obtained relief from the Commission under Rule of Practice 194. This difference between the CFTC's approach and the Commission's rules would result in costs related to replacing or reassigning statutorily disqualified associated non-U.S. persons or applying to the Commission for relief. In addition, this difference could disrupt existing counterparty relationships across closely linked swap and security-based swap markets. However, under the proposed exclusion, non-U.S. person counterparties of SBS Entities would be able to continue interacting with the same non-U.S. associated persons of the same SBS Entities across interconnected markets without delays related to Commission review under Rule of Practice 194. As noted above, this may result in lower transaction costs for SBS Entities that, in turn, may flow to both their U.S. and non-U.S. person counterparties.

This proposal is consistent with exceptions the Commission provided in its business conduct rules for SBS Entities.[252] The Commission also notes that, in adopting the definition of ''U.S. business''—which does not include transactions conducted through a foreign branch of a U.S. person [253]—the Commission stated that it is concerned principally with those transactions that appear particularly likely to affect the integrity of the security-based swap market in the United States and the U.S. financial markets more generally or that raise concerns about the protection of participants in those markets.[254] The Commission explained that this exception reflected its view at the time that transactions between the foreign branch of a U.S. person and a non-U.S. person, in which the personnel arranging, negotiating, and executing the transaction are all located outside the United States, are less likely to affect the integrity of the U.S. market and reflects the Commission's consideration of the role of foreign regulators in non-U.S. markets.[255] As the Commission has explained previously, the Dodd-Frank Act generally is concerned with the protection of U.S. markets and participants in those markets.[256]

The proposed amendment would exclude, subject to certain limitations, SBS Entities from the statutory disqualification prohibition in Exchange Act Section 15F(b)(6) with respect to their associated natural persons who (i) are not U.S. persons and (ii) do not effect and are not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person.

As the Commission discussed in the Rule of Practice 194 Adopting Release,[257] and in part VII.D.2 of the Economic Analysis below, the Commission appreciates that there is a dearth of research on the economic effect of statutory disqualification in derivatives markets, and the broader economic research on other markets is somewhat ambiguous. Nevertheless, some research suggests that increasing the ability of a statutorily disqualified person to continue to effect or be involved in effecting transactions on behalf of a registered SBS Entities may give rise to higher compliance and counterparty risks, may increase adverse selection costs,[258] and may reduce competition among higher quality associated persons.[259] On the other hand, some research suggests that greater flexibility in employing disqualified persons may actually increase competition among SBS Entities and their associated persons and benefit counterparties.[260]

The Commission also notes that the scope of conduct that gives rise to disqualification is broad and includes conduct that may not pose ongoing risks to counterparties.[261] In addition, because the overwhelming majority of dealers and most counterparties transact across both swap and security-based swap markets, differential regulatory treatment of disqualification in swap and security-based swap markets may increase costs of intermediating transactions for some SBS Entities, which may be passed along to counterparties in the form of higher transaction costs, and may disrupt existing counterparty relationships.[262]

The potential for increased risk may be mitigated by other factors. For example, the proposed exclusion would not limit or otherwise affect the Commission's existing authority to institute proceedings under Exchange Act Section 15F(l)(3) to censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity.[263] In addition, SBS Entities may choose not to use this proposed exclusion if the reputational and compliance risks associated with hiring and retaining statutorily disqualified persons may outweigh the costs SBS Entities may face if they decide to fire or replace statutorily disqualified persons who may otherwise have valuable skills, expertise, or counterparty relationships.[264] Furthermore, the security-based swap market is largely an institutional one,[265] and institutional counterparties (*e.g.,* banks, pension funds and insurance companies) may be better able to mitigate or offset the potential for higher counterparty risks, including, by among

[251] *See* Rule of Practice 194 Adopting Release, 84 FR at 4935–36 (discussing the economic baseline for Rule of Practice 194 and stating that approximately 46 out of 50 entities likely to register with the Commission as security-based swap dealers are already registered with the CFTC as swap dealers).

[252] Under Exchange Act Rule 3a71–3(c), a registered security-based swap dealer, with respect to its ''foreign business'' (as that term is defined in Rule 3a71–3(a)(9)), shall not be subject to requirements of the Commission's business conduct rules—other than the supervision requirements pursuant to Exchange Act Section 15F(h)(1)(B). *See also* Exchange Act Rule 3a67–10(d) (providing an analogous exclusion for registered U.S. major security-based swap participants).

[253] *See* 17 CFR 3a71–3(a)(8)(i)–(ii).

[254] *See* ''Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,'' Exchange Act Release No. 77617, (Apr. 14, 2016) 81 FR 29960, 30065 (May 13, 2016) (''Business Conduct Adopting Release'').

[255] *See id.* at 30065–66, n.1330 (citing the Cross-Border Proposing Release, 78 FR at 31017).

[256] *See id.* at 30065.

[257] *See* Rule of Practice 194 Adopting Release, 84 FR at 4941.

[258] *See* note 477, *infra* (noting that, with respect to a problem commonly known as adverse selection, when information about counterparty quality is scarce, market participants may be less willing to enter into transactions and the overall level of trading may fall).

[259] *See* part VII.D, *infra.*

[260] *See id.; see also* Jonathan Berk & Jules H. van Binsbergen, ''Regulation of Charlatans in High-Skill Professions'' (Stanford University Graduate School of Business, Research Paper No. 17–43, 2017), *available at https://ssrn.com/abstract=2979134.*

[261] *See id.*

[262] *See id.*

[263] *See* 15 U.S.C. 78o–10(l)(3); *see also* 15 U.S.C. 78u–3 (authorizing cease-and-desist proceedings by the Commission). *Accord* Rule of Practice 194 Adopting Release, 84 FR at 4912 n.72 (discussing the same statutory authority).

[264] *See* part VII.D.1 and VII.D.2, *infra.*

[265] *See id.* (citing the economic baseline in the Rule of Practice 194 Adopting Release, and noting that investment advisers, banks, pension funds, insurance companies, and ISDA-recognized dealers account for 99.8% of security-based swaps transaction activity).

other things, requesting, as a business practice, representations that the associated persons they deal with have not triggered an event giving rise to statutory disqualification.

Accordingly, the Commission is proposing an exclusion from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act for SBS Entities with respect to an associated person who is a natural person who: (i) Is a not a U.S. person, and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person. The Commission also notes that, as discussed further below in Section VI.A., proposed modifications to proposed Rule 18a–5 would provide that a stand-alone or bank SBS Entity is not required to make and keep current a questionnaire or application for employment executed by an associated person if the SBS Entity is excluded from the statutory disqualification prohibition in Exchange Act Section 15F(b)(6) with respect to such associated person (*e.g.,* the exclusion proposed in Rule of Practice 194(c)(2)).

D. Limitation on Proposed Rule of Practice 194(c)(2)

The Commission also is proposing a limitation where an SBS Entity would not be able to avail itself of the exclusion from the prohibition in Exchange Act Section 15F(b)(6) as set forth in proposed paragraph (c)(2)—and would therefore need to use the process outlined in Rule of Practice 194 to seek relief from the statutory prohibition in Exchange Act Section 15F(b)(6).

Under the proposed limitation, an SBS Entity would not be able to avail itself of the exclusion if the associated person of that SBS Entity is currently subject to an order that prohibits such person from participating in the U.S. financial market, including the U.S. securities or swap market, or foreign financial markets. More specifically, an SBS Entity would not be able to avail itself of the exclusion from the prohibition in Exchange Act Section 15F(b)(6) set forth in proposed paragraph (c)(2) with respect to an associated person if that associated person is currently subject to an order described in subparagraphs (A) and (B) of Section 3(a)(39) of the Exchange Act, with the limitation that an order by a foreign financial regulatory authority described in subparagraphs (B)(i) and (B)(iii) of Section 3(a)(39) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located. For example, this would include current orders, which are still in effect, from the Commission, the CFTC, an SRO (*e.g.,* FINRA), a registered futures association (*e.g.,* the NFA), or a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located (*e.g.,* the Financial Conduct Authority), that suspends or bars such person from being associated with any entity regulated by such authorities or otherwise places limitations on the activities or functions of the associated person.[266] As another example, the exclusion from the prohibition in Exchange Act Section 15F(b)(6) would also not be available in cases where the CFTC, an SRO, a registered futures association, or a foreign financial regulatory authority where the associated person is employed or located has, as applicable, issued an order that that denies, revokes, cancels, suspends the membership, association, registration or listing as a principal with respect to the associated person.[267] In these circumstances, for example, the Commission, the CFTC, an SRO, a registered futures association or a foreign financial regulatory authority will have affirmatively made a determination to not allow an associated person to participate in the U.S. securities markets generally (*e.g.,* as an associated person of a broker-dealer or investment adviser), some other sector of the U.S. financial market (*e.g.,* the U.S. swap market), or some sector of the foreign financial markets. The Commission preliminarily believes that an SBS Entity should not be able to avail itself of the exclusion in proposed paragraph (c)(2) with respect to such associated persons given this prior determination by the relevant regulatory authorities.

[266] By way of example, Exchange Act Section 15F(l)(3) provides the Commission with authority to institute proceedings under to censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity. *See* 15 U.S.C. 78o–10(l)(3).

[267] For example, under Exchange Act Section 15A(g)(2), 15 U.S.C. 78o–3(g)(2), where it is necessary or appropriate in the public interest or for the protection of investors, the Commission may, by order, direct the SRO to deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. Section 17(h) of the CEA provides for the CFTC to review certain NFA decisions, including the NFA's disciplinary actions and member responsibility actions, as do the CFTC's Part 171 Rules, 17 CFR 171.1–171.50.

E. Solicitation of Comments Regarding Proposed Amendment to Commission Rule of Practice 194

The Commission is requesting comment regarding all aspects of proposed paragraph (c)(2) of Rule of Practice 194, including any of the potential benefits, risks and costs outlined above or in the Economic Analysis below, as well as any concerns, including investor protection concerns. The Commission also seeks comment on the specific questions below. The Commission particularly requests comment from entities that intend to register as SBS Entities and that anticipate making an application under proposed Rule of Practice 194, as well as counterparties to such SBS Entities. This information will help inform the Commission's consideration of proposed paragraph (c)(2) of Rule of Practice 194.

1. Are there other potential benefits to the exclusion provided in proposed Rule of Practice 194(c)(2) that are not outlined in the proposal? Are there other potential risks or costs to this proposed exclusion that are not outlined in the proposal? Does the exclusion provided in proposed Rule of Practice 194(c)(2) appropriately consider the potential benefits, risks and costs? In each instance, please explain why or why not.

2. Proposed Rule of Practice 194(c)(2) would apply to all SBS Entities, whether U.S. persons or nonresident SBS Entities. Do commenters agree with this approach? Why or why not?

3. Proposed Rule of Practice 194(c)(2) would apply to an associated person who is a natural person who (i) is not a U.S. person and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person. Do commenters agree with this approach? Why or why not?

4. Under Proposed Rule of Practice 194(c)(2), an SBS Entity would not be able to avail itself of the exclusion if the following limitation applies: if the associated person of that SBS Entity is currently subject to an order described in subparagraphs (A) and (B) of Section 3(a)(39) of the Exchange Act, with the limitation that an order by a foreign financial regulatory authority described in subparagraphs (B)(i) or (B)(iii) of Section 3(a)(39) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located. Do commenters agree with these limitations? Why or why not? Should the Commission require any additional conditions or limitations to the proposal? If so, please explain what additional conditions or limitations should apply.

5. Are there any other categories of associated persons of an SBS Entity for which the Commission should provide an exclusion from the statutory prohibition in

Exchange Act Section 15F(b)(6)? If so, please specify the category and the reasons for requesting the Commission to exclude that category of associated person from the statutory prohibition.

6. Would the exclusion from the statutory disqualification prohibition for certain foreign associated persons under the proposed approach differ materially from relief provided with respect to the corresponding prohibition under the CEA or rules and regulations thereunder? If so, please describe any differences, including any compliance or other challenges posed by such differences.

7. As described above, in the Registration Adopting Release the Commission included an interpretation of the scope of the phrase ''involved in effecting security-based swaps,'' as that phrase is used in Exchange Act Section 15F(b)(6).[268] Based on this interpretation, are there additional categories of non-U.S. associated persons of an SBS Entity that should be excluded from the statutory disqualification prohibition in Section 15F(b)(6)? If so, please describe the functions carried out by such non-U.S. associated persons of an SBS Entity and why you believe those functions do not present the types of concerns addressed by the prohibition on associating with a statutorily disqualified person.

VI. Proposed Modifications to Proposed Rule 18a–5

A. Proposed Rule

The Commission proposed recordkeeping, reporting, and notification requirements applicable to SBS Entities, securities count requirements applicable to certain SBS Entities, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities.[269] The proposed requirements were modeled on existing broker-dealer requirements.[270] The Commission received a number of comments in response to these proposals.[271] Separately, the Commission proposed rules governing the cross-border treatment of recordkeeping and reporting requirements with respect to SBS Entities.[272] The Commission received comments to the cross-border proposals as well.[273]

In the Recordkeeping and Reporting Proposing Release, the Commission proposed new Exchange Act Rule 18a–5 (patterned after Exchange Act Rule 17a–3—the recordkeeping rule for registered broker-dealers), to establish recordkeeping standards for stand-alone and bank SBS Entities.[274] As part of that rulemaking, the Commission proposed to require that a stand-alone or bank SBS Entity make and keep current a questionnaire or application for employment for each associated person who is a natural person and, in the case of bank SBS Entities, whose activities relate to the bank SBS Entity's business as an SBS Entity. The proposal required that the questionnaire or application for employment include an associated person's identifying information, business affiliations for the past ten years, relevant disciplinary history, relevant criminal record, and place of business, among other things.[275] The Commission also proposed a definition of the term associated person that would include persons associated with an SBS Entity as defined under Section 3(a)(70) of the Exchange Act.[276]

One commenter requested that the Commission modify the proposed rule for foreign SBS Entities so that the questionnaire requirement would not apply to associated persons who effect or are involved in effecting security-based swap transactions with non-U.S. persons or foreign branches.[277] In a subsequent letter, the commenter also requested that the proposal be modified to exclude from the questionnaire requirement an associated person employed or located in a non-U.S. branch, office, or affiliate of the firm in circumstances where: (1) Applicable non-U.S. law prohibits the firm from conducting background checks on the associated person and consent does not cure the prohibition or may not be a condition of employment; (2) the associated person is not subject to a statutory disqualification that the firm actually knows about; (3) the associated person does not effect and is not involved in effecting security-based swaps with U.S. counterparties on behalf of the firm; and (4) the associated person complies with applicable registration and licensing requirements in the jurisdiction(s) where he or she effects or is involved in effecting security-based swaps on behalf of the firm.[278] This commenter also suggested that the proposal be modified to permit an SBS Entity to use alternative measures to confirm that a non-resident associated person is not subject to a statutory disqualification in situations where (1) using a standard U.S. questionnaire or application and background check would conflict with local law or the associated person does not interact with U.S. counterparties, and (2) the associated person complies with applicable registration or licensing requirements in the jurisdictions where the associated person is located.[279]

The Commission preliminarily believes that it is appropriate to provide flexibility with respect to the questionnaire requirement as applied to associated persons of both stand-alone and bank SBS Entities. Thus, the Commission is proposing to add two sets of exemptions under new paragraphs (a)(10) and (b)(8) to proposed Rule 18a–5.

- The first exemption would provide that an SBS Entity need not make and keep current a questionnaire or application for employment with respect to any associated person if the SBS Entity is excluded from the prohibition in Exchange Act 15F(b)(6). This could include, for example, a situation in which the SBS Entity relies on the exclusion pursuant to proposed Rule of Practice 194(c)(2) as discussed above with respect to a non-U.S. associated person who does not effect and is not involved in effecting security-based swap transactions with or for a counterparty that is a U.S. person, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person.
- The second exemption would provide that a questionnaire or application for employment executed by an associated person that is not a U.S. person need not include certain information if the receipt of that information, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located. In accordance with Rule 15Fb6–2, this exemption would be available with respect to non-U.S. associated persons that effect or are involved in effecting security-based transactions on behalf of the SBS Entity

[268] *See* Registration Adopting Release, 80 FR at 48974, 48976. Specifically, the Commission stated that the term ''involved in effecting security-based swaps'' generally means engaged in functions necessary to facilitate the SBS Entity's security-based swap business, including, but not limited to the following activities: (1) Drafting and negotiating master agreements and confirmations; (2) recommending security-based swap transactions to counterparties; (3) being involved in executing security-based swap transactions on a trading desk; (4) pricing security-based swap positions; (5) managing collateral for the SBS Entity; and (6) directly supervising persons engaged in the above-described activities. *See id.*

[269] *See* Recordkeeping and Reporting Proposing Release.

[270] *See id.* at 25196–97 (proving the rationale for modeling the proposed requirements on the relevant broker-dealer requirements).

[271] The comment letters are available at *https://www.sec.gov/comments/s7-05-14/s70514.shtml.*

[272] *See* Cross-Border Proposing Release.

[273] The comment letters are available at *https://www.sec.gov/comments/s7-02-13/s70213.shtml.*

[274] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25205.

[275] Paragraph (b)(8) of proposed Rule 18a–5.

[276] Paragraph (c) of proposed Rule 18a–5.

[277] *See* SIFMA 9/5/2014 Letter.

[278] *See* IIB/SIFMA 8/26/2016 Letter.

[279] *See* IIB/SIFMA 6/21/2018 Letter.

with counterparties that are U.S. persons, as well as counterparties that are not.

1. Exemption Based on the Exclusion From the Prohibition Under Section 15F(b)(6)

The Commission is proposing to add new paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) to proposed Rule 18a–5. As discussed above, the questionnaire requirement is intended to serve as a basis for a background check of the associated person to verify that the person is not subject to statutory disqualification under Section 15(b)(6), and so to support the certification required under Rule 15Fb6–2(b). These new paragraphs would provide that a stand-alone or bank SBS Entity is not required to make and keep current a questionnaire or application for employment with respect to an associated person if the stand-alone or bank SBS Entity is excluded from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to that associated person. The proposed modifications would complement the Commission's proposal, discussed above in Section V.C., to amend Rule of Practice 194 to provide an exclusion from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to an associated person who is not a U.S. person and does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person, subject to certain conditions. Given that the proposed amendment to Rule of Practice 194 would allow an SBS Entity to exclude such associated persons when making the certification required by Rule 15Fb6–2(a), the Commission preliminarily believes that it is unnecessary to require that the SBS Entity make and keep current the questionnaire or application for employment contemplated by proposed paragraphs 18a–5(a)(10)(i) and (b)(8)(i) with respect to those associated persons. Thus, under proposed Rule 18a–5 paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A), an SBS Entity generally would not be required to obtain the questionnaire or application for employment, otherwise required by proposed Rule 18a–5, with respect to any associated person who is not a U.S. person and who does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person). More broadly, proposed new paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) would provide that an SBS Entity need not make and keep current a questionnaire or application for employment with respect to any associated person if the SBS Entity is excluded from the prohibition in Exchange Act 15F(b)(6) with respect to that associated person.

2. Exemption Based on Local Law

The Commission also is proposing to add new paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to proposed Rule 18a–5 to address situations where the law of a non-U.S. jurisdiction in which an associated person is employed or located may prohibit a stand-alone or bank SBS Entity from receiving, creating or maintaining a record of any of the information mandated by the questionnaire requirement. Specifically, the provisions would apply to an associated person who is not a U.S. person (as defined in Exchange Act Rule 3a71–3(a)(4)(i)(A)),[280] and would be available, in accordance with Rule 15Fb6–2, to non-U.S. associated persons who effect or are involved in effecting security-based swaps transactions on behalf of an SBS Entity. Paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to proposed Rule 18a–5 would permit the exclusion of certain information mandated by the questionnaire requirement with respect to those associated persons if the receipt of that information, or the creation or maintenance of records reflecting such information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located. Rather than fully excluding these associated persons from the questionnaire requirement, the provisions would provide that the stand-alone or bank SBS Entity need not record information mandated by the questionnaire requirement with respect to such associated persons if the receipt of that information, or the creation or maintenance of records reflecting such information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.[281]

This proposed change is designed to address commenters' concerns, and would provide SBS Entities with flexibility to not record information that might result in a violation of the law in the jurisdiction in which the associated person is employed or located, while continuing to require that they record information not restricted by the law in that jurisdiction. SBS Entities should still make and keep current information included in the questionnaire or application requirement that would not result in a violation of local law. In addition, if an SBS Entity would be able to obtain the information required by the questionnaire or application requirement if it obtained the consent of the associated person, the SBS Entity generally should try to obtain such consent before relying on new paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B).[282]

As noted above, the questionnaire serves as a basis for a background check of the associated person to verify that the person is not subject to a statutory disqualification, which in turn supports the substantive prohibition in Section 15F(b)(6) of the Exchange Act and the related certification and background check requirements in Rule 15Fb6–2.[283] The Commission recognizes that there may be various means by which an SBS Entity could meet its obligations under Section 15F(b)(6) of the Exchange Act and Rule 15Fb6–2. In the release adopting Rule 15Fb6–2, the Commission did not prescribe a particular means by which an SBS Entity must conduct the required background check.[284] Rather, the Commission indicated that whatever steps are taken, the SBS Entity must have sufficient comfort to be able to comply with Section 15F(b)(6) of the Exchange Act, and make the certification required by Rule 15Fb6–2.[285] While an SBS Entity may be prohibited by local laws from obtaining certain information from an associated person, the SBS Entity may still be able to review public records (in foreign

[280] Exchange Act Rule 3a71–3(a)(4)(i)(A) defines the term U.S. person to mean, with respect to natural persons, ''a natural person resident in the United States.''

[281] To the extent an nonresident SBS Entity is able to rely on either paragraph (a)(10)(iii)(A) or (b)(8)(iii)(A) with respect to a particular associated person, the firm would not need to also rely on the relief provided under (a)(10)(iii)(B) or (b)(8)(iii)(B) because the firm would be exempt from the questionnaire requirement with respect to that associated person.

[282] However, we recognize that there may be other issues raised with respect to consents. *See* part IV.A.2, *supra.*

[283] *See* 17 CFR 240.15Fb6–2(b); *see also* ''Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,'' 76 FR 65784 (Oct. 24, 2011), and the discussion regarding proposed Rule 15Fb6–1(b) at 65796. Proposed paragraph 15Fb6–1(b) was not adopted because it was duplicative of the requirement in the Recordkeeping and Reporting Proposing release. Specifically, the Commission stated in the Registration Adopting Release, ''We do not believe that it would be efficient or necessary to repeat the same requirement for obtaining such questionnaires or applications in two separate Commission rules.'' *See* Registration Adopting Release, 80 FR at 48978.

[284] *See id.* at 48977.

[285] 17 CFR 240.15Fb6–2.

jurisdictions or in the U.S.) or take other steps to help provide it with sufficient comfort to comply with Section 15F(b)(6). The Commission emphasizes that every SBS Entity must still comply with Section 15F(b)(6) of the Exchange Act and Rule 15Fb6–2 with respect to every associated person that is not subject to an exclusion from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act.

B. Solicitation of Comments Regarding Proposed Modifications to Proposed Rule 18a–5

The Commission requests comment on all aspects of these proposed modifications to proposed Rule 18a–5 and the guidance described above.

1. Will the proposed modifications adequately address the concerns raised by the commenter? If not, why not, and what further modifications should the Commission make?

2. Are there processes that foreign regulators use in lieu of employing an equivalent to the questionnaire requirement? If so, please cite examples.

3. What information do entities that may seek to register as SBS Entities currently collect regarding their employees as part of their normal operations for various purposes (*e.g.,* to pay employees, to pay taxes, to provide employees with other benefits, and to know what functions each employee performs and who supervises them)?

4. Section 15F(b)(6) generally makes it illegal to permit a person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of an SBS Entity if the SBS Entity ''knew, or in the exercise of reasonable care should have known'' of the statutory disqualification. Should the Commission provide guidance on the minimum level of due diligence in which an SBS Entity must engage to satisfy that ''reasonable care'' standard in the event that the receipt of information, or the creation or maintenance of records reflecting information that would otherwise be required under Rule 18a–5, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located? If so, what guidance should the Commission provide, and why?

5. Would the laws in jurisdictions other than the jurisdiction where an associated person is employed or located limit an SBS Entity's ability to make and retain information contained in the questionnaire or application for employment? If so, should proposed paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) be modified to instead focus on the laws of other jurisdictions? For instance, should these paragraphs instead focus on the law of the jurisdiction in which an SBS Entity is incorporated, or where the SBS Entity maintains its books and records? Why or why not? Or, should these proposed paragraphs be expanded to include other jurisdictions? Why or why not? Alternatively, should the rule be more narrowly focused on either where the associated person is ''employed'' or where the associated person is ''located?'' If so, why should one be used and the other excluded?

6. What role would consents play in terms of nonresident SBS Entities' ability to meet the questionnaire requirement?

7. Will the proposed addition of new paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) adequately address the concerns raised by the commenter by providing, as proposed, that a stand-alone or bank SBS Entity is not required to make and keep current a questionnaire or application for employment executed by an associated person if they are excluded from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to that associated person. If not, why not, and what further changes should the Commission make?

VII. Economic Analysis

The Commission is mindful of the economic effects, including the costs and benefits, of the proposed amendments and guidance. Section 3(f) of the Exchange Act provides that whenever the Commission is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[286] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[287] Exchange Act Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The analysis below addresses the likely economic effects of the proposed amendments and interpretive guidance, including the anticipated and estimated benefits and costs of the amendments and interpretive guidance and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this proposal. Many of the benefits and costs discussed below are difficult to quantify. For example, the Commission cannot quantify the costs that potentially could result from competitive disparities associated with either proposed Alternative 1 or proposed Alternative 2 to the exception to Rule 3a71–3 because these costs will depend, in part, on foreign regulatory requirements applicable to non-U.S. entities. This is because the extent to which a non-U.S. entity would need to develop or modify systems to allow it and its majority-owned affiliate to meet the conditions of the proposed exception likely depends on the extent to which the non-U.S. entity's local regulatory obligations differ from analogous conditions of the proposed exception. These potential costs could also depend on the business decisions of non-U.S. persons that may avail themselves of the proposed exception. Furthermore, the likelihood of a non-U.S. entity availing itself of the proposed exception under either alternative depends on whether the non-U.S. entity is regulated in a listed jurisdiction, a determination that, in turn, depends on the foreign regulatory regime. Also, in connection with the proposed amendments to Commission Rule of Practice 194, the Commission has no data or information allowing us to quantify the number of disqualified non-U.S. employees transacting with foreign counterparties or foreign branches of U.S. counterparties on behalf of U.S. and non-U.S. SBS Entities; the direct costs of relocating disqualified U.S. personnel outside of the United States for U.S. and non-U.S. SBS Entities; or reputational and compliance costs of U.S. and non-U.S. SBS Entities from continuing to transact through disqualified non-U.S. associated persons with foreign counterparties and foreign branches of U.S. counterparties. Therefore, while the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature.

[286] *See* 15 U.S.C. 78c(f).

[287] *See* 15 U.S.C. 78w(a)(2).

A. Baseline

To assess the economic effects of the proposed amendments, the Commission is using as the baseline the security-based swap market as it exists at the time of this release, including applicable rules the Commission has already adopted, but excluding rules the Commission has proposed but not yet finalized. The analysis includes the statutory provisions that currently govern the security-based swap market pursuant to the Dodd-Frank Act and rules adopted in the Intermediary Definitions Adopting Release, the Cross-Border Adopting Release, the SDR Rules and Core Principles Adopting Release,[288] and the Rule of Practice 194 Adopting Release.[289] Additionally, the baseline includes rules that have been adopted but for which compliance is not yet required, including the ANE Adopting Release, Registration Adopting Release,[290] Regulation SBSR Amendments Adopting Release,[291] and the Business Conduct Adopting Release,[292] as these final rules—even if compliance is not yet required—are part of the existing regulatory landscape that market participants expect to govern their security-based swap activity. The following sections discuss available data from the security-based swap market, security-based swap market participants and dealing structures, market-facing and non-market-facing activities of dealing entities, security-based swap market activity, global regulatory efforts, other markets and existing regulatory frameworks, current estimates of entities likely to incur assessment costs under rules adopted in the ANE Adopting Release, and an estimate of non-U.S. persons that could be affected by the proposed amendments and guidance.

1. Available Data From the Security-Based Swap Market

The Commission's understanding of the market is informed, in part, by available data on security-based swap transactions, though the Commission acknowledges that limitations in the data limit the extent to which it is possible to quantitatively characterize the market.[293] The Commission's analysis of the current state of the security-based swap market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW''), especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2017. The details of this data set, including its limitations, have been discussed in a prior release.[294]

2. Security-Based Swap Market: Market Participants and Dealing Structures

a. Security-Based Swap Market Participants

Activity in the security-based swap market is concentrated among a relatively small number of entities that act as dealers in this market. In addition to these entities, thousands of other participants appear as counterparties to security-based swap contracts in the TIW sample, and include, but are not limited to, investment companies, pension funds, private (hedge) funds, sovereign entities, and industrial companies. A discussion of security-based swap market participants can be found in a prior release.[295]

b. Security-Based Swap Market Participant Domiciles

As depicted in Figure 1 below, domiciles of new accounts participating in the security-based swap market have shifted over time. It is unclear whether these shifts represent changes in the types of participants active in this market, changes in reporting, or changes in transaction volumes in particular underliers. For example, the percentage of new entrants that are foreign accounts increased from 24.4% in the first quarter of 2008 to 32.3% in the last quarter of 2017, which may reflect an increase in participation by foreign account holders in the security-based swap market, though the total number of new entrants that are foreign accounts decreased from 112 in the first quarter of 2008 to 48 in the last quarter of 2017.[296] Additionally, the percentage of the subset of new entrants that are foreign accounts managed by U.S. persons increased from 4.6% in the first quarter of 2008 to 16.8% in the last quarter of 2017, and the absolute number rose from 21 to 25, which also may reflect more specifically the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other stimuli.[297] At the same time, apparent changes in the percentage of new accounts with foreign domiciles may also reflect improvements in reporting by market participants to TIW, an increase in the percentage of transactions between U.S. and non-U.S. counterparties, and/or increased transactions in single-name CDS on U.S. reference entities by foreign persons.[298]

[288] *See* Security-Based Swap Data Repository Registration, Duties, and Core Principles, Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14437 (Mar. 19, 2015) (''SDR Rules and Core Principles Adopting Release'').

[289] *See* Rule of Practice 194 Adopting Release, 84 FR at 4906.

[290] *See* Registration Adopting Release, 80 FR at 48997–49003.

[291] See Regulation SBSR–Reporting and Dissemination of Security-Based Swap Information, Exchange Act Release No. 78321 (Jul.14, 2016), 81 FR 53546 (Aug. 12, 2016) (''Regulation SBSR Amendments Adopting Release'').

[292] *See* Business Conduct Adopting Release, 81 FR at 30105.

[293] The Commission also relies on qualitative information regarding market structure and evolving market practices provided by commenters and knowledge and expertise of Commission staff.

[294] *See* Rule of Practice 194 Adopting Release, 84 FR at 4924.

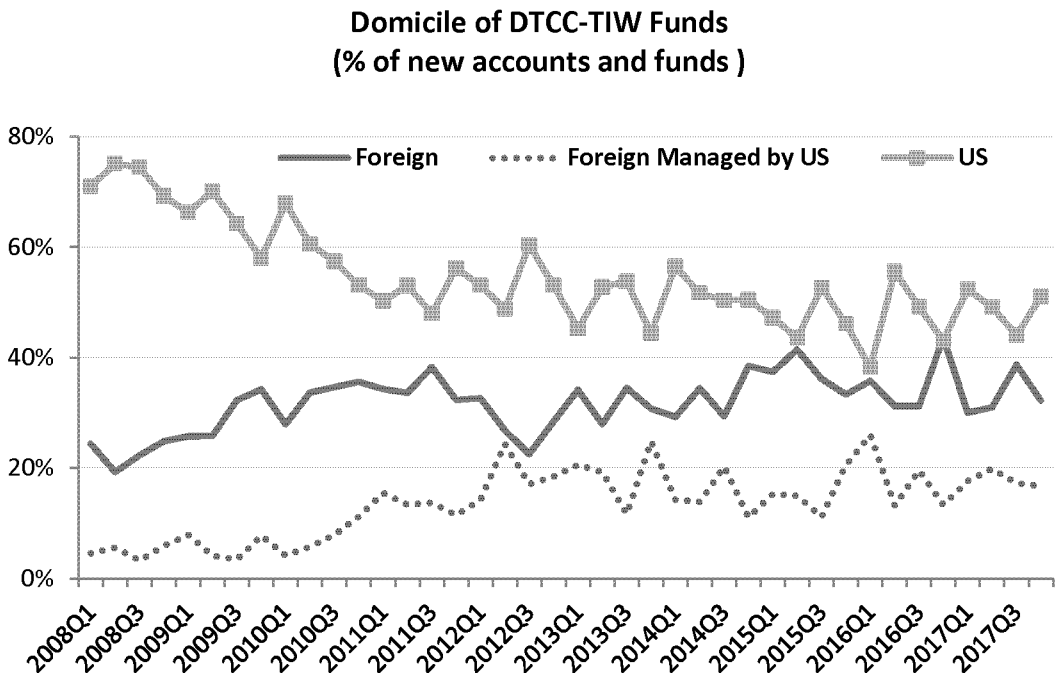
[295] *See* Rule of Practice 194 Adopting Release, 84 FR at 4925.

[296] These estimates were calculated by Commission staff using TIW data.

[297] *See* Charles Levinson, ''U.S. banks moved billions in trades beyond the CFTC's reach,'' Reuters, Aug. 21, 2015, *available at http://www.reuters.com/article/2015/08/21/usa-banks-swaps-idUSL3N10S57R20150821*. The estimates of 21 and 25 were calculated by Commission staff using TIW data.

[298] The available data do not include all security-based swap transactions but only transactions in single-name CDS that involve either (1) at least one account domiciled in the United States (regardless of the reference entity) or (2) single-name CDS on a U.S. reference entity (regardless of the U.S.-person status of the counterparties). *See* note 294, *supra,* for a discussion of the TIW data set.

Figure 1: The percentage of (1) new accounts with a domicile in the United States (referred to as "US"), (2) new accounts with a domicile outside the United States (referred to below as "Foreign"), and (3) new accounts outside the United States but managed by a U.S. person, account of a foreign branch of a U.S. person, and accounts of a foreign subsidiary of a U.S. person (collectively referred to below as "Foreign Managed by US").[299] Unique, new accounts are aggregated each quarter and percentages are computed on a quarterly basis, from January 2008 through December 2017.



c. Market Centers [299]

A market participant's domicile, however, does not necessarily correspond to where it engages in security-based swap activity. In particular, non-U.S. persons engaged in security-based swap dealing activity operate in multiple market centers and carry out such activity with counterparties around the world.[300] Many market participants that are engaged in dealing activity prefer to use traders and manage risk for security-based swaps in the jurisdiction where the underlier is traded. Thus, although a significant amount of the dealing activity in security-based swaps on U.S. reference entities involves non-U.S. dealers, the Commission understands that these dealers tend to carry out much of the security-based swap trading and related risk-management activities in these security-based swaps within the United States.[301] Some dealers have explained that being able to centralize their trading, sales, risk management, and other activities related to U.S. reference entities in U.S. operations (even when the resulting transaction is booked in a foreign entity) improves the efficiency of their dealing business.

Consistent with these operational concerns and the global nature of the security-based swap market, the available data appear to confirm that participants in this market are in fact active in market centers around the globe. Although, as noted above, the available data do not permit us to identify the location of personnel in a transaction, TIW transaction records, supplemented with legal entity location data, indicate that firms that are likely to be security-based swap dealers operate out of branch locations in key market centers around the world, including New York, London, Paris, Zurich, Tokyo, Hong Kong, Chicago, Sydney, Toronto, Frankfurt, Singapore, and the Cayman Islands.[302]

Given these market characteristics and practices, participants in the security-based swap market may bear the financial risk of a security-based swap transaction in a location different from the location where the transaction is arranged, negotiated, or executed, or where economic decisions are made by managers on behalf of beneficial owners. Market activity may also occur in a jurisdiction other than where the market participant or its counterparty books the transaction. Similarly, a participant in the security-based swap market may be exposed to counterparty risk from a counterparty located in a jurisdiction that is different from the market center or centers in which it participates.

[299] Following publication of the Warehouse Trust Guidance on CDS data access, DTCC–TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This is designated the registered office location by the DTCC–TIW. When an account does not report a registered office location, the Commission has assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. This treatment assumes that the registered office location reflects the place of domicile for the fund or account.

[300] *See* ANE Adopting Release, 81 FR at 8604 n.56.

[301] *See id.* note 58.

[302] TIW transaction records contain a proxy for the domicile of an entity, which may differ from branch locations, which are separately identified in the transaction records. The legal entity location data are from Avox.

d. Common Business Structures

A non-U.S. person that engages in a global security-based swap dealing business in multiple market centers may choose to structure its dealing business in a number of different ways. This structure, including where it books the transactions that constitute that business and how it carries out market-facing activities that generate those transactions, reflects a range of business and regulatory considerations, which each non-U.S. person may weigh differently.

A non-U.S. person may choose to book all of its security-based swap transactions, regardless of where the transaction originated, in a single, central booking entity. That entity generally retains the risk associated with that transaction, but it also may lay off that risk to another affiliate via a back-to-back transaction or an assignment of the security-based swap.[303] Alternatively, a non-U.S. person may book security-based swaps arising from its dealing business in separate affiliates, which may be located in the jurisdiction where it originates the risk associated with the security-based swap, or, alternatively, the jurisdiction where it manages that risk. Some non-U.S. persons may book transactions originating in a particular region to an affiliate established in a jurisdiction located in that region.[304] As discussed earlier,[305] a non-U.S. person may choose to book its security-based swap transactions in one jurisdiction in part to avoid triggering regulatory requirements associated with another jurisdiction.

Regardless of where a non-U.S. person determines to book its security-based swaps arising out of its dealing activity, it is likely to operate offices that perform sales or trading functions in one or more market centers in other jurisdictions. Maintaining sales and trading desks in global market centers permits the non-U.S. person to deal with counterparties in that jurisdiction or in a specific geographic region, or to ensure that it is able to provide liquidity to counterparties in other jurisdictions,[306] for example, when a counterparty's home financial markets are closed. A non-U.S. person engaged in a security-based swap dealing business also may choose to manage its trading book in particular reference entities or securities primarily from a trading desk that can utilize local expertise in such products or that can gain access to better liquidity, which may permit it to more efficiently price such products or to otherwise compete more effectively in the security-based swap market. Some non-U.S. persons prefer to centralize risk management, pricing, and hedging for specific products with the personnel responsible for carrying out the trading of such products to mitigate operational risk associated with transactions in those products.

The non-U.S. person affiliate that books these transactions may carry out related market-facing activities, whether in its home jurisdiction or in a foreign jurisdiction, using either its own personnel or the personnel of an affiliated or unaffiliated agent. For example, the non-U.S. person may determine that another of its affiliates employs personnel who possess expertise in relevant products or who have established sales relationships with key counterparties in a foreign jurisdiction, making it more efficient to use the personnel of the affiliate to engage in security-based swap market-facing activity on its behalf in that jurisdiction. In these cases, the affiliate that books these transactions and its affiliated agent may operate as an integrated dealing business, each performing distinct core functions in carrying out that business.

Alternatively, the non-U.S. person affiliate that books these transactions may, in some circumstances, determine to engage the services of an unaffiliated agent through which it can engage in market-facing activity. For example, a non-U.S. person may determine that using an interdealer broker may provide an efficient means of participating in the interdealer market in its own, or in another, jurisdiction, particularly if it is seeking to do so anonymously or to take a position in products that trade relatively infrequently.[307] A non-U.S. person may also use unaffiliated agents that operate at its direction. Such an arrangement may be particularly valuable in enabling a non-U.S. person to service clients or access liquidity in jurisdictions in which it has no security-based swap operations of its own.

The Commission understands that non-U.S. person affiliates (whether affiliated with U.S.-based non-U.S. persons or not) that are established in foreign jurisdictions may use any of these structures to engage in dealing activity in the United States, and that they may seek to engage in dealing activity in the United States to transact with both U.S.-person and non-U.S.-person counterparties. In transactions with non-U.S.-person counterparties, these foreign affiliates may affirmatively seek to engage in dealing activity in the United States because the sales personnel of the non-U.S.-person dealer (or of its agent) in the United States have existing relationships with counterparties in other locations (such as Canada or Latin America) or because the trading personnel of the non-U.S.-person dealer (or of its agent) in the United States have the expertise to manage the trading books for security-based swaps on U.S. reference securities or entities. The Commission understands that some of these foreign affiliates engage in dealing activity in the United States through their personnel (or personnel of their affiliates) in part to ensure that they are able to provide their own counterparties, or those of non-U.S. person affiliates in other jurisdictions, with access to liquidity (often in non-U.S. reference entities) during U.S. business hours, permitting them to meet client demand even when the home markets are closed. In some cases, such as when seeking to transact with other dealers through an interdealer broker, these foreign affiliates may act, in a dealing capacity, in the United States through an unaffiliated, third-party agent.

3. Market-Facing and Non-Market-Facing Activities

As discussed above, the activities of a security-based swap dealer involve both market-facing activities and non-market-facing activities.[308] Market-facing activities would include arranging, negotiating, or executing a security-based swap transaction. The terms ''arrange'' and ''negotiate'' indicate market-facing activity of sales or trading personnel in connection with a particular transaction, including interactions with counterparties or their

[303] *See* Exchange Act Release No. 74834 (Apr. 29, 2015), 80 FR 27444, 27463 (May 13, 2015) (''U.S. Activity Proposing Release''); Cross-Border Proposing Release, 78 FR 30977–78.

[304] There is some indication that this booking structure is becoming increasingly common in the market. *See, e.g.,* Catherine Contiguglia, ''Regional swaps booking replacing global hubs,'' Risk.net, Sep. 4, 2015, *available at http://www.risk.net/risk-magazine/feature/2423975/regional-swaps-booking-replacing-global-hubs.* Such a development may be reflected in the increasing percentage of new entrants that have a foreign domicile, as described above.

[305] *See* part III.B.4, *supra.*

[306] These offices may be branches or offices of the booking entity itself, or branches or offices of an affiliated agent, such as, in the United States, a registered broker-dealer.

[307] The Commission understands that interdealer brokers may provide voice or electronic trading services that, among other things, permit dealers to take positions or hedge risks in a manner that preserves their anonymity until the trade is executed. These interdealer brokers also may play a particularly important role in facilitating transactions in less-liquid security-based swaps.

[308] *See* part I.A.2, *supra.*

agents. The term ''execute'' refers to the market-facing act that, in connection with a particular transaction, causes the person to become irrevocably bound under the security-based swap under applicable law. Non-market-facing activities include processing trades and other back-office activities; designing security-based swaps without communicating with counterparties in connection with specific transactions; preparing underlying documentation, including negotiating master agreements (as opposed to negotiating with the counterparty the specific economic terms of a particular security-based swap transaction); and clerical and ministerial tasks such as entering executed transactions on a non-U.S. person's books.

4. Security-Based Swap Market Activity

As already noted, firms that act as dealers play a central role in the security-based swap market. Based on an analysis of 2017 single-name CDS data in TIW, accounts of those firms that are likely to exceed the security-based swap dealer *de minimis* thresholds and trigger registration requirements intermediated transactions with a gross notional amount of approximately $2.9 trillion, approximately 55% of which was intermediated by the top five dealer accounts.[309]

These dealers transact with hundreds or thousands of counterparties. Approximately 21% of accounts of firms expected to register as security-based dealers and observable in TIW have entered into security-based swaps with over 1,000 unique counterparty accounts as of year-end 2017.[310] Another 25% of these accounts transacted with 500 to 1,000 unique counterparty accounts; 29% transacted with 100 to 500 unique accounts; and 25% of these accounts intermediated security-based swaps with fewer than 100 unique counterparties in 2017. The median dealer account transacted with 495 unique accounts (with an average of approximately 570 unique accounts). Non-dealer counterparties transacted almost exclusively with these dealers. The median non-dealer counterparty transacted with two dealer accounts (with an average of approximately three dealer accounts) in 2017.

Figure 2 below describes the percentage of global, notional transaction volume in North American corporate single-name CDS reported to TIW between January 2008 and December 2017, separated by whether transactions are between two ISDA-recognized dealers (interdealer transactions) or whether a transaction has at least one non-dealer counterparty. Figure 2 also shows that the portion of the notional volume of North American corporate single-name CDS represented by interdealer transactions has remained fairly constant through 2015 before falling from approximately 72% in 2015 to approximately 40% in 2017. This fall corresponds to the availability of clearing to non-dealers. Interdealer transactions continue to represent a significant fraction of trading activity, even as notional volume has declined over the past ten years,[311] from more than $6 trillion in 2008 to less than $700 billion in 2017.[312]

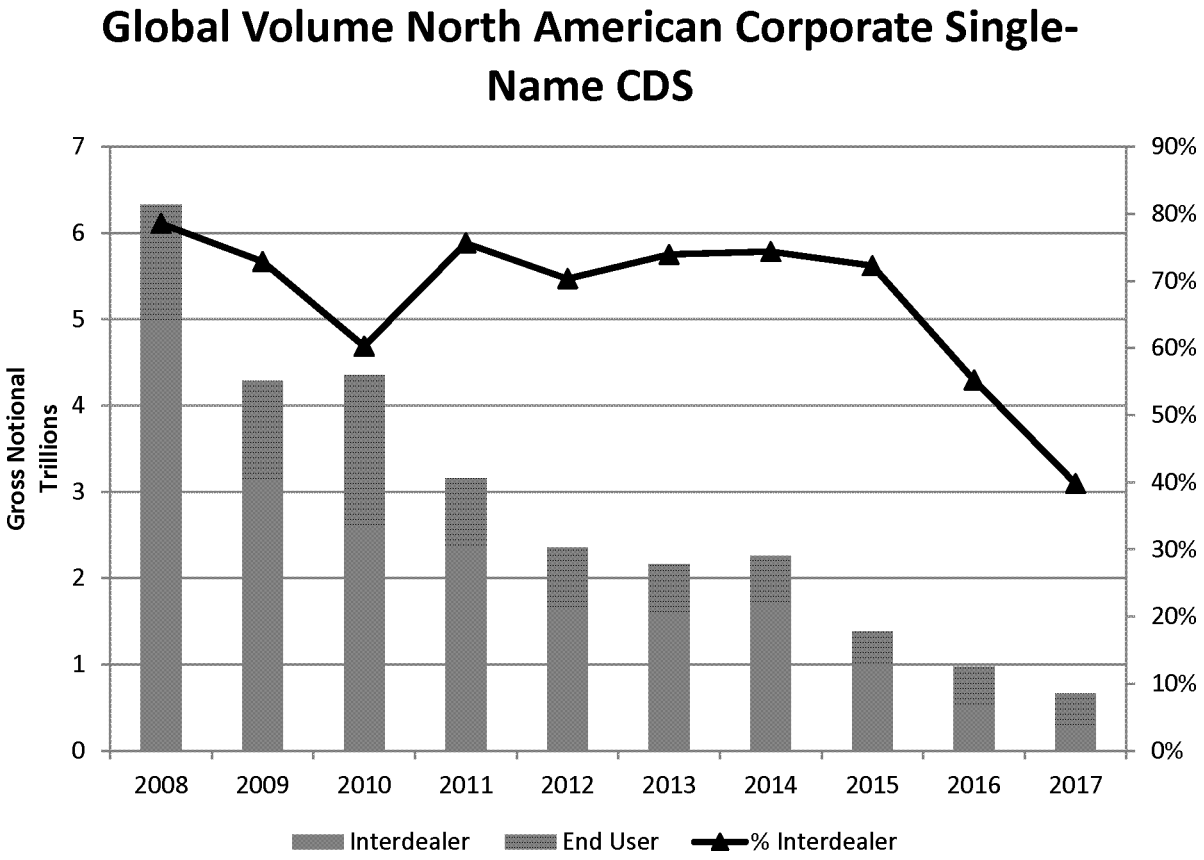
[309] The Commission staff analysis of TIW transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2017 involved an ISDA-recognized dealer.

[310] Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, the Commission may infer that entities and financial groups may transact with at least as many counterparties as the largest of their accounts.

[311] The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking.

[312] This estimate is lower than the gross notional amount of $4.6 trillion noted in note 294 above as it includes only the subset of single-name CDS referencing North American corporate documentation.

Figure 2: Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer.



The high level of interdealer trading activity reflects the central position of a small number of dealers, each of which intermediates trades with many hundreds of counterparties. While the Commission is unable to quantify the current level of trading costs for single-name CDS, these dealers appear to enjoy market power as a result of their small number and the large proportion of order flow that they privately observe.

Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data that the Commission analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad, as shown in Figure 3 below. Using the self-reported registered office location of the TIW accounts as a proxy for domicile, the Commission estimates that only 12% of the global transaction volume by notional volume between 2008 and 2017 was between two U.S.-domiciled counterparties, compared to 49% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty and 39% entered into between two foreign-domiciled counterparties.[313]

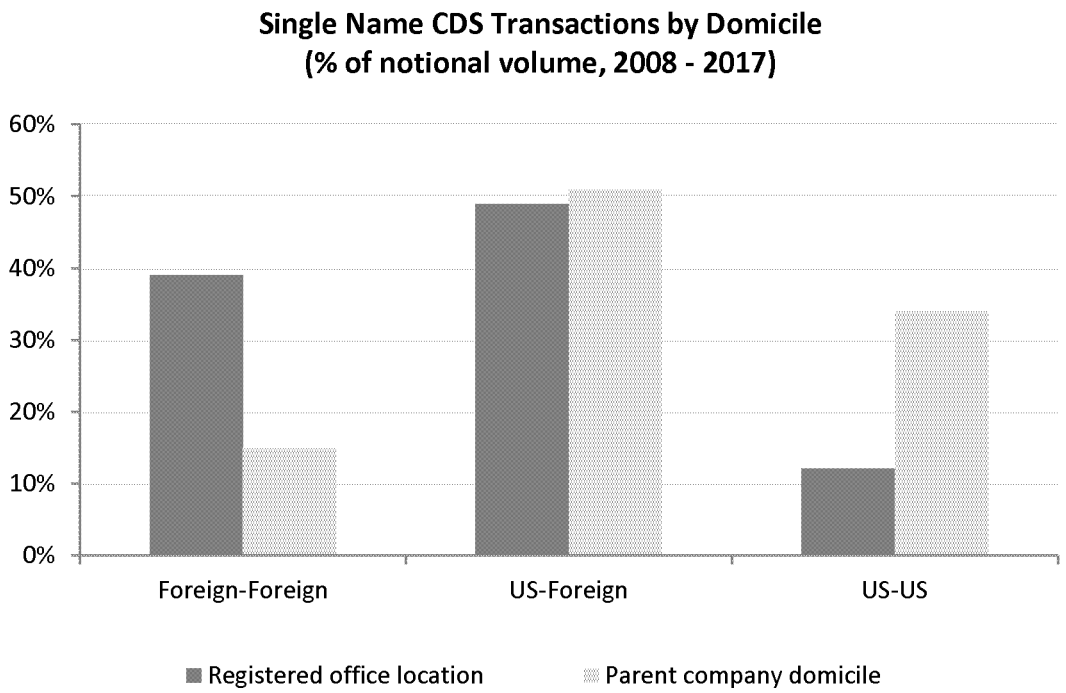
If the Commission instead considers the number of cross-border transactions from the perspective of the domicile of the corporate group (*e.g.,* by classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the percentages shift significantly. Under this approach, the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 34%, and to 51% for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty. By contrast, the proportion of activity between two foreign-domiciled counterparties drops from 39% to 15%. This change in respective shares based on different classifications suggests that the activity of foreign subsidiaries of U.S. firms and foreign branches of U.S. banks accounts for a higher percentage of security-based swap activity than U.S. subsidiaries of foreign firms and U.S. branches of foreign banks. It also demonstrates that financial groups based in the United States are involved in an overwhelming majority (approximately 85%) of all reported transactions in North American corporate single-name CDS.

Financial groups based in the United States are also involved in a majority of interdealer transactions in North American corporate single-name CDS. Of the 2017 transactions on North American corporate single-name CDS between two ISDA-recognized dealers and their branches or affiliates, 94% of transaction notional volume involved at least one account of an entity with a U.S. parent. The Commission notes, in addition, that a majority of North American corporate single-name CDS transactions occur in the interdealer market or between dealers and foreign non-dealers, with the remaining portion of the market consisting of transactions between dealers and U.S.-person non-dealers. Specifically, 60% of North American corporate single-name CDS

[313] For purposes of this discussion, the Commission has assumed that the registered office location reflects the place of domicile for the fund or account, but the Commission notes that this domicile does not necessarily correspond to the location of an entity's sales or trading desk. ANE Adopting Release, 81 FR at 8607 n.83.

transactions involved either two ISDA-recognized dealers or an ISDA-recognized dealer and a foreign non-dealer. Approximately 39% of such transactions involved an ISDA-recognized dealer and a U.S.-person non-dealer.

Figure 3: The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts; (2) one U.S.-domiciled account and one non-U.S.-domiciled account; and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2017.



5. Global Regulatory Efforts

In 2009, the G20 leaders—whose membership includes the United States, 18 other countries, and the European Union—addressed global improvements in the OTC derivatives market. They expressed their view on a variety of issues relating to OTC derivatives contracts. In subsequent summits, the G20 leaders have returned to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[314]

Many security-based swap dealers likely will be subject to foreign regulation of their security-based swap activities that is similar to regulations that may apply to them pursuant to Title VII of the Dodd-Frank Act, even if the relevant foreign jurisdictions do not classify certain market participants as ''dealers'' for regulatory purposes. Some of these regulations may duplicate, and in some cases conflict with, certain elements of the Title VII regulatory framework.

Foreign legislative and regulatory efforts have generally focused on five areas: (1) Moving OTC derivatives onto organized trading platforms, (2) requiring central clearing of OTC derivatives, (3) requiring post-trade reporting of transaction data for regulatory purposes and public dissemination of anonymized versions of such data, (4) establishing or enhancing capital requirements for non-centrally cleared OTC derivatives transactions, and (5) establishing or enhancing margin and other risk mitigation requirements for non-centrally cleared OTC derivatives transactions. Foreign jurisdictions have been actively implementing regulations in connection with each of these categories of requirements. A number of major foreign jurisdictions have initiated the process of implementing margin and other risk mitigation requirements for non-centrally cleared OTC derivatives transactions.[315]

Notably, the European Parliament and the European Council have adopted the European Market Infrastructure Regulation (''EMIR''), which includes provisions aimed at increasing the safety and transparency of the OTC derivatives market. EMIR mandates the European Supervisory Authorities (''ESAs'') to develop regulatory technical standards specifying margin requirements for non-centrally cleared OTC derivatives contracts. The ESAs have developed, and in October 2016

[314] *See, e.g.,* G20 Leaders' Final Declaration, November 2011, para. 24, *available at https://g20.org/wp-content/uploads/2014/12/Declaration_eng_Cannes.pdf.*

[315] In November 2018, the Financial Stability Board reported that 16 member jurisdictions participating in its thirteenth progress report on OTC derivatives market reforms had in force margin requirements for non-centrally cleared derivatives. A further 4 jurisdictions made some progress in implementation leading to a change in reported implementation status during the reporting period. *See* Financial Stability Board, ''OTC Derivatives Market Reforms Thirteenth Progress Report on Implementation'' (Nov. 2018), *available at http://www.fsb.org/wp-content/uploads/P191118-5.pdf.*

the European Commission adopted, these regulatory technical standards.[316]

Several jurisdictions have also taken steps to implement the Basel III recommendations governing capital requirements for financial entities, which include enhanced capital charges for non-centrally cleared OTC derivatives transactions.[317] Moreover, as discussed above, subsequent to the publication of the proposing release, the Basel Committee on Banking Supervision (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') issued the *Margin Requirements for Non-centrally Cleared Derivatives* (''WGMR Paper'') that recommends minimum standards for margin requirements for non-centrally cleared derivatives.[318] The recommendations in the WGMR Paper included a recommendation that all financial entities and systemically important non-financial entities exchange variation and initial margin appropriate for the counterparty risk posed by such transactions, that initial margin should be exchanged without provisions for ''netting'' and held in a manner that protects both parties in the event of the other's default, and that the margin regimes of the various regulators should interact so as to be sufficiently consistent and non-duplicative.

6. Other Markets and Existing Regulatory Frameworks

The numerous financial markets are integrated, often attracting the same market participants that trade across corporate bond, swap, and security-based swap markets, among others. A discussion of other markets and existing regulatory frameworks can be found in a prior release.[319]

7. Estimates of Persons That May Use the Proposed Exception to Rule 3a71–3

To analyze the economic effects of the proposed exception to Rule 3a71–3, the Commission has analyzed 2017 TIW data to identify persons that may use the proposed exception. The Commission preliminarily believes that these persons fall into several categories, which we discuss below.

a. Non-U.S. Persons Seeking To Reduce Assessment Costs

One category of persons that may use the proposed exception are those non-U.S. persons that may need to assess the amount of their market-facing activity against the *de minimis* thresholds solely because of the inclusion of security-based swap transactions between two non-U.S. persons that are arranged, negotiated, or executed by personnel located in the U.S. for the purposes of the *de minimis* threshold analysis. These non-U.S. persons may have an incentive to rely on the proposed exception as a means of avoiding assessment and business restructuring if the cost of compliance associated with the proposed exception is less than assessment costs and the costs of business restructuring. In the ANE Adopting Release, the Commission provided an estimate of this category of persons.[320] However, in light of the reduction in security-based swap market activity since the publication of the ANE Adopting Release,[321] the Commission preliminarily believes that it would be appropriate to update that estimate to more accurately identify the set of persons that potentially may use the proposed exception. Analyses of the 2017 TIW data indicate that approximately five additional non-U.S. persons,[322] beyond those non-U.S. persons likely to incur assessment costs in connection with the other cross-border counting rules that the Commission previously had adopted in the Cross-Border Adopting Release,[323] are likely to exceed the $2 billion threshold[324] the Commission has previously employed to estimate the number of persons likely to incur assessment costs under Exchange Act rule 3a71–3(b). These non-U.S. persons may have an incentive to rely on the proposed exception as a means of avoiding assessment if the cost of compliance associated with the proposed exception is less than the assessment costs.

b. Non-U.S. Persons Seeking To Avoid Security-Based Swap Dealer Regulation

Another category of persons that potentially may use the proposed exception are those non-U.S. persons whose dealing transaction volume would have fallen below the $3 billion *de minimis* threshold if their transactions with non-U.S. counterparties were not counted toward the *de minimis* threshold under the current ''arranged, negotiated, or executed'' counting requirement, but absent the exception, would have dealing transactions in excess of that threshold.[325] Such non-U.S. persons may choose to use the proposed exception if they expect the compliance cost associated with the proposed exception to be lower than the compliance cost associated with being subject to the full set of security-based swap dealer regulation and the cost of business restructuring. The Commission's analysis of 2017 TIW data indicates that there is one non-U.S. person whose transaction volume would have fallen below the $3 billion *de minimis* threshold if that person's transactions with non-U.S. counterparties were not counted toward the *de minimis* threshold under the current ''arranged, negotiated, or executed'' counting requirement.[326]

c. U.S. Dealing Entities Considering Changes to Booking Practices

A third category of persons that potentially may use the conditional exception are those U.S. dealers that use U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties. If the proposed exception were available, such dealers

[316] *See* EBA, EIOPA, and ESMA, ''Regulatory Technical Standards (RTS) on risk mitigation techniques for OTC derivatives not cleared by a central counterparty (CCP)'' (March 2016), *available at https://www.eba.europa.eu/documents/10180/1398349/RTS+on+Risk+Mitigation+Techniques+for+OTC+contracts+%28JC-2016-+18%29.pdf/fb0b3387-3366-4c56-9e25-74b2a4997e1d; see also* EC Delegated Regulation, supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (Oct. 4, 2016), *available at http://ec.europa.eu/finance/financial-markets/docs/derivatives/161004-delegated-act_en.pdf.* After the non-objection from the European Parliament and Council, Delegated Regulation (EU) 2016/2251 was published in the Official Journal of the European Union and entered into force on January 4, 2017.

[317] In November 2018, the Financial Stability Board reported that 23 of the 24 member jurisdictions participating in its thirteenth progress report on OTC derivatives market reforms had in force interim standards for higher capital requirements for non-centrally cleared transactions. *See* Financial Stability Board, OTC Derivatives Market Reforms Thirteenth Progress Report on Implementation (Nov. 2018), *available at http://www.fsb.org/wp-content/uploads/P191118-5.pdf.*

[318] *See* BCBS, IOSCO, ''*Margin Requirements for Non-centrally Cleared Derivatives*'' (Mar. 2015), *available at http://www.bis.org/bcbs/publ/d317.pdf.*

[319] *See* Rule of Practice 194 Adopting Release, 84 FR at 4927.

[320] *See* ANE Adopting Release, 81 FR at 8627.

[321] *See* part VII.A.4, *supra.*

[322] Adjustments to these statistics from the ANE Adopting Release reflect further analysis of the TIW data. *Cf.* ANE Adopting Release, 81 FR at 8627 (providing an estimate of 10 additional non-U.S. persons based on 2014 TIW data).

[323] *See* note 13, *supra.*

[324] *See* ANE Adopting Release, 81 FR at 8626.

[325] The $3 billion threshold is being used to help identify potential impacts of the proposal. A phase-in threshold of $8 billion currently is in effect. *See* Exchange Act Rule 3a71–2(a)(1).

[326] The analysis begins by considering the single-name CDS transactions of each of the non-U.S. persons against both U.S. person and non-U.S. person counterparties. The Commission then excluded transactions involving these non-U.S. persons and their non-U.S. person counterparties. For this analysis, we assume that all transactions between non-U.S. person dealers and non-U.S. counterparties are arranged, negotiated, or executed using U.S. personnel.

may consider booking future transactions with non-U.S. counterparties to their non-U.S. affiliates, while still using U.S. personnel to arrange, negotiate, or execute such transactions. These U.S. dealers may have an incentive to engage in such booking practices in order to utilize the proposed exception to the extent that they wish to continue using U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties and the compliance cost associated with the proposed exception is less than the cost of compliance with Title VII requirements (if they choose not to book transactions to avail themselves of the proposed exception) and the cost of business restructuring (if they choose to both book transactions to their non-U.S. affiliates and also refrain from using U.S. personnel to arrange, negotiate or execute such transactions).[327] The Commission's analysis of 2017 TIW data indicates that there are six U.S. dealers who transact with non-U.S. counterparties, who are likely to register as security-based swap dealers,[328] and have non-U.S. affiliates that also transact in the CDS market. To the extent that these U.S. dealers anticipate booking future transactions with non-U.S. counterparties that are arranged, negotiated, or executed by U.S. personnel to their non-U.S. affiliates, the Commission preliminarily believes that these U.S. dealers may potentially make use of the proposed exception.

d. Additional Considerations and Summary

Under Alternative 1,[329] the U.S. arranging, negotiating, and executing activity could be conducted by a registered security-based swap dealer. Under Alternative 2, the U.S. arranging, negotiating, and executing could be conducted by a registered broker.[330] The economic analysis of these alternatives depends, in part, on whether non-U.S. persons that might make use of the proposed exception have U.S. affiliates that are likely to register as security-based swap dealers (under Alternative 1) or that are registered broker-dealers (under Alternative 2). Of the six non-U.S. persons discussed above,[331] four have majority-owned affiliates that are registered broker-dealers. Of these non-U.S. persons, one has a majority-owned affiliate that is likely to register as a security-based swap dealer. Of the six U.S. persons discussed above, all have majority-owned affiliates that are registered broker-dealers, and all have majority-owned affiliates that are likely to register as security-based swap dealers. Of these 12 persons, eight are banks, and three are affiliated with banks. These estimates are summarized in Table 1 below. The Commission's analysis of 2017 TIW data indicates that these 12 persons transacted with 807 non-U.S. counterparties, of which 558 participate in the swap markets and 249 do not.

TABLE 1—AFFILIATES OF PERSONS THAT MAY USE THE PROPOSED EXCEPTION

Persons identified in TIW data that may use the proposed exception	Non-U.S.	U.S.
Estimate	6	6
Breakdown:		
Has majority-owned registered broker-dealer affiliate	4	6
Has majority-owned registered security-based swap dealer affiliate	1	6
Is a bank	4	4
Is a bank affiliate	1	2

In summary, the Commission's analysis of 2017 TIW data indicates that 12 persons[332] may make use of the proposed exception. In light of the uncertainty associated with this estimate[333] and to account for potential growth of the security-based swap market, and consistent with the approach in the ANE Adopting Release, the Commission believes that it is reasonable to increase this estimate by a factor of two.[334] As a result, the Commission preliminarily estimates that up to 24 persons potentially may make use of the proposed exception. The Commission also doubles the number of non-U.S. counterparties discussed above and preliminarily estimates that persons that may make use of the proposed exception may transact with up to 1,614 non-U.S. counterparties, of which 1,116 participate in the swap markets and 498 do not.[335]

8. Estimates of Persons That Potentially May Be Affected by the Proposed Market Color Guidance

As discussed in part II *supra,* the ''arranged, negotiated, or executed'' test has been incorporated within the *de minimis* counting standard, the cross-border application of security-based swap dealer business conduct provisions, and the cross-border application of Regulation SBSR's regulatory reporting and public dissemination provisions. The Commission preliminarily believes that the persons that may rely on this proposed guidance fall into a number of categories, which we discuss below.

[327] The Commission recognizes that this potential use of the proposed exception by U.S. dealing entities is distinct from the rationale underlying the proposed exception, which is to help avoid market fragmentation and operational risks resulting from the relocation of U.S. personnel by non-U.S. dealers. *See* part I.A.4, *supra.* Nonetheless, such changes in booking practices by U.S. dealing entities might be a consequence of the proposal.

[328] To the extent that U.S. persons with transaction volumes that are insufficient to trigger dealer registration potentially might also make use of the proposed exception, this estimate would be a lower bound estimate of the number of U.S. persons that potentially may make use of the proposed exception.

[329] *See* part III.B, *supra.*

[330] *See* part III.C, *supra.*

[331] Calculated as the 5 non-U.S. persons seeking to reduce assessment costs (part VII.A.7.a) + 1 non-U.S. person seeking to avoid security-based swap dealer regulation (part VII.A.7.b) = 6 non-U.S. persons.

[332] Calculated as 5 non-U.S. persons seeking to reduce assessment costs (part VII.A.7.a) + 1 non-U.S. person seeking to avoid security-based swap dealer regulation (part VII.A.7.b) + 6 U.S. persons considering changes to booking practices (part VII.A.7.c) = 12 persons.

[333] The estimate may be overinclusive, as it is unlikely that all transactions between two non-U.S. persons are arranged, negotiated, or executed by personnel located in a U.S. branch or office; it may also be underinclusive, as our TIW data do not include single-name CDS transactions between two non-U.S. entities written on non-U.S. underliers, some of which may be arranged, negotiated, or executed by personnel located in a U.S. branch or office, or transactions on other types of security-based swaps (including equity swaps) whether on U.S. or non-U.S. underliers. *See* ANE Adopting Release, 81 FR at 8627.

[334] *See* ANE Adopting Release, 81 FR at 8627.

[335] *See* part VII.B.3.a, *infra* where we use these estimates to calculate certain costs associated with an additional alternative.

a. Non-U.S. Dealing Entities That Use Guidance in Connection With Counting, Business Conduct, and Regulatory Reporting and Public Dissemination Requirements

Because non-U.S. security-based swap dealers are entities that fall within the scope of the de minimis counting, business conduct, and regulatory reporting and public dissemination provisions due to their dealing activities and their obligations under these provisions depend in part on the ''arranged, negotiated, or executed'' test, the Commission preliminarily believes that non-U.S. security-based swap dealers would be persons that potentially may change their assessment with respect to compliance with security-based swap dealer regulation generally as a result of the proposed guidance. Based on 2017 TIW data, the Commission estimates that up to 22 non-U.S. persons [336] will register as security-based swap dealers.

b. Non-U.S. Persons That Use Guidance in Connection With *de minimis* assessment

A second group of persons that may be affected by the proposed guidance are non-U.S. persons that may need to assess the amount of their market-facing activity against the *de minimis* thresholds solely because of the inclusion for the purposes of the *de minimis* threshold analysis of security-based swap transactions between two non-U.S. persons that are arranged, negotiated, or executed by personnel located in the U.S. As discussed elsewhere,[337] the Commission preliminarily believes that these non-U.S. persons will incur reporting obligations under Regulation SBSR in connection with security-based swap transactions with other non-U.S. persons that are arranged, negotiated, or executed by U.S. personnel. As discussed in part VII.A.7 above, this group consists of five non-U.S. persons based on the analysis of 2017 TIW data, which the Commission has increased by a factor of two to 10.

c. Non-U.S. Persons That Use Guidance in Connection With Assessing Regulatory Reporting and Public Dissemination Requirements

A third group of persons that may be affected by the proposed guidance are unregistered non-U.S. persons that will incur costs, under Rule 908(b)(5), to assess whether they engage in security-based swap transactions with non-U.S. persons that are arranged, negotiated, or executed by U.S. personnel, and if so, whether they will incur reporting duties under Rule 901(a)(2)(ii)(E).[338] The Commission preliminarily estimates that this group consists of five non-U.S. persons,[339] who are in addition to the non-U.S. persons described in part VII.A.8.b above.

d. Non-U.S. Persons Affiliated With U.S. Dealing Entities That Consider Changes to Booking Practices

A fourth group of persons that may be affected by the proposed guidance are the non-U.S. persons affiliated with those U.S. dealers that may use U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties and book those transactions to the non-U.S. persons. As discussed in part VII.A.7 above, these U.S. dealers may have an incentive to engage in such booking practices in order to utilize the proposed exception to the extent that they wish to continue using U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties and the compliance cost associated with the proposed exception is less than the cost of compliance with Title VII requirements and the cost of business restructuring. As discussed in part VII.A.7 above, the Commission preliminarily estimates that up to 12 U.S. dealers [340] potentially may use the proposed exception. To the extent that each of these dealers chooses to book transactions subject to the proposed exception to one unregistered non-U.S. person affiliate, the Commission preliminarily believes that this fourth group of non-U.S. persons would consist of 12 unregistered non-U.S. persons. The Commission preliminarily believes that these non-U.S. persons may incur reporting duties under Rule 901(a)(2)(ii)(E) [341] and are in addition to the non-U.S. persons described in part VII.A.8.c above.

All told, the Commission preliminarily believes that up to 49 non-U.S. persons [342] potentially may be affected by the proposed guidance.

9. Statutory Disqualification

In the Rule of Practice 194 Adopting Release, the Commission analyzed, among others, data on the number of natural persons associated with SBS Entities, applications for review under parallel review processes, and relevant research on statutory disqualification. In that release, the Commission estimated that SBS Entities may file up to five applications per year with respect to their associated natural persons. A more detailed discussion of these data and estimates can be found in that release.[343] If associated natural persons who become statutorily disqualified are located outside of the U.S. and transact exclusively with foreign counterparties and foreign branches of U.S. counterparties, the proposal may decrease the number of these applications for relief and corresponding direct costs. Based on the Commission's experience with broker-dealers and on the Commission's understanding of current market activity in security-based swaps, the Commission preliminarily estimates that the proposed exclusion may reduce the number of applications under Rule

[336] This estimate is based on the number of accounts in TIW data with total notional volume in excess of *de minimis* thresholds, increased by a factor of two, to account for any potential growth in the security-based swap market, to account for the fact that the Commission is limited in observing transaction records for activity between non-U.S. persons to those that reference U.S. underliers, and to account for the fact that the Commission does not observe security-based swap transactions other than in single-name CDS. *See* Business Conduct Adopting Release, 81 FR at 30105 and note 1633 therein.

[337] *See* Regulation SBSR Amendments Adopting Release, 81 FR 156 at 53614 & n.657.

[338] *See* Regulation SBSR Amendments Adopting Release, 81 FR 156 at 53638.

[339] The Commission has previously estimated that there are four unregistered non-U.S. persons that will incur assessment costs as a result of Rule 908(b)(5). *See* Regulation SBSR Amendments Adopting Release, 81 FR 156 at 53638 n.919. In light of the changes in the security-based swap market, as noted in part VII.A.4 *supra,* the Commission has updated the estimate using 2017 TIW data and preliminarily believes that there are five unregistered non-U.S. persons that will incur assessment costs as a result of Rule 908(b)(5). Because of the relatively low volume of transaction activity of these five entities during 2017 and the existence of affiliations with other entities expected to register as security-based swap dealers, the Commission preliminarily believes that, even after accounting for growth in the security-based swap market and acknowledging the limitations of the transaction data available for analysis, five is a reasonable estimate of the number of unregistered dealing entities likely to incur assessment costs as a result of Rule 908(b)(5).

[340] This is calculated as the six U.S. dealers identified in 2017 TIW data increased by a factor of 2 to 12.

[341] *See* Regulation SBSR Amendments Adopting Release, 81 FR 156 at 53638.

[342] Calculated as 22 non-U.S. dealing entities that use the proposed guidance in connection with counting, business conduct, and regulatory reporting and public dissemination requirements (part VII.A.8.a) + 10 non-U.S. persons that use the proposed guidance in connection with *de minimis* assessment (part VII.A.8.b) + 5 non-U.S. persons that use the proposed guidance in connection with assessing regulatory reporting and public dissemination requirements (part VII.A.8.c) + 12 non-U.S. persons affiliated with U.S. dealing entities that consider changes to booking practices (part VII.A.8.d) = 49 non-U.S. persons.

[343] *See* Rule of Practice 194 Adopting Release, 84 FR at 4925.

of Practice 194 by between zero and two applications.

10. Certification, Opinion of Counsel, and Employee Questionnaires

As a baseline matter, SBS Entity Registration rules, including Rule 15Fb2–1 and the certification and opinion of counsel requirements in Rule 15Fb2–4, have been adopted but compliance with registration rules is not yet required.

In addition, Rule 17a–3(a)(12) requires all broker-dealers, including broker-dealers that may seek to register with the Commission as SBS Entities, to make and keep current a questionnaire or application for employment for each associated person. In the Recordkeeping and Reporting Proposing Release, the Commission proposed a parallel requirement, in Rule 18a–5, for stand-alone and bank SBS Entities. The Commission is proposing modifications to proposed Rule 18a–5(a)(10) and Rule 18a–5(b)(8). Based on 2017 TIW data, of 22 non-U.S. persons that may register with the Commission as security-based swap dealers, the Commission estimates that approximately 12 security-based swap dealers will be foreign banks and another 3 will be foreign stand-alone security-based swap dealers that may be affected by these proposed modifications.

B. Proposed Amendment to Rule 3a71–3

This section discusses the potential costs and benefits associated with the proposed amendment to Rule 3a71–3, the effects of the proposed amendment on efficiency, competition, and capital formation, and alternative approaches to the proposed amendment. The Commission's analysis considers the costs and benefits of both Alternative 1 and Alternative 2. Because many of the conditions associated with the exception are the same in both proposed alternatives, the Commission expects them to produce many of the same economic consequences. Where the Commission believes those costs and benefits would be the same under either proposed alternative, they are discussed together. Where the costs and benefits may differ, they are discussed separately.

Under either Alternative 1 or Alternative 2, each person that engages in arranging, negotiating, and executing activity with non-U.S. counterparties using affiliated U.S.-based personnel would have two possible options for complying with the Commission's Title VII regulations regarding the cross-border application of the ''security-based swap dealer'' definition. The first option would be for the persons to follow current security-based swap dealer counting requirements without regard for the exception afforded by the proposed amendment (whichever alternative is adopted). Specifically, a person could opt to incur the assessment costs to determine (i) whether any portion of their security-based swap transaction activities must be counted against the dealer *de minimis* thresholds, and (ii) whether the total notional amount of relevant transaction activities exceeds the *de minimis* threshold.[344] If the amount of its activities crosses the *de minimis* thresholds, then the person would have to register as a security-based swap dealer and become subject to Title VII security-based swap dealer requirements. A person that chooses to comply in this manner would experience no incremental economic effects under the proposed alternative as compared to the baseline.

The second option would be to rely on the exception afforded by the proposed amendment (whichever alternative is adopted). Under the proposed amendment, a person could register one entity as a registered security-based swap dealer (under both proposed alternatives) or as a registered broker (only under Alternative 2) [345] to arrange, negotiate, or execute transactions with non-U.S. counterparties on its behalf using personnel located in a U.S. branch or office. Doing so could allow it to avoid the direct regulation of itself (or multiple affiliated entities) as a security-based swap dealer. A person that chooses to use this exception and incur the associated costs to meet the conditions of this exception, detailed below, likely would not incur assessment costs with respect to security-based swap transactions with non-U.S. counterparties that are arranged, negotiated, or executed by personnel located in the United States.

As discussed above, the Commission preliminarily believes that up to 24 [346] persons potentially may use the proposed exception to the extent that the compliance costs associated with the proposed exception are lower than the compliance costs in the absence of the proposed exception.

1. Costs and Benefits of the Proposed Amendment

The Commission preliminarily believes that the proposed amendment would provide increased flexibility to security-based swap market participants to comply with the Title VII framework while preserving their existing business practices. This could reduce their compliance burdens, while supporting the Title VII regime's benefit of mitigating risks in foreign security-based swap markets that may flow into U.S. financial markets through liquidity spillovers. The Commission also preliminarily believes that the amendments could reduce market fragmentation and associated distortions. At the same time, and as detailed later in this section, the Commission acknowledges that the proposed amendment potentially limits certain other programmatic benefits of the Title VII regime by excusing security-based swap market participants that elect to use the exception from some of the Title VII requirements that would otherwise apply to their activity. The Commission preliminarily believes that the proposed amendment will result in compliance costs for persons that elect to use the exception, as described below. However, the Commission expects that persons will elect to incur those costs only where it would be less costly than either complying with the Title VII framework or restructuring to avoid using U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties.

[344] *See* part I.A.2, *supra.*

[345] Under Alternative 2, registration may not be required if, as discussed in part VII.A.7, *supra,* persons who may take advantage of this exception already have a registered broker-dealer affiliate and choose to use their existing registered broker-dealer affiliate to take advantage of the exception. *See also* part VII.B.1.a, *infra.*

[346] *See* part VII.A.7, *supra.*

a. Costs and Benefits for Persons That May Use the Proposed Amendment

The primary benefit of the proposed amendment is that it would permit a person further flexibility to opt into a Title VII compliance framework that is compatible with its existing business practices. While the registered U.S. person would be the entity adhering to most of the conditions set forth in the proposed amendment and the non-U.S. person would be responsible for complying with some of the other conditions,[347] for the purposes of this analysis, the Commission assumes that the costs of complying with these conditions will be passed on to the non-U.S. person affiliate. In the absence of the proposed amendment, a non-U.S. person could incur the cost of registering as a security-based swap dealer and a financial group may incur the cost of registering at least one security-based swap dealer[348] due to the ''arranged, negotiated, or executed'' counting test.[349] The non-U.S. person or group accordingly would incur the cost necessary for compliance with the full set of security-based swap dealer requirements by one or more registered security-based swap dealers. These burdens, contingent on exceeding the *de minimis* threshold, are in addition to the assessment costs that the non-U.S. person would incur to identify and count relevant market-facing activity toward the *de minimis* threshold.

As discussed in the ANE Adopting Release, such a non-U.S. person could respond to these costs by restructuring its security-based swap business to avoid using U.S. personnel to arrange, negotiate, or execute transactions with non-U.S. counterparties. Such a strategy would allow the non-U.S. person to avoid counting transactions between the non-U.S. person and its non-U.S. counterparties toward the non-U.S. person's *de minimis* threshold. In addition to reducing the likelihood of incurring the programmatic costs associated with the full set of security-based swap dealer requirements under Title VII, this response to current requirements could reduce the assessment costs associated with counting transactions toward the *de minimis* threshold and fully abrogate the need to identify transactions with non-U.S. counterparties that involve U.S. personnel.[350]

However, the Commission also noted in the ANE Adopting Release that restructuring is itself costly. To reduce the costs of assessment and potential dealer registration, a non-U.S. person may need to incur costs to ensure that U.S. personnel are not involved in arranging, negotiating, or executing transactions with non-U.S. counterparties. The Commission was able to quantify some, but not all of the costs of restructuring in the ANE adopting release.[351] As discussed above in part VII.A.2.d, non-U.S. persons may make their location decisions based on business considerations such as maintaining 24-hour operations or the value of local market expertise. Thus, restructuring business lines or relocating personnel (or the activities performed by U.S. personnel) to avoid the United States could result in less efficient operations for non-U.S. persons active in the security-based swap market.

The proposed exception would benefit non-U.S. persons by offering them an alternative to costly relocation or restructuring that would still permit them to avoid some of the costs associated with assessing their market-facing activity while also reducing the likelihood that their market-facing activity crosses the *de minimis* threshold. As discussed in detail below, the availability of the proposed exception would be conditioned on the use of a registered entity and compliance with certain Title VII requirements designed to protect counterparties but not all Title VII requirements. To the extent that the costs of compliance with these proposed conditions as part of Alternative 1 and Alternative 2 are lower than the compliance costs in the absence of the proposed amendment and the costs of business restructuring, the exception could reduce the regulatory cost burden for the non-U.S. person or group.

The Commission recognizes that U.S.-based dealing entities may use the proposed exception by booking transactions with non-U.S. counterparties into non-U.S. affiliates, thereby avoiding the application of the full set of security-based swap dealer requirements to those transactions and the associated security-based swaps.[352] As discussed further in part VII.B.1.b *infra,* U.S.-based dealing entities that use the conditional exception in this manner may benefit by incurring lower compliance costs when providing liquidity to non-U.S. counterparties.

The Commission's designation of a listed jurisdiction by order could signal to non-U.S. counterparties that a non-U.S. person was subject to a regulatory regime that, at a minimum, is consistent with the public interest in terms of financial responsibility requirements, the jurisdiction's supervisory compliance program, the enforcement authority in connection with those requirements, and other factors the Commission may consider. This process potentially provides a certification benefit to non-U.S. persons availing themselves of the proposed exception by demonstrating to non-U.S. counterparties the applicability of regulatory requirements that would be in the public interest.

Table 2 summarizes the quantifiable costs the Commission estimates non-U.S. persons could incur as a result of the conditions associated with the proposed exception. The per-entity cost estimates assume the de novo formation of a security-based swap dealer or broker-dealer. The Commission expects that these are likely upper bounds for per-entity costs for two reasons. First, non-U.S. persons may already be regulated by jurisdictions with similar requirements and, as a consequence of foreign regulatory requirements, may already have established infrastructure, policies, and procedures that would facilitate meeting the conditions of the proposed exception. For example, a non-U.S. person regulated by a jurisdiction with similar trade acknowledgement and verification requirements would likely already have an order management system in place capable of complying with Rule 15Fi–2,

[347] *See, e.g.,* proposed Alternative 1—proposed paragraph (d)(1)(iii)(A) of Rule 3a71–3.

[348] The available data limit the Commission's ability to discern the multiple different legal entities each of which engages in security-based swap market-facing activity at levels above the *de minimis* thresholds because the way in which non-U.S. persons organize their dealing business may not align with the way their transaction volumes are accounted for in TIW. In particular, it is possible that some of the 10 non-U.S. persons identified in the TIW data as potential registrants aggregate transaction volumes of multiple non-U.S. person dealers. In such cases, the exclusion of transactions between these non-U.S. person dealers and non-U.S. counterparties from the *de minimis* calculations may result in multiple non-U.S. person dealers no longer meeting the *de minimis* threshold.

[349] *See id.*

[350] In 2016, the Commission estimated a cost of $410,000 per entity to establish systems to identify market-facing activity arranged, negotiated, or executed using U.S. personnel and $6,500 per entity per year for training, compliance and verification costs. *See* ANE Adopting Release, 81 FR at 8627. Adjusted for inflation, these amounts are approximately $435,000 and $6,900 in 2018 dollars.

[351] In 2016, the Commission estimated it would cost approximately $28,300 per entity to establish policies and procedures to restrict communication between personnel located in the United States employed by non-U.S. persons or their agents, and other personnel involved in market-facing activity. *See* ANE Adopting Release, 81 FR at 8628. Adjusted for inflation, this is approximately $30,000. The Commission notes that the foregoing is one of the ways in which a non-U.S. person might choose to restructure its business activities. Other restructuring methods, such as the relocation of U.S. personnel to locations outside the United States, potentially would be more costly.

[352] *See* parts III.A and VII.A.7, *supra.*

making development of a novel system for the purpose of taking advantage of the proposed exception unnecessary. Second, non-U.S. persons that already have an affiliated registered security-based swap dealer (under Alternative 1 or 2) or an affiliated registered broker-dealer (under Alternative 2) likely would use their existing registered affiliates to rely on the proposed exception rather than register new entities.

TABLE 2—ESTIMATES OF QUANTIFIABLE COSTS ASSOCIATED WITH PROPOSED AMENDMENT TO RULE 3a71–3 [353]

	Initial costs		Ongoing costs	
	Per entity	Aggregate	Per entity	Aggregate
Registered entity:				
Security-based swap dealer registration	$514,000	$12,336,000	$2,705	* $64,920
Security-based swap dealer capital requirement	.....	.....	3,000,000	72,000,000
Applicable SBSD requirements	11,688,700	280,528,800	522,900	12,549,600
Recordkeeping:				
• If registered entity is a registered security-based swap dealer and registered broker-dealer	437,444	10,498,656	101,278	2,430,672
• If registered entity is a stand-alone registered SBSD	231,988	5,567,712	59,541	1,428,984
• If registered entity is a bank registered SBSD	178,534	4,284,816	42,952	1,030,848
Trading relationship documentation	3,000	72,000	3,528	84,672
Consent to service of process	409	9,816	.....	.....
Broker-dealer registration [354]	291,500	7,000,000	53,000	1,272,000
Broker-dealer capital requirement [355]	.....	.....	35,300	847,200
Non-U.S. entity:				
Trading relationship documentation	3,000	72,000	7,056	169,344
Consent to service of process	409	9,816	.....	.....
Disclosure of limited Title VII applicability	* 29,715	† 713,160	.....	.....
"Listed jurisdiction" applications	115,920	347,760	.....	.....

* and 100 hours.
† and 2,400 hours.

Under Alternative 1, if a non-U.S. person, or its affiliated group, seeks to utilize the exception, that person, or its affiliated group, would incur the cost of registering one U.S. based entity as a security-based swap dealer (if there otherwise is not an affiliated security-based swap dealer present).[356] The Commission estimates per entity initial costs of registering a security-based swap dealer of approximately $514,000.[357] In addition, the non-U.S. person or its affiliated group would incur ongoing costs associated with its registered security-based swap dealer of approximately $2,705.[358] Based on the Commission's estimate that up to 24 [359] persons might avail themselves of Alternative 1, the aggregate initial costs associated with registering security-based swap dealers under Alternative 1 would be approximately $12,336,000 and the aggregate ongoing costs would be approximately $64,920.[360] The U.S. person affiliate of such a non-U.S. person or affiliated group would also be required to meet minimum capital requirements as a registered security-based swap dealer.[361] At a minimum, the Commission estimates the ongoing cost of this capital to be approximately $3 million [362] per entity and $72 million in aggregate.[363] To the extent that this capital is held in liquid assets [364] that

[353] Unless otherwise stated, cost estimates presented in Table 2 apply to both Alternatives 1 and 2.

[354] Cost applicable only to Alternative 2.

[355] Cost applicable only to Alternative 2.

[356] This is a Title VII programmatic cost and is in addition to other Title VII programmatic costs discussed in part VII.B.1.b, *infra.*

[357] These estimates incorporate quantifiable initial costs presented in the Registration Adopting Release, 80 FR at 48990–48995 and 49005–49006, adjusted for CPI inflation using data from the Bureau of Labor Statistics between 2015 and 2018. Specifically, per entity initial costs are estimated in 2015 dollars as $11,886 (filing Form SBSE) + $12,125 (senior officer certification) + $410,310 (associated natural person certifications) + $24,735 (associated entity person certifications) + $25,424.50 (initial filing of Schedule F) = $484,480.50, and adjusted by 1.06 to $513,549.30 or approximately $514,000 in current dollars.

[358] These estimates incorporate quantifiable annual costs presented in the Registration Adopting Release, 80 FR at 48990–48995 and 49005–49006, adjusted for CPI inflation using data from the Bureau of Labor Statistics between 2015 and 2018. Specifically, ongoing costs are estimated in 2015 dollars as $849 (amending Form SBSE) + $1,373.25 (amending Schedule F) + $46.31 (retaining signature pages) + $283 (filing withdrawal form) = $2,551.56, and adjusted by 1.06 to $2,704.65 or approximately $2,705 in current dollars.

[359] *See* part VII.A.7, *supra.*

[360] Aggregate initial costs calculated as 24 × $514,000 = $12,336,000. Aggregate ongoing costs calculated as 24 × $2,705 = $64,920.

[361] Under proposed rules, a registered non-bank security-based swap dealer may be subject to minimum fixed-dollar capital requirements of $20 million or $1 billion in net capital and $100 million or $5 billion in tentative net capital, depending in part on whether it is a stand-alone security-based swap dealer or a security-based swap dealer that is dually registered as a broker-dealer, and on whether it uses models to compute deductions for market and credit risk. *See* Capital, Margin and Segregation Proposing Release, 77 FR at 70329, 70333. Registered security-based swap dealers that have a prudential regulator must comply with capital requirements that the prudential regulators have prescribed. *See* 80 FR 74840 (Nov. 30, 2015) (adopting capital requirements for bank security-based swap dealers).

[362] This estimation assumes that the registered entity must maintain a minimum of $20 million in net capital. *See* note 361, *supra.* The Commission estimated the cost of capital in two ways. First, the time series of average return on equity for all U.S. banks between the fourth quarter 1983 and the first quarter 2018 (*see* Federal Financial Institutions Examination Council (US), Return on Average Equity for all U.S. Banks [USROE], retrieved from FRED, Federal Reserve Bank of St. Louis on December 7, 2018, *available at https://fred.stlouisfed.org/series/USROE*), are averaged to arrive at an estimate of 11.26%. The cost of capital is calculated as 11.26% × $20 million = $2.252 million or approximately $2.3 million. The Commission preliminarily believes that use of the historical return on equity for U.S. banks adequately captures the cost of capital because of the 12 persons that potentially may use the proposed exception, eight are banks and three have bank affiliates. *See* part VII.A.7 *supra.* To the extent that this approach does not adequately capture the cost of capital of persons that are not banks or have no bank affiliates, the Commission supplements the estimation by also using the annual stock returns on financial stocks to calculate the cost of capital. With this second approach, the annual stock returns on a value-weighted portfolio of financial stocks from 1983 to 2017 (*see* Professor Ken French's website, *available at http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/data_library.html*) are averaged to arrive at an estimate of 16.96%. The cost of capital is calculated as 16.96% × $20 million = $3.392 million or approximately $3.4 million. The final estimate of the cost of capital is the average of $2.3 million and $3.4 million = (2.3 + 3.4)/2 = $2.85 million or approximately $3 million.

[363] Aggregate costs calculated as $3 million × 24 entities = $72 million.

[364] *See* Capital, Margin and Segregation Proposing Release, 77 FR at 70219.

generate a positive return to the registered security-based swap dealer, that positive return could be used to offset, at least in part, the ongoing cost of capital.

In addition to registering security-based swap dealers, U.S. person affiliates of non-U.S. persons seeking to rely on Alternative 1 would be required to comply with applicable security-based swap dealer requirements, including those related to disclosures of risks, characteristics, incentives, and conflicts of interest, suitability, communications, trade acknowledgment and verification, and portfolio reconciliation.[365] The Commission estimates initial costs associated with these requirements of up to approximately $11,688,700 per entity,[366] or up to $280,528,800 in aggregate,[367] and ongoing costs associated with these requirements of approximately $522,900 per entity,[368] or up to $12,549,600 in aggregate.[369]

Under Alternative 1, the registered security-based swap dealer also would be responsible for creating and maintaining books and records related to the transactions subject to the exception that are required, as applicable, by Exchange Act Rules 18a–5 and 18a–6, including any books and records requirements relating to the provisions specified in proposed paragraph (d)(1)(iii)(B).[370] If the registered security-based swap dealer is also a registered broker-dealer, then it would need to comply with Exchange Act Rules 17a–3 and 17a–4. The Commission estimates the initial costs associated with these rules to be approximately $437,444 per entity,[371] or up to $10,498,656 in aggregate,[372] and ongoing costs associated with these rules of approximately $101,278 per entity,[373] or up to $2,430,672 in

[365] *See* proposed Rule 3a71–3(d)(1)(ii)(B). The costs of complying with applicable security-based swap dealer requirements under proposed Alternative 1 are Title VII programmatic costs and are in addition to other Title VII programmatic costs discussed in part VII.B.1.b, *infra.*

[366] These estimates incorporate quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30092–30093, 30111, 30117, 30126, the Trade Acknowledgement and Verification Adopting Release, 81 FR at 39839, and the Risk Mitigation Proposing Release, 84 FR at 4658–4659, adjusted for CPI inflation, where applicable, using data from the Bureau of Labor Statistics between 2016 and 2018. Specifically, initial costs associated with disclosures, suitability, communications, and trade acknowledgement and verification are estimated in 2016 dollars as $906,666.67 (disclosures) + $ 523,640 (suitability) + $16,680 (communications) + $128,550 (trade acknowledgement and verification) = $1,575,536.67, and adjusted by 1.05 to $1,654,313.50 in current dollars. The cost associated with disclosures has been adjusted to account for the fact that the disclosures of clearing rights and daily mark are not part of proposed paragraph (d)(1)(ii)(B)(*1*) of Rule 3a71–3. Initial costs associated with portfolio reconciliation are estimated in current dollars as $10,034,360. Per entity initial costs = $1,654,313.50 + $10,034,360 = $11,688,673.50 or approximately $11,688,700.00.

[367] Aggregate initial costs = Per entity initial costs of $11,688,700.00 × 24 entities = $280,528,800.

[368] These estimates incorporate quantifiable ongoing costs presented in the Business Conduct Adopting Release, 81 FR at 30092–30093, 30111, 30126, the Trade Acknowledgement and Verification Adopting Release, 81 FR at 39839, and the Risk Mitigation Proposing Release, 84 FR at 4658–4659, adjusted for CPI inflation, where applicable, using data from the Bureau of Labor Statistics between 2016 and 2018. Specifically, ongoing costs associated with disclosures, communications, and trade acknowledgement and verification are estimated in 2016 dollars as $392,533.33 (disclosures) + $89,094 (trade acknowledgement and verification) = $481,627.33, and adjusted by 1.05 to $505,708.70 in current dollars. The cost associated with disclosures has been adjusted to account for the fact that the disclosures of clearing rights and daily mark are not part of proposed paragraph (d)(1)(ii)(B)(*1*) of Rule 3a71–3. Ongoing costs associated with portfolio reconciliation are estimated in current dollars as $17,180. Per entity ongoing costs = $505,708.70 + $17,180 = $522,888.70 or approximately $522,900.

[369] Aggregate ongoing costs = Per entity ongoing costs of $522,900 × 24 entities = $12,549,600.

[370] *See* proposed paragraph (d)(1)(iii)(B) of Rule 3a71–3.

[371] The per entity initial costs associated with proposed amendments to Exchange Act Rule 17a–3 (assuming the entity is not an ANC broker-dealer) = 150 hours × $283/hour national hourly rate for a compliance manager = $42,450 (*See* Recordkeeping Proposing Release, 79 FR at 25262 for burden hours). The $283 per hour figure for a compliance manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* as modified by Commission staff to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Recordkeeping Proposing Release, 79 FR at 25295 n.1403.

To estimate the per entity initial costs associated with current Exchange Act Rule 17a–3, the Commission assumes these costs are proportional to the per entity ongoing costs associated with current Exchange Act Rule 17a–3. Further, the Commission assumes that this proportion is equal to the proportion of per entity initial costs to per entity ongoing costs associated with proposed amendments to Exchange Act Rule 17a–3. As discussed in note 373 *infra,* the Commission estimates the per entity ongoing costs associated with proposed amendments to Exchange Act Rule 17a–3 as $12,288. The proportion of per entity initial costs to per entity ongoing costs associated with proposed amendments to Exchange Act Rule 17a–3 is $42,450/$12,288 or approximately 3.5. The per entity initial costs associated with current Exchange Act Rule 17a–3 is estimated as 3.5 × $53,880.83 (per entity ongoing costs associated with current Exchange Act Rule 17a–3, *see* note 373 *infra*) = $188,582.91.

The per entity initial costs associated with proposed amendments to Exchange Act Rule 17a–4 (assuming the entity is not an ANC broker-dealer) = 156 hours × $312/hour national hourly rate for a senior database administrator = $48,672. (See Recordkeeping Proposing Release, 79 FR at 25265 for burden hours). The $312 per hour figure for a senior database administrator is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* as modified by Commission staff to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

To estimate the per entity initial costs associated with current Exchange Act Rule 17a–4, the Commission assumes these costs are proportional to the per entity ongoing costs associated with current Exchange Act Rule 17a–4. Further, the Commission assumes that this proportion is equal to the proportion of per entity initial costs to per entity ongoing costs associated with proposed amendments to Exchange Act Rule 17a–4. As discussed in note 373 *infra,* the Commission estimates the per entity ongoing costs associated with proposed amendments to Exchange Act Rule 17a–4 as $7,928. The proportion of per entity initial costs to per entity ongoing costs associated with proposed amendments to Exchange Act Rule 17a–4 is $48,672/$7,928 or approximately 6.2. The per entity initial costs associated with current Exchange Act Rule 17a–4 is estimated as 6.2 – $21,448 (per entity ongoing costs associated with current Exchange Act Rule 17a–4, *see* note 373 *infra*) = $132,977.60.

The per entity initial costs associated with amendments to Exchange Act Rules 17a–3 and 17a–4 = $42,450 + $188,582.91 + 48,672 + $132,977.60 = $412,682.51, and adjusted by 1.06 CPI inflation between 2014 and 2018 (from the Bureau of Labor Statistics) to $437,443.46 in current dollars or approximately $437,444.

[372] Aggregate initial costs = Per entity initial costs of $437,444 × 24 entities = $10,498,656.

[373] The per entity ongoing costs associated with current Exchange Act Rule 17a–3 = 673.40 hours × $64/hour national hourly rate for a compliance clerk + per entity external costs of $10,783.23 = $53,880.83. Per entity ongoing burden hours = total burden hours of 2,763,612/4,104 broker-dealer respondents = 673.40 hours. Per entity external costs = total external costs of $44,254,361/4,104 broker-dealer respondents = $10,783.23. For number of respondents, total burden hours, and total external costs, *see* Commission, ''Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3'' (Mar. 9, 2017), *available at https://www.reginfo.gov/public/do/DownloadDocument?objectID=72125401.* The $64 per hour figure for a compliance clerk is from SIFMA's *Office Salaries in the Securities Industry 2013,* as modified by Commission staff to account for an 1,800-hour work-year, and multiplied by 2.93 to account for bonuses, firm size, employee benefits, and overhead.

The per entity ongoing costs associated with proposed amendments to Exchange Act Rule 17a–3 (assuming the entity is not an ANC broker-dealer) = 192 hours × $64/hour national hourly rate for a compliance clerk = $12,288 (*See* Recordkeeping Proposing Release, 79 FR at 25262 for burden hours).

The per entity ongoing costs associated with current Exchange Act Rule 17a–4 = 257 hours ×

Continued

aggregate.[374] If the registered security-based swap dealer is a stand-alone registered security-based swap dealer, then it would need to comply with Exchange Act Rules 18a–5 and 18a–6. The Commission estimates the initial costs associated with these rules to be approximately $231,988 per entity,[375] or up to $5,567,712 in aggregate,[376] and ongoing costs associated with these rules of approximately $59,541 per entity,[377] or up to $1,428,984 in aggregate.[378] The discussion in part VII.A.7 above suggests that a number of the persons that may make use of the proposed exception likely would be banks.[379] In light of this finding, the Commission also presents cost estimates associated with Exchange Act Rules 18a–5 and 18a–6 under the assumption that the registered security-based swap dealer is a bank registered security-based swap dealer. The Commission estimates the initial costs associated with these rules to be approximately $178,534 per entity,[380] or up to $4,284,816 in aggregate,[381] and ongoing costs associated with these rules of approximately $42,952 per entity,[382] or up to $1,030,848 in aggregate.[383]

The registered security-based swap dealer also must obtain from the non-U.S. person relying on the exception, and maintain, documentation encompassing all terms governing the trading relationship between the non-U.S. person and its counterparty relating to the transactions subject to this exception, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation, and dispute resolution.[384] The Commission preliminarily believes that both the registered entity and its non-U.S. affiliate will incur costs to comply with this condition. However as discussed above, the Commission preliminarily believes that the costs incurred by the registered entity would be passed on to the non-U.S. affiliate.[385] For registered entities, the Commission estimates the initial costs associated with this condition to be approximately $3,000 per registered entity,[386] or up to $72,000 in aggregate,[387] and ongoing costs associated with this condition of approximately $3,528 per registered entity,[388] or up to $84,672 in

---

$64/hour national hourly rate for a compliance clerk + per entity external costs of $5,000 = $21,448. *See* Commission, ''Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–4'' (Oct. 19, 2016), *available at https://www.reginfo.gov/public/do/DownloadDocument?objectID=68823501.*

The per entity on going costs associated with proposed amendments to Exchange Act Rule 17a–4 (assuming the entity is not an ANC broker-dealer) = 72 hours × $64/hour national hourly rate for a compliance clerk + per entity external costs of $3,320 = $7,928 (*See* Recordkeeping Proposing Release, 79 FR at 25265 for burden hours and external costs).

The total per entity ongoing costs = $53,880.83 + $12,288 + $21,448 + $7,928 = $95,544.83, and adjusted by 1.06 CPI inflation between 2014 and 2018 (from the Bureau of Labor Statistics) to $101,277.52 in current dollars or approximately $101,278.

[374] Aggregate ongoing costs = Per entity ongoing costs of $101,278 × 24 entities = $2,430,672.

[375] The per entity initial costs associated with Exchange Act Rule 18a–5 (assuming that the stand-alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 320 hours × $283/hour national hourly rate for a compliance manager + per entity external costs of $1,000 = $91,560 (*See* Recordkeeping Proposing Release, 79 FR at 25262 for burden hours and external costs). *See* note 371, *supra,* for a derivation of the national hourly rate for a compliance manager.

The per entity initial costs associated with Exchange Act Rule 18a–6 (assuming that the stand-alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 408 hours × $312/hour national hourly rate for a senior database administrator = $127,296 (*See* Recordkeeping Proposing Release, 79 FR at 25265 for burden hours). *See* note 371, *supra,* for a derivation of the national hourly rate for a senior database administrator.

The per entity initial costs associated with Exchange Act Rules 18a–5 and 18a–6 = $91,560 + 127,296 = $218,856, and adjusted by 1.06 CPI inflation between 2014 and 2018 (from the Bureau of Labor Statistics) to $231,987.36 in current dollars or approximately $231,988.

[376] Aggregate initial costs = Per entity initial costs of $231,988 × 24 entities = $5,567,712.

[377] The per entity ongoing costs associated with Exchange Act Rule 18a–5 (assuming that the stand-alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 400 hours × $64/hour national hourly rate for a compliance clerk + per entity external costs of $4,650 = $30,250 (*See* Recordkeeping Proposing Release, 79 FR at 25262 for burden hours and external costs). *See* note 373, *supra,* for a derivation of the national hourly rate for a compliance clerk.

The per entity ongoing costs associated with Exchange Act Rule 18a–6 (assuming that the stand-alone registered security-based swap dealer does not have a prudential regulator and is not an ANC stand-alone registered security-based swap dealer) = 310 hours × $64/hour national hourly rate for a compliance clerk + per entity external costs of $6,080 = $25,920. (*See* Recordkeeping Proposing Release, 79 FR at 25265 for burden hours and external costs).

The per entity ongoing costs associated with Exchange Act Rules 18a–5 and 18a–6 = $30,250 + 25,920 = $56,170, and adjusted by 1.06 CPI inflation between 2014 and 2018 (from the Bureau of Labor Statistics) to $59,540.20 in current dollars or approximately $59,541.

[378] Aggregate ongoing costs = Per entity ongoing costs of $59,541 × 24 entities = $1,428,984.

[379] *See* part VII.A.7, *supra,* stating that of the 12 persons identified in 2017 TIW data as potential users of the proposed exception, eight are banks.

[380] The per entity initial costs associated with Exchange Act Rule 18a–5 (assuming that the registered security-based swap dealer has a prudential regulator) = 260 hours × $283/hour national hourly rate for a compliance manager = $73,580 (*See* Recordkeeping Proposing Release, 79 FR at 25262 for burden hours). *See* note 371, *supra,* for a derivation of the national hourly rate for a compliance manager.

The per entity initial costs associated with Exchange Act Rule 18a–6 (assuming that the registered security-based swap dealer has a prudential regulator) = 304 hours × $312/hour national hourly rate for a senior database administrator = $94,848 (*See* Recordkeeping Proposing Release, 79 FR at 25265 for burden hours). *See* note 371, *supra,* for a derivation of the national hourly rate for a senior database administrator.

The per entity initial costs associated with Exchange Act Rules 18a–5 and 18a–6 = $73,580 + $94,848 = $168,428, and adjusted by 1.06 CPI inflation between 2014 and 2018 (from the Bureau of Labor Statistics) to $178,533.68 in current dollars or approximately $178,534.

[381] Aggregate initial costs = Per entity initial costs of $178,534 × 24 entities = $4,284,816.

[382] The per entity ongoing costs associated with Exchange Act Rule 18a–5 (assuming that the registered security-based swap dealer has a prudential regulator) = 325 hours × $64/hour national hourly rate for a compliance clerk = $20,800 (*See* Recordkeeping Proposing Release, 79 FR at 25262 for burden hours). *See* note 373, *supra,* for a derivation of the national hourly rate for a compliance clerk.

The per entity ongoing costs associated with Exchange Act Rule 18a–6 (assuming that the registered security-based swap dealer has a prudential regulator) = 230 hours × $64/hour national hourly rate for a compliance clerk + per entity external costs of $5,000 = $19,720. (*See* Recordkeeping Proposing Release, 79 FR at 25265 for burden hours and external costs).

The per entity ongoing costs associated with Exchange Act Rules 18a–5 and 18a–6 = $20,800 + 19,720 = $40,520, and adjusted by 1.06 CPI inflation between 2014 and 2018 (from the Bureau of Labor Statistics) to $42,951.20 in current dollars or approximately $42,952.

[383] Aggregate ongoing costs = Per entity ongoing costs of $42,952 × 24 entities = $1,030,848.

[384] *See* note 370, *supra.*

[385] *See* part VIII.A.4.e, *infra.*

[386] Per entity initial costs = 10 hours × $283/hour national hourly rate for a compliance manager = $2,830. *See* note 371, *supra,* for a derivation of the national hourly rate for a compliance manager. Adjusting for CPI inflation using data from the Bureau of Labor Statistics between 2014 and 2018, the per entity initial costs in current dollars = $2,830 × 1.06 = $2,999.80 or approximately $3,000.

[387] Aggregate initial costs = Per entity initial costs of $3,000 × 24 entities = $72,000.

[388] Per entity ongoing costs = 1 hour × 52 weeks × $64/hour national hourly rate for a compliance

aggregate.[389] For non-U.S. entities, the Commission estimates the initial costs associated with this condition to be approximately $3,000 per non-U.S. entity,[390] or up to $72,000 in aggregate,[391] and ongoing costs associated with this condition of approximately $7,056 per non-U.S. entity,[392] or up to $169,344 in aggregate.[393]

The registered security-based swap dealer also would be responsible for obtaining from the non-U.S. person relying on this exception written consent to service of process for any civil action brought by or proceeding before the Commission, providing that process may be served on the non-U.S. person by service on the registered entity in the manner set forth in the registered entity's current Form SBSE, SBSE–A, or SBSE–BD, as applicable.[394] The Commission preliminarily believes that both the registered entity and its non-U.S. affiliate will incur one-time costs to comply with this condition.[395] For registered entities, the Commission estimates the one-time costs associated with this condition to be approximately $409 per registered entity,[396] or up to $9,816 in aggregate.[397] For non-U.S. entities, the Commission estimates the one-time costs associated with this condition to be approximately $409 per non-U.S. entity,[398] or up to $9,816 in aggregate.[399] To the extent both parties agree to use an industry-standard consent provision,[400] these costs may be limited.

Under Alternative 2, if a non-U.S. person, or its affiliated group, seeks to utilize the exception, that person, or its affiliated group, may incur the cost of registering one entity as a broker-dealer (if there otherwise is not an affiliated broker-dealer present) or as a security-based swap dealer. Because the conditions for using a security-based swap dealer to utilize the exception under Alternative 1 are identical to the conditions under Alternative 2, non-U.S. persons who avail themselves of the proposed exception by registering a security-based swap dealer under Alternative 2 would incur the same costs described above for registering a security-based swap dealer under Alternative 1.

Alternatively, a non-U.S. person could choose to use the exception permitted under Alternative 2 by using a registered broker-dealer to conduct U.S. activity. A non-U.S. person choosing this option could incur initial and ongoing costs associated with registering an affiliate as a broker-dealer. The Commission preliminarily estimates the costs of registering a new broker-dealer to be approximately $291,500,[401] and estimate ongoing costs of meeting registration requirements as a broker-dealer to be approximately $53,000[402] per year. Based on the Commission's estimate that up to 24[403] persons might avail themselves of the proposed exception and assuming that these persons choose to do so by using registered broker-dealers permitted under Alternative 2, the Commission preliminarily estimates the aggregate costs of broker-dealer registration to be approximately $7 million[404] and the aggregate ongoing costs of meeting broker-dealer registration requirements to be approximately $1.272 million[405] per year. Non-U.S. persons meeting the conditions of the proposed exception under Alternative 2 by using a registered broker-dealer would additionally incur the cost of complying with applicable requirements associated with the registered broker-dealer status, including maintaining a minimum level of net capital. The Commission estimates the ongoing cost of this capital to be approximately $35,300[406] per entity. If the up to 24 persons that might use the proposed exception choose to do so by using registered broker-dealers permitted under Alternative 2, the estimated aggregate ongoing cost of capital is approximately $847,200.[407] To the extent that this capital is held in liquid assets[408] that generate a positive return to the registered broker-dealer, that positive return would offset, at least in part, the ongoing cost of capital.

All non-U.S. persons using the proposed exception under Alternative 2 would incur the cost of complying with security-based swap dealer requirements related to disclosures of risks, characteristics, incentives, and conflicts of interest, suitability,

clerk= $3,328. *See* note 373, *supra,* for a derivation of the national hourly rate for a compliance clerk. Adjusting for CPI inflation using data from the Bureau of Labor Statistics between 2014 and 2018, the per entity initial costs in current dollars = $3,328 × 1.06 = $3,527.68 or approximately $3,528.

[389] Aggregate ongoing costs = Per entity ongoing costs of $3,528 × 24 entities = $84,672.

[390] Per entity initial costs in current dollars = 10 hours × $283/hour national hourly rate for a compliance manager × 1.06 CPI inflation adjustment = $2,999.80 or approximately $3,000. See note 386, *supra.*

[391] Aggregate initial costs = Per entity initial costs of $3,000 × 24 entities = $72,000.

[392] Per entity ongoing costs in current dollars = 2 hours × 52 weeks × $64/hour national hourly rate for a compliance clerk × 1.06 CPI inflation adjustment = $7,055.36 or approximately $7,056. See note 388, *supra.*

[393] Aggregate ongoing costs = Per entity ongoing costs of $7,056 × 24 entities = $169,344.

[394] *See* proposed paragraph (d)(1)(iii)(B)(3) of Rule 3a71–3.

[395] See part VIII.A.2.f, *infra.* The Commission assumes that the burden will be allocated equally between the registered entity and the non-U.S. affiliate.

[396] Per entity initial costs = 1 hour × $409/hour for national hourly rate for an attorney = $409. The hourly cost figure is based upon data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead).

[397] Aggregate initial costs = Per entity initial costs of $409 × 24 entities = $9,816.

[398] *See* note 396, *supra.*

[399] *See* note 397 *supra.*

[400] *See* part VIII.A.2.f, *infra.*

[401] The Commission previously estimated that an entity would incur costs of $275,000 to register as a broker-dealer and become a member of a national securities association. *See* Crowdfunding, Exchange Act Release No. 76324 (October 30, 2015), 80 FR 71388 (November 16, 2015) (''Regulation Crowdfunding Adopting Release''), 80 FR at 71509. Accounting for CPI inflation between 2015 and 2018, the Commission now estimates that an entity would incur costs of $275,000 × 1.06 = $291,500 to register as a broker-dealer and become a member of a national securities association.

[402] The Commission previously estimated that an entity would incur ongoing annual costs of $50,000 to maintain broker-dealer registration and membership of a national securities association. *See* Regulation Crowdfunding Adopting Release, 80 FR at 71509. Accounting for CPI inflation between 2015 and 2018, the Commission now estimates that an entity would incur ongoing annual costs of $50,000 × 1.06 = $53,000 to maintain broker-dealer registration and membership of a national securities association. The estimation of ongoing annual costs is based on the assumption that the entity would use existing staff to perform the functions of the registered broker-dealer and would not incur incremental costs to hire new staff. To the extent that the entity chooses to hire new staff, the ongoing annual costs may be higher.

[403] *See* part VII.A.7, *supra.*

[404] Aggregate broker-dealer registration costs calculated as $291,500 × 24 entities = $6,996,000 or approximately $7,000,000.

[405] Aggregate ongoing costs of meeting broker-dealer registration requirements calculated as = $53,000 × 24 entities = $1,272,000.

[406] The Commission assumes that the registered entity must maintain a minimum of $250,000 in net capital. *See* Exchange Act Rule 15c3–1. The Commission preliminarily believes that the methodology for estimating the cost of capital of a registered security-based swap dealer under proposed Alternative 1 is also appropriate for estimating the cost of capital of a registered broker-dealer under proposed Alternative 2 (*see* note 362, *supra*). Using the historical return on equity for all U.S. banks, the Commission calculated the cost of capital as 11.26% × $250,000 = $28,150 or approximately $28,200. The Commission preliminarily believes that use of the historical return on equity for U.S. banks adequately captures the cost of capital because of the 12 persons that potentially may use the proposed exception, 8 are banks and 3 have bank affiliates. *See* part VII.A.7 *supra.* To the extent that this approach does not adequately capture the cost of capital of persons that are not banks or have no bank affiliates, the Commission supplements the estimation by also using the annual stock returns on financial stocks to calculate the cost of capital. With this second approach, the Commission calculated the cost of capital as 16.96% × $250,000 = $42,400. The final estimate of the cost of capital is the average of $28,200 and $42,400 = (28,200 + 42,400)/2 = $35,300.

[407] Aggregate ongoing cost of capital calculated as $35,300 × 24 entities = $847,200.

[408] *See* Exchange Act Rule 15c3–1.

communications, trade acknowledgment and verification, and portfolio reconciliation;[409] and requirements related to providing the Commission access to books, records and testimony[410] quantified above in connection with Alternative 1, regardless of whether these persons meet the conditions of Alternative 2 using a registered broker-dealer or a registered security-based swap dealer.

To the extent that a non-U.S. person has an existing, registered broker-dealer affiliate[411] and uses that affiliate to rely on the conditional exception under Alternative 2, the non-U.S. person would not incur costs associated with registering a broker-dealer and the incremental compliance cost would be limited to costs associated with complying with the restricted set of security-based swap dealer requirements as discussed above.

Although costly, the Commission preliminarily believes that the conditions associated with the proposed exception afford appropriate counterparty protections under Title VII and the Commission has considered the benefits of these specific Rule provisions in prior Commission releases.[412] In the context of the proposed exception, these conditions would benefit non-U.S. counterparties. Moreover, the registered entity that is a majority-owned affiliate of the non-U.S. person availing itself of the proposed exception under Alternative 1 or Alternative 2 would be required to disclose to non-U.S. counterparties, in connection with each transaction covered by the proposed exception, that the non-U.S. person is not registered with the Commission and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps do not apply in connection with the transaction. The Commission preliminarily believes that non-U.S. persons would incur an upfront cost of $713,160 and 2,400 hours[413] to develop appropriate disclosures, but that non-U.S. persons using the proposed exception would integrate these disclosures into existing trading systems so that the ongoing costs of delivering these disclosures would be insubstantial. Furthermore, disclosures are only required when the identity of the counterparty is known to the registered entity, so anonymous transactions would not be subject to this requirement.[414]

These required disclosures would benefit non-U.S. counterparties by informing them of the regulatory treatment of transactions under the proposed exception. To the extent that non-U.S. counterparties value elements of the Title VII regulatory framework that do not apply to transactions under the proposed exception, they may attempt to negotiate more favorable prices to compensate themselves for the additional risks they may perceive. Alternatively, non-U.S. counterparties that prefer transactions fully covered by the Commission's security-based swap regulatory framework could search for a registered security-based swap dealer willing to transact with all Title VII protections in place.

In connection with the proposal, a situation may arise where some jurisdictions are designated by order as listed jurisdictions before other jurisdictions, whether the designation is on the Commission's own initiative or in response to applications. To the extent that some jurisdictions become listed jurisdictions earlier than other jurisdictions, non-U.S. persons operating in jurisdictions that become listed jurisdictions earlier than other jurisdictions potentially could rely on the conditional exception sooner than, and may gain a competitive advantage over, non-U.S. persons operating in jurisdictions that become listed jurisdictions at a later date. In particular, non-U.S. persons operating in jurisdictions that become listed jurisdictions earlier than other jurisdictions and that rely on the exception may incur lower regulatory burdens[415] than non-U.S. persons operating in jurisdictions that become listed jurisdictions at a later date. That said, this cost advantage may be limited if non-U.S. persons operating in jurisdictions that currently are not listed jurisdictions could set up operations in a listed jurisdiction to rely on the exception.

An application for listed jurisdiction designation would be filed pursuant to Rule 0–13 and, like the proposed exception, is purely voluntary. Thus, the Commission expects that, to the extent that market participants submit applications for designation of one or more listed jurisdictions, non-U.S. persons would do so only to the extent that they believe that compliance with each relevant jurisdiction's regulatory regime, in combination with the other conditions of the proposed exception, was less burdensome than the alternatives of (i) incurring assessment costs related to *de minimis* calculations and potential compliance with the Title VII regulatory framework for dealers, and (ii) restructuring their security-based swap businesses to avoid arranging, negotiating, or executing transactions with non-U.S. counterparties using personnel located in the United States. The Commission estimates that three non-U.S. persons that seek to rely on the exception would file listed jurisdiction applications.[416] The Commission estimates the costs associated with each application to be approximately $115,920, or up to $347,760 in aggregate.[417] The Commission notes that any costs incurred by a non-U.S. person in filing an application for a listed jurisdiction may be obviated in part by the provision that permits a foreign financial regulatory authority or authorities supervising such a non-U.S. person or its security-based swap activities to file such an application. Further, to the extent that certain jurisdictions are designated as listed jurisdictions if this

[409] *See* Alternative 2 proposed paragraph (d)(1)(ii)(B) of Rule 3a71–3.

[410] *See* Alternative 2 proposed paragraph (d)(1)(iii)(B) and (C) of Rule 3a71–3.

[411] Analyses of 2017 TIW data indicate that of the six non-U.S. persons that potentially may use the proposed exception, four have majority-owned registered broker-dealer affiliates. *See* part VII.A.7, *supra.*

[412] *See* Business Conduct Adopting Release, Trade Acknowledgement and Verification Adopting Release, Recordkeeping Proposing Release, and Risk Mitigation Proposing Release.

[413] *See* part VIII.A.4.a and note 525, *infra* stating that each non-U.S. person would spend 100 hours and incur approximate costs of $29,715 to develop policies and procedures to help ensure that appropriate disclosures are provided. The aggregate upfront costs are = $29,715 × 24 entities = $713,160. The aggregate burden hours are = 100 × 24 entities = 2,400 hours.

[414] *See* note 148, *supra,* for circumstances in which the registered entity engaged would not know the identity of the counterparty.

[415] These non-U.S. persons may incur lower regulatory burdens to the extent that they avoid the costs of assessing market-facing activity and the costs of compliance with conditions set forth under the proposed exception are lower than the compliance costs in the absence of the proposed amendment and the costs of business restructuring. In contrast, non-U.S. persons in unlisted jurisdictions may have to incur the costs of assessing market-facing activity. Further, for these non-U.S. persons, the costs of complying with the full set of security-based swap dealer requirements and business restructuring may be higher than compliance costs associated with the proposed exception.

[416] *See* part VIII.A.4.g, *infra.*

[417] The Commission assumes that the costs associated with filing an application for a qualified jurisdiction designation are the same as the costs associated with filing a substituted compliance request with respect to business conduct requirements. *See* Business Conduct Adopting Release, 81 FR at 30097 and 30137 and part VIII.A.4.g, *infra.* The Commission estimates the per entity costs of filing an application in 2016 dollars as: $30,400 (internal counsel) + $80,000 (external counsel) = $110,400. Adjusted for CPI inflation from 2016 to 2018, the per entity costs of filing an application in current dollars are = $110,400 × 1.05 = $115,920. The aggregate costs of filing applications = Per entity costs of $115,920 × 3 entities = $347,760.

proposed amendment is adopted, the non-U.S. persons (or their financial regulatory authorities) in these jurisdictions may avoid the costs of filing an application.

b. Title VII Programmatic Costs and Benefits

The proposed exclusion of transactions that must be counted against the *de minimis* threshold will affect the set of registered security-based swap dealers subject to security-based swap dealer regulation and in turn determine the allocation and flow of programmatic costs and benefits arising from such regulation.

The Commission preliminarily believes that requiring a non-U.S. person that wishes to make use of the proposed exception to be subject to the margin and capital requirements of a listed jurisdiction when engaging in transactions subject to the proposed exception would support the Title VII regime's programmatic benefit of mitigating risks in foreign security-based swap markets that may flow into U.S. financial markets through liquidity spillovers.[418] Specifically, proposed Rule 3a71–3(d)(1)(v) under both alternatives would require a non-U.S. person relying on the proposed exception to be subject to the margin and capital requirements of a listed jurisdiction when engaging in transactions subject to the proposed exception. As discussed earlier,[419] the listed jurisdiction condition is intended to help avoid creating an incentive for dealers to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards. Absent this type of condition, non-U.S. persons that rely on the proposed exception could gain a competitive advantage because they would be able to conduct security-based swap dealing activity in the United States without being subject to even minimal financial responsibility standards and incurring the associated compliance costs. Such non-U.S. persons potentially could provide liquidity to market participants at more favorable prices, but potentially also at greater risk, compared to registered security-based swap dealers. Generally, this proposed condition would benefit non-U.S. counterparties by providing them with assurances that the non-U.S. person has sufficient financial resources to engage in security-based swap activity and that the non-U.S. person's risk exposures to other counterparties are appropriately managed, supporting the Title VII regime's programmatic benefit of preventing risks in foreign security-based swap markets from flowing into U.S. financial markets through liquidity spillovers.

The Commission preliminarily believes that another potential programmatic benefit of the proposed amendment is to reduce market fragmentation and associated distortions. In the ANE Adopting Release, the Commission noted that the ''arranged, negotiated, or executed'' counting requirement may cause non-U.S. dealers to restructure their operations to avoid using U.S. personnel in order to avoid triggering security-based swap dealer obligations. Such restructuring may result in market fragmentation. Nevertheless, to the extent that the restructuring costs incurred by non-U.S. dealers offset the benefits from avoiding dealer registration, the likelihood or extent of market fragmentation and associated distortions may be attenuated, but not eliminated.[420] The Commission believes that the proposed amendment, by permitting a non-U.S. person further flexibility to opt into a Title VII compliance framework that is compatible with its existing business practices, could further reduce the incentives of non-U.S. persons to restructure and further reduce the likelihood or extent of market fragmentation and associated distortions.

The above discussion notwithstanding, the Commission is mindful that the likelihood of market fragmentation and associated distortions might increase if U.S.-based dealing entities rely on the conditional exception by booking transactions with non-U.S. counterparties into non-U.S. affiliates, thereby avoiding the application of the full set of security-based swap dealer requirements to those transactions and the associated security-based swaps.[421] As discussed further below, U.S.-based dealing entities that use the conditional exception in this manner may incur lower compliance costs when providing liquidity to non-U.S. counterparties and may decide to limit their liquidity provision only to non-U.S. counterparties. To the extent that these U.S.-based dealing entities choose to provide liquidity only to non-U.S. counterparties, security-based swap liquidity may fragment into two pools: One pool that caters to U.S. counterparties and another pool that caters to non-U.S. counterparties.

The proposed amendment could promote competition in the security-based swap market to the extent that competitive effects arise from differences between the full set of requirements for registered security-based swap dealers (that otherwise would apply to the non-U.S. entity) and the conditions applicable to the registered U.S. entity under the proposed amendment. As discussed more fully below,[422] a non-U.S. person dealer that uses the exception may become more competitive in the market for liquidity provision because (a) the non-U.S. person dealer may incur lower compliance costs when providing liquidity to non-U.S. counterparties and (b) non-U.S. counterparties may incur lower costs when transacting with the non-U.S. person dealer. The set of dealing entities that benefit from such competitive effects might expand to the extent that U.S.-based dealing entities that are primarily or wholly responsible for managing interactions with non-U.S. counterparties may rely on the conditional exception by booking transactions into non-U.S. affiliates.[423] Nevertheless, this competitive effect may be attenuated by the condition that makes the exception available only to non-U.S. persons that are subject to the margin and capital requirements of a listed jurisdiction.

The proposed amendment potentially could limit the programmatic benefits of Title VII regulation because the non-U.S. person taking advantage of the conditional exception would not be subject to the full suite of Title VII business conduct and financial responsibility requirements. This limitation of programmatic benefits might increase to the extent that U.S.-based dealing entities that primarily or wholly are responsible for managing interactions with non-U.S. counterparties may rely on the conditional exception by booking transactions into non-U.S. affiliates.[424] Because the non-U.S. person would not be subject to Title VII business conduct

[418] As the Commission noted elsewhere, in a highly concentrated global security-based swap market, the failure of a key liquidity provider poses a particularly high risk of propagating liquidity shocks not only to its counterparties but to other participants, including other dealers. To the extent that U.S. persons are significant participants in the market, the liquidity shock may propagate to these U.S. persons, and from these U.S. persons to the U.S. financial system as a whole, even if the liquidity shock originates with the failure of a non-U.S. person liquidity provider. *See* ANE Adopting Release, 81 FR at 8611–12, 8630.

[419] *See* III.B.5, *supra.*

[420] *See* ANE Adopting Release, 81 FR at 8630.

[421] *See* parts III.A and VII.A.7, *supra.*

[422] *See* part VII.B.2, *infra.*

[423] *See* part III.A, *supra.*

[424] *See id.*

requirements, the associated Title VII counterparty protections would not apply to the non-U.S. person's communications with non-U.S. counterparties. The non-U.S. counterparties thus would not benefit from those protections in their dealings with the non-U.S. person relying on the exception, notwithstanding the U.S. arranging, negotiating, and executing activity that led to the transactions at issue.[425]

Similarly, Title VII financial responsibility requirements applicable to security-based swap dealers would not apply to the non-U.S. person, notwithstanding that the transactions would result from arranging, negotiating, and executing activity in the United States. To the extent that the financial responsibility requirements serve to prevent the spread to U.S. financial markets of financial contagion that originates from the failure of one or more non-U.S. persons engaged in arranging, negotiating, and executing activity in the United States,[426] the fact that these requirements would not apply to non-U.S. persons taking advantage of the conditional exception could limit the ability of the Title VII regulatory regime to protect U.S. financial markets from financial contagion. This concern would be mitigated by the condition that makes the exception available only to non-U.S. persons that are subject to the margin and capital requirements of a listed jurisdiction, which would afford the Commission flexibility to designate jurisdictions with appropriately robust financial responsibility requirements as listed jurisdictions. More generally, competitive disparities and limits to the programmatic effects of Title VII may be offset to the extent that non-U.S. counterparties value the protections afforded them by Title VII regulation and prefer to transact with dealing entities that are subject to the full scope of Title VII regulation, rather than with non-U.S. persons that rely on the conditional exception.

2. Effects on Efficiency, Competition, and Capital Formation

As discussed earlier, the proposed amendment could reduce the regulatory burden for non-U.S. persons that engage in security-based swap arranging, negotiating, and executing activity with non-U.S. counterparties using affiliated U.S.-based personnel because these non-U.S. persons could avail themselves of an additional, potentially lower-cost, means of engaging in arranging, negotiating, and executing activity with non-U.S. counterparties.[427] To the extent that the regulatory burden for such non-U.S. persons is reduced as a result of the proposed amendment, resources could be freed up for investing in profitable projects, which would promote investment efficiency and capital formation. In addition, a reduction in regulatory burden for such non-U.S. persons could allow these persons to operate their security-based swap dealing business more efficiently. To the extent that these non-U.S. persons carry out security-based swap dealing activity with counterparties around the world[428] and choose to pass on cost savings flowing from their improved efficiency in the form of lower prices for liquidity provision, counterparties around the world could benefit by being able to transact at lower costs. A reduction in regulatory burden associated with the proposed amendment could lower entry barriers into the security-based swap market and increase the number of non-U.S. person dealers that are willing to provide liquidity to non-U.S. counterparties using affiliated U.S.-based personnel. An increase in the number of such non-U.S. person dealers may increase competition for liquidity provision to non-U.S. counterparties, which could lower transaction costs for these counterparties and improve their ability to hedge economic exposures. To the extent that non-U.S. person dealers focus their market-making activities on non-U.S. counterparties and avoid U.S. counterparties, the competition for liquidity provision to U.S. counterparties may decline, which could increase transaction costs for U.S. counterparties and impair their ability to hedge their economic exposures or to incur economic exposures. In addition, to the extent that increased transaction costs reduce the expected profits from trading on new information, market participants may be less willing to transact in the security-based swap market in response to new information. Such reduced participation in the security-based swap market might impede the incorporation of new information into security-based swap prices, reducing the informational efficiency of these markets.

The proposed amendment might generate certain competitive effects due to gaps between the full set of requirements for registered security-based swap dealers and the conditions applicable to the registered entity of the non-U.S. person under the proposed amendment,[429] though these effects will be tempered to the extent that the non-U.S. person dealer passes on compliance costs incurred by its U.S. registered entity to the non-U.S. counterparty. First, under proposed Rule 3a71–3(d)(1)(C), the exception would not be conditioned on the registered entity of the non-U.S. person dealer having to comply with requirements pertaining to ECP verification, daily mark disclosure, and ''know your counterparty.''[430] Thus, to the extent that the non-U.S. person adheres only to the provisions specifically required by the conditions set forth under the proposed amendment, the non-U.S. person dealer could incur lower compliance costs in providing liquidity to non-U.S. counterparties than under current rules, relative to the baseline. In that case, the non-U.S. person dealer might be able to lower the price at which it offers liquidity to a non-U.S. counterparty. However, under both alternatives the non-U.S. person must have a U.S. affiliate that is registered with the Commission. The extent to which the non-U.S. person dealer may offer a more competitive price would depend in part on whether the non-U.S. person dealer will pass on compliance costs incurred by its U.S. registered entity to the non-U.S. counterparty in the form of a higher price for providing liquidity to the non-U.S. counterparty. To the extent that the non-U.S. person dealer offers liquidity to the non-U.S. counterparty at a price that fully recovers the compliance costs incurred by its U.S. registered entity, any price reduction that could be offered by the non-U.S. person dealer might be limited.

Second, a non-U.S. counterparty may prefer to enter into a security-based swap transaction with a non-U.S.-person dealer that takes advantage of the conditional exception, rather than a U.S. registered security-based swap dealer, not only because the non-U.S.-person dealer may offer more competitive prices, but also because the non-U.S. counterparty may itself avoid certain costs by transacting with a non-U.S. person dealer. For example, Title VII financial responsibility requirements applicable to security-based swap

[425] As discussed in part III.A, *supra,* the antifraud provisions of the federal securities laws and certain relevant Title VII requirements would continue to apply to the transactions.

[426] *See* ANE Adopting Release, 81 FR at 8612.

[427] *See* part VII.B.1, *supra.*

[428] *See* part VII.A.2.c, *supra.*

[429] As context, the use of the ''arranged, negotiated, or executed'' counting standard was intended in part to avoid allowing competitive disparities between registered security-based swap dealers and entities that otherwise could engage in security-based swap market-facing activity in the United States without having to register as security-based swap dealers. *See* part I.A.2, *supra.*

[430] *See* Business Conduct Adopting Release, part II.G.

dealers would not apply to the non-U.S. person dealer under the proposed amendment, although the non-U.S. person dealer would be subject to the margin and capital requirements of a listed jurisdiction. To the extent that a non-U.S. counterparty has already established with the non-U.S. person dealer the necessary margin agreement that is compliant with the margin requirements of the listed jurisdiction, the non-U.S. counterparty could avoid the additional costs of negotiating and adhering to a new margin agreement that is compliant with the Commission's Title VII margin requirements, if the non-U.S. counterparty transacts with the non-U.S. person dealer.

These competitive effects may create an incentive for entities that carry out their security-based swap dealing business in a U.S.-person dealer with non-U.S. person counterparties to restructure a proportion of this business to be carried out in a non-U.S.-person dealer affiliate.

3. Additional Alternatives Considered

In developing these proposed amendments, the Commission considered a number of additional alternatives. This section outlines these alternatives and discusses the potential economic effects of each.

a. Requiring the Registered Entity To Comply With ECP Verification and ''Know Your Counterparty''

When identifying the security-based swap dealer requirements that are applicable to a registered entity for purposes of this rulemaking, the Commission considered requiring the registered entity to comply with ECP verification and ''know your counterparty'' requirements, along with other security-based swap dealer requirements, even if the registered entity is not a party to the resulting security-based swap. Although this alternative would lead to greater conformity with the full set of security-based swap dealer requirements, the provisions in question may require knowledge that may not be readily available to the registered entity when it engages in limited arranging, negotiating, and executing activity in connection with the security-based swaps addressed by the proposed exception. These operational difficulties may prevent the registered entity from complying with the provisions or may require the registered entity to incur costs to ensure compliance. The Commission estimates that, if included as part of the conditions of the exception, the ECP verification and know your counterparty requirements would impose initial costs of approximately $2,919 per registered entity,[431] or $70,056 in aggregate,[432] and ongoing costs of approximately $91,770 per registered entity,[433] or $2,202,480 in aggregate.[434] Further, the non-U.S. counterparties transacting with the non-U.S. persons making use of the proposed exception that are not also participating in swap markets and relying on industry established verification of status protocol may incur initial costs associated with the verification of status requirement and related adherence letters.[435] The Commission estimates these aggregate initial costs at approximately $460,152.[436] All non-U.S. counterparties (or their agents) transacting with the non-U.S. persons making use of the proposed exception would also be required to collect and provide essential facts to the registered entities to comply with the ''know your counterparty'' obligations for an aggregate initial cost of approximately $6,439,860.[437] To the extent that the knowledge needed to comply with these requirements may not be readily available to the registered entity and the registered entity has to expend additional resources to obtain that knowledge, the actual costs incurred by the registered entity to comply with these requirements may be higher. The Commission acknowledges that a non-U.S. person making use of the proposed exception potentially could mitigate the compliance costs of the registered entity by transacting only with non-U.S. counterparties that are known ECPs to the registered entity. By doing so, the registered entity could avoid expending additional resources to learn about the non-U.S. counterparties' ECP status. However, as a result of this approach, the non-U.S. person may have to forgo transacting with new non-U.S. counterparties whose ECP status is not known to the registered entity. The non-U.S. person would thus have to balance the cost savings associated with transacting only with a set of known non-U.S. counterparties against the revenues that may be forgone by not transacting with new non-U.S. counterparties whose ECP status is unknown to the registered entity.

As another alternative, the Commission considered requiring compliance with the ECP verification and ''know your counterparty'' requirements with a one-time carve out when the non-U.S. counterparty is unknown to the registered entity and there is no basis to believe that the registered entity would have further interactions with that non-U.S. counterparty. Although such a carve out may reduce compliance costs by excluding transactions that likely would pose the greatest operational difficulties in terms of obtaining knowledge needed for complying with the ECP verification and know your counterparty requirements, the Commission is also cognizant that the carve out may create new costs associated with assessing when the carve out would apply. The Commission is concerned that these new assessment costs may impose an additional burden on the registered entity and may offset any reduction in compliance costs associated with a one-time carve out. As with the previous alternative, a non-U.S. person making use of the proposed exception potentially could mitigate the

[431] These estimates incorporate quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–30092, 30110 adjusted for CPI inflation using data from the Bureau of Labor Statistics between 2016 and 2018. Specifically, per entity initial costs are estimated in 2016 dollars as $880 (ECP verification) + $1,900 (know your counterparty) = $2,780, and adjusted by 1.05 to $2,919 in current dollars.

[432] Aggregate initial costs = Per entity initial costs of $2,919 × 24 entities = $70,056.

[433] These estimates incorporate quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–30092, 30110 adjusted for CPI inflation using data from the Bureau of Labor Statistics between 2016 and 2018. Specifically, per entity ongoing costs are estimated in 2016 dollars as $87,400, and adjusted by 1.05 to $91,770 in current dollars.

[434] Aggregate initial costs = Per entity initial costs of $91,770 × 24 entities = $2,202,480.

[435] In the Business Conduct Adopting Release, the Commission assumed that counterparties that are swap market participants likely already adhere to the relevant protocol and would not have any start-up or ongoing burdens with respect to verification. *See* 81 FR at 30091. The Commission continues to believe that this assumption is valid and thus, for purposes of this alternative, the Commission believes that only non-U.S. counterparties that are not swap market participants will incur verification-related costs. As discussed in part VII.A.7 *supra,* the Commission preliminarily estimates that up to 24 persons likely may use the proposed exception, and that their registered entity affiliates may arrange, negotiate, or execute transactions with up to 1,614 non-U.S. counterparties, of which 498 do not participate in swap markets.

[436] This estimate incorporates quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–30092, 30110 adjusted for CPI inflation using data from the Bureau of Labor Statistics between 2016 and 2018. Per counterparty initial costs are estimated in 2016 dollars as $500 (initial costs of disclosure of essential facts) + $380 (initial costs of adherence letters) = $880, and adjusted by 1.05 to $924 in current dollars. Aggregate initial costs = Per entity initial costs of $924 × 498 counterparties = $460,152.

[437] This estimate incorporates quantifiable initial costs presented in the Business Conduct Adopting Release, 81 FR at 30090–30092, 30110 adjusted for CPI inflation using data from the Bureau of Labor Statistics between 2016 and 2018. Per counterparty initial costs are estimated in 2016 dollars as (In-house attorney at $380 per hour) × 10 hours = $3,800, and adjusted by 1.05 to $3,990 in current dollars. Aggregate initial costs = Per entity initial costs of $3,990 × 1,614 counterparties = $6,439,860.

compliance costs of the registered entity by transacting only with non-U.S. counterparties that are ECPs known to the registered entity. As discussed above, the non-U.S. person would thus have to balance the cost savings associated with this approach against the revenues that may be forgone by not transacting with new non-U.S. counterparties whose ECP status is unknown to the registered entity.

In light of these compliance challenges and the fact that the proposed amendment does include conditions designed to impose a minimum standard of conduct upon security-based swap dealers in connection with their transaction-related activities, the Commission preliminarily believes that the proposed approach is preferable to these alternatives.

b. Requiring the Registered Entity To Comply With Daily Mark Disclosure

The Commission also considered requiring the registered entity to comply with daily mark disclosure, along with other security-based swap dealer requirements, even if the registered entity is not a party to the resulting security-based swap. Similar to the discussion of ECP verification and know your counterparty requirements above, this alternative would lead to greater conformity with the full set of security-based swap dealer requirements, but may require knowledge that may not be readily available to the registered entity when it engages in limited arranging, negotiating, and executing activity in connection with the security-based swaps addressed by the proposed exception. Further, the daily mark disclosure is predicated on the existence of an ongoing relationship between the security-based swap dealer and the counterparty that may not be present in connection with the transactions at issue, and would be linked to risk management functions that are likely to be associated with the entity in which the resulting security-based swap position is located.[438] These operational difficulties may prevent the registered entity from complying with the daily mark disclosure requirement or may require the registered entity to incur an unreasonably high cost to ensure compliance. In light of these compliance challenges and the fact that the proposed amendment does include conditions designed to impose a minimum standard of conduct upon security-based swap dealers in connection with their transaction-related activities, the Commission preliminarily believes that the proposed approach is preferable to this alternative.

c. Requiring a Limited Disclosure of Incentives and Conflicts

As an alternative to the disclosure requirements set forth under proposed Rule 3a71–3(d)(1)(ii)(B)(1), the Commission considered requiring the registered entity to disclose its own material incentives and conflicts of interest, but not requiring the registered entity to disclose the incentives and conflicts of interest of its non-U.S. affiliate. While this alternative might help to mitigate the costs associated with disclosing the incentives and conflicts of interest of the non-U.S. affiliate,[439] the benefits associated with such disclosures[440] may also decrease because non-U.S. counterparties would not know about the incentives and conflicts of interest of the non-U.S. affiliate prior to entering into security-based swaps with the non-U.S. affiliate. In light of this concern, the Commission preliminarily believes that the proposed approach is preferable to this alternative.

d. Requiring the Non-U.S. Person To Be Domiciled in a G–20 Jurisdiction or in a Jurisdiction Where the Non-U.S. Person Would Be Subject to Basel Capital Requirements

As alternatives to proposed paragraph (d)(1)(v), the Commission considered proposing a requirement that the non-U.S. person be domiciled in a G–20 jurisdiction or in a jurisdiction where the non-U.S. person would be subject to Basel capital requirements as commenters have suggested. While the Commission acknowledges that these alternatives are clearly defined and would provide certainty to market participants, the Commission preliminarily believes these alternatives potentially could create opportunities for regulatory arbitrage whereby a non-U.S. person may relocate its operations to a jurisdiction that imposes lower financial responsibility standards. The non-U.S. person may thus enjoy a cost advantage relative to other dealers that operate under higher regulatory burdens, while not being subject to equally rigorous financial responsibility standards. Further, as discussed earlier,[441] the fact that a jurisdiction is a member of the G–20 or subscribes to Basel standards does not by itself provide assurance that the jurisdiction has implemented appropriate financial responsibility standards.

e. Not Requiring Notification to Counterparties of the Non-U.S. Person

In proposing the conditions that would apply to the non-U.S. person under Alternative 1 and Alternative 2, the Commission considered omitting the condition that non-U.S. counterparties of the non-U.S. person relying on the exception be notified contemporaneously by the registered entity that the non-U.S. person is not registered as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable in connection with the transaction. The omission of this notification condition may reduce cost and thus regulatory burden for the non-U.S. persons that rely on the exception.

However, the absence of this notification condition potentially could reinforce the competitive disparity between the non-U.S. persons that make use of the exception and registered security-based swap dealers that comply with the full set of Title VII security-based swap dealer requirements. As discussed above,[442] non-U.S. persons that avail themselves of the exception could bear lower costs compared to registered security-based swap dealers that have to comply with the full set of security-based swap dealer requirements.

To the extent that non-U.S. counterparties prefer to trade with dealers that are subject to the full set of Title VII security-based swap dealer requirements and the associated safeguards, in the absence of the notification condition, non-U.S. persons that rely on the exception could bear lower regulatory costs than registered security-based swap dealers but may nevertheless be regarded by non-U.S. counterparties to be no different than registered security-based swap dealers, at least with respect to Title VII safeguards. As a result, these non-U.S. persons potentially could capture the business of non-U.S. counterparties from registered security-based swap dealers that they otherwise might not have captured if the notification condition had been part of the exception. In light of this concern, the Commission preliminarily believes that requiring such notification to non-U.S. counterparties is preferable to this alternative.

[438] *See* part III.B.2.a, *supra.*

[439] *See* Business Conduct Adopting Release, 81 FR at 30112.

[440] *See* Business Conduct Adopting Release, 81 FR at 30111–12.

[441] *See* part III.B.5, *supra.*

[442] *See* part VII.B.2, *supra.*

f. ''No Management of Relationship'' Condition

When identifying the conditions of the proposed exception, the Commission considered making the exception unavailable where U.S. personnel manage the relationship with the non-U.S. counterparty to the security-based swap. Such a condition might help address concerns that U.S.-based dealers could use the proposed exception to rebook transactions, which are managed by U.S. personnel, to a non-U.S. affiliate to avoid triggering security-based swap dealer registration. However, the Commission recognizes that there may be challenges in articulating objective criteria to identify when the proposed exception would or would not be available under this type of approach. Even if objective criteria could be articulated, non-U.S. persons seeking to use the proposed exception may have to incur costs to satisfy these criteria on an ongoing basis. In light of these concerns, the Commission preliminarily believes that the proposed approach is preferable to this alternative.

g. Rule 10b–10 in Lieu of Trade Acknowledgement and Verification Requirement

In specifying the requirements that are applicable to the registered entity under Alternative 2, the Commission considered requiring the registered entity to comply with Rule 10b–10 in lieu of the security-based swap dealer trade acknowledgement and verification requirement (Rules 15Fi–1 and 15Fi–2), if the registered entity is a registered broker-dealer that is not also a security-based swap dealer. As discussed earlier,[443] if a non-U.S. person chooses to use a registered broker-dealer under Alternative 2, the non-U.S. person could incur costs associated with the registered broker status, including the cost of complying with Rule 10b–10. Additionally, the non-U.S. person would incur the cost of complying with certain security-based swap dealer requirements, including the trade acknowledgement and verification requirement. The alternative approach could reduce the regulatory burden on the non-U.S. person by obviating the need for its registered broker-dealer affiliate to comply with the trade acknowledgement and verification requirement. However, the Commission preliminarily believes that compliance with the trade acknowledgement and verification requirement may better support the regulation of the security-based swap market. First, the Rule 15Fi–2 requirement that a trade acknowledgement ''must disclose all of the terms of the security-based swap transaction'' [444] is tailored to the security-based swap market and is more likely to effectively communicate the relevant terms of the transaction to the counterparty. A more effective communication of transaction terms could facilitate timely and accurate confirmations and in turn reduce the likelihood of a confirmation backlog and associated market, credit, settlement, and financial stability risks.[445] Second, while Rule 10b–10 requires only the registered broker-dealer to provide a trade confirmation to a customer, Rule 15Fi–2 requires a security-based swap dealer or major security-based swap participant to provide a trade acknowledgement to, as well as obtain a verification of that acknowledgement from, the counterparty. As discussed elsewhere,[446] unlike most other securities transactions, a security-based swap gives rise to ongoing obligations between transaction counterparties during the life of the transaction, including payments contingent on specific events, such as a corporate default. Consequently, the acknowledgement and verification of the terms of a security-based swap transaction help ensure that security-based swap market participants effectively measure and manage market and credit risk. Third, the trade acknowledgement and verification requirement would better promote a uniform regulatory framework for security-based swap transactions because the requirement would apply to all security-based swap transactions that are arranged, negotiated, or executed in the United States. In light of the foregoing, the Commission preliminarily believes that the proposed approach is preferable to this alternative.

C. Proposed Guidance Regarding the Scope of the ''Arranged, Negotiated, or Executed'' Test

As discussed in part II *supra,* the Commission is proposing guidance regarding the scope of the ''arranged, negotiated, or executed'' test. This guidance could have economic effects to the extent that, in the absence of such guidance, some market participants may have understood the scope of the test differently.

As discussed in part VII.A.8 above, the Commission preliminarily believes that up to 49 non-U.S. persons could be affected by the proposed guidance. To the extent that some of these non-U.S. persons currently understand the scope of the ''arranged, negotiated, or executed'' test to be different from the scope of the test set forth in the proposed guidance, there might be certain potential economic effects associated with (1) counting toward the *de minimis* threshold for security-based dealer registration,[447] (2) cross-border application of security-based swap dealer business conduct provisions, and (3) cross-border application of Regulation SBSR's regulatory reporting and public dissemination provisions. The Commission discusses these potential economic effects below.

Under rules adopted in the Cross-Border Adopting Release, a non-U.S. person is permitted to exclude from the *de minimis* analysis certain dealing transactions conducted through a foreign branch of a counterparty that is a U.S. bank. For this exclusion to be effective, persons located within the United States cannot be involved in arranging, negotiating, or executing the transaction. Moreover, the counterparty U.S. bank must be registered as a security-based swap dealer,[448] unless the transaction occurs prior to 60 days following the effective date of final rules providing for the registration of security-based swap dealers.[449] Under rules adopted in the ANE Adopting Release, a non-U.S. person has to count toward its *de minimis* threshold, transactions with a non-U.S. counterparty that are arranged, negotiated, or executed by U.S. personnel. The Commission preliminarily believes that the proposed guidance might have certain economic effects in connection with the application of the ''arranged, negotiated, or executed'' test to the *de minimis* threshold.

First, the proposed guidance may cause a change in behavior of those non-U.S. persons, if any, who currently interpret the scope of the ''arranged, negotiated, or executed'' test to be different from the proposed guidance. To the extent that the proposed guidance reduces the likelihood of non-U.S. persons mistakenly believing they have exceeded the *de minimis* threshold, it would potentially eliminate costs that non-U.S. persons may otherwise incur related to security-based swap dealer registration and compliance. Specifically, the proposed guidance potentially could reduce the

[443] *See* part VII.B.1, *supra.*

[444] *See* Exchange Act Rule 15Fi–2(c).

[445] *See* Trade Acknowledgement and Verification Adopting Release part VII.C.

[446] *See id.,* 81 FR at 39833.

[447] *See* note 90, *supra.*

[448] *See* Exchange Act Rule 3a71–3(b)(1)(iii)(A)(1).

[449] *See* Exchange Act Rule 3a71–3(b)(1)(iii)(A)(2).

compliance burden of those non-U.S. persons that employ U.S. personnel to provide market color to non-U.S. counterparties or foreign branches of U.S. persons, and understood the provision of market color to fall within the scope of the ''arranged, negotiated, or executed'' test. In the absence of the proposed guidance, such a non-U.S. person could incur the cost of registering as a security-based swap dealer if it counts transactions involving the provision of market color by U.S. personnel toward the *de minimis* threshold, and as a consequence of this treatment, its market-facing activity exceeds the *de minimis* threshold. The non-U.S. person accordingly would incur the cost necessary for compliance with the full set of security-based swap dealer requirements by one or more registered security-based swap dealers. These burdens are in addition to the assessment costs that the non-U.S. person would incur to identify and count relevant market-facing activity toward the *de minimis* threshold.

To the extent that the proposed guidance reduces the likelihood of restructuring due to perceived regulatory burdens, it would potentially eliminate costs that non-U.S. persons may otherwise incur. In the absence of the proposed guidance, non-U.S. persons that employ U.S. personnel to provide market color to non-U.S. counterparties or foreign branches of U.S. persons, and understand the provision of market color to fall within the scope of the ''arranged, negotiated, or executed'' test, may choose to avoid security-based swap dealer registration by relocating those U.S. personnel (or the activities performed by those U.S. personnel) to locations outside the United States or by restructuring operations to use non-U.S. personnel to provide market color to non-U.S. counterparties or foreign branches of U.S. persons. These forms of restructuring would impose costs on these non-U.S. persons associated with moving personnel outside the United States or forgoing the market knowledge and expertise of the U.S. personnel that provide market color. The proposed guidance, by clarifying that transactions involving the provision of market color by U.S. personnel would not fall within the scope of the arranged, negotiated, or executed counting test, may obviate the need for these forms of restructuring and potentially limit the associated costs for these non-U.S. persons.

The proposed guidance may affect the approach to assessment chosen by different market participants. In the ANE Adopting Release, the Commission noted that non-U.S. persons likely would consider three possible approaches to determine which transactions must be counted toward the *de minimis* threshold.[450] The Commission also discussed potential costs associated with each approach. The proposed guidance might affect such assessment costs to the extent that non-U.S. persons that employ U.S. personnel to provide market color to non-U.S. counterparties would have, in the absence of the proposed guidance, interpreted the provision of market color to fall within the scope of the ''arranged, negotiated, or executed'' test, and further to the extent that such persons would change their approach to assessment in light of the proposed guidance. The Commission preliminarily believes that a non-U.S. person may choose to make such a change if the associated benefits outweigh the associated costs.

In light of the proposed guidance, a non-U.S. person who has opted to perform assessments on a per-transaction basis[451] may modify its information system[452] to track transactions involving only the provision of market color by U.S. personnel, if the system does not already possess this capability. The potential benefit of such modifications would be to allow the non-U.S. person to avoid security-based swap dealer registration and the associated regulatory burdens by excluding transactions involving only the provision of market color by U.S. personnel from being counted toward the *de minimis* threshold. These costs likely would not be incurred to the extent that the non-U.S. person already employs an information system that can track transactions involving only the provision of market color by U.S. personnel.

Instead of performing assessments on a per-transaction basis, a non-U.S. person might: (1) Restrict its U.S. personnel from arranging, negotiating, or executing security-based swaps with non-U.S. counterparties,[453] or (2) count transactions with other non-U.S. persons toward its *de minimis* threshold, regardless of whether counting them is required, to avoid the cost of assessing the locations of personnel involved with each transaction.[454] In light of the proposed guidance, a non-U.S. person that intends to take either approach likely would continue to use such approach to the extent that the costs associated with assessments on a per-transaction basis outweigh any potential cost savings from excluding transactions involving only the provision of market color by U.S. personnel from the *de minimis* threshold, and consequently avoiding having to register as a security-based swap dealer.

Under rules adopted in the Business Conduct Adopting Release, a non-U.S. security-based swap dealer has to comply with transaction-level business conduct requirements for transactions between the non-U.S. security-based swap dealer and non-U.S. counterparties that are arranged, negotiated, or executed by personnel of the non-U.S. security-based swap dealer located in a U.S. branch or office, or by personnel of its agent located in a U.S. branch or office.[455]

To the extent that the proposed guidance reduces the likelihood of non-U.S. security-based swap dealers mistakenly believing they will enter into security-based swaps that fall within the scope of the ''arranged, negotiated, or executed'' test in connection with transaction-level business conduct requirements, it would potentially eliminate costs that non-U.S. security-based swap dealers may otherwise incur. Specifically, the proposed guidance potentially could reduce the compliance burden of those non-U.S. security-based swap dealers that employ U.S. personnel to provide market color to non-U.S. counterparties, and that previously understood the provision of market color to fall within the scope of the ''arranged, negotiated, or executed'' test. In the absence of the proposed guidance, such a non-U.S. security-based swap dealer could incur the cost of complying with transaction-level business conduct requirements (*e.g.,* disclosure of material risks and characteristics) if it considers

[450] *See* ANE Adopting Release, 81 FR at 8627–28.

[451] *See id.* at 8627.

[452] In the ANE Adopting Release, the Commission estimated the costs associated with developing and modifying information technology systems to track the location of persons with dealing activity. The Commission preliminarily believes that this approach also would be appropriate for estimating the costs incurred by the non-U.S. person to modify its information system in light of the proposed guidance. The Commission estimates that the average non-U.S. person will incur start-up costs of $410,000 to modify its information system to track transactions involving only the provision of market color by U.S. personnel. Further, the Commission preliminarily believes that non-U.S. persons would incur the cost of $6,500 per location per year on an ongoing basis for training, compliance, and verification costs (calculated as Internal Cost, 90 hours × $50 per hour = $4,500 plus Consulting Costs, 10 hours × $200 per hour = $2,000, for a total cost of $6,500). *See* ANE Adopting Release, 81 FR at 8627.

[453] *See* ANE Adopting Release, 81 FR at 8627–28.

[454] *See* ANE Adopting Release, 81 FR at 8628.

[455] *See* Business Conduct Adopting Release, 81 FR at 30065; Exchange Act Rules 3a71–3(c) and 3a71–3(a)(8)(i).

transactions involving the provision of market color by U.S. personnel to fall within the scope of the test. These burdens are in addition to the assessment costs that the non-U.S. security-based swap dealers would incur to identify transactions that fall within the scope of the test.[456]

Under Regulation SBSR, a security-based swap transaction between two non-U.S. persons that is arranged, negotiated, or executed using U.S. personnel may be subject to regulatory reporting and public dissemination. Rule 908(b)(2) of Regulation SBSR provides that a registered security-based swap dealer or major security-based swap participant will incur reporting obligations.[457] This rule covers both U.S. and non-U.S. registered entities. Rule 908(b)(5) imposes reporting obligations on a non-U.S. person that, in connection with the person's security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or using personnel of an agent located in a U.S. branch or office.[458] Rule 908(a)(1)(v)[459] provides that a security-based swap transaction shall be subject to regulatory reporting and public dissemination if the transaction is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office. Rule 901(a)(2)(ii) assigns reporting duties for various types of uncleared security-based swap transactions including, but not limited to, transactions in which (a) one or both sides include a registered security-based swap dealer and (b) both sides include unregistered non-U.S. persons and at least one side includes a non-U.S. person that falls within Rule 908(b)(5).

To the extent that the proposed guidance reduces the likelihood of non-U.S. persons (*i.e.,* non-U.S. security-based swap dealers and unregistered non-U.S. dealing entities) mistakenly believing they have entered into security-based swaps that fall within the scope of the ''arranged, negotiated, or executed'' test in connection with Regulation SBSR regulatory reporting requirements, it would potentially eliminate costs that non-U.S. persons may otherwise incur. Specifically, the proposed guidance potentially could reduce the compliance burden of those non-U.S. persons that employ U.S. personnel to provide market color to non-U.S. counterparties and that previously understood the provision of market color to fall within the scope of the ''arranged, negotiated, or executed'' test. In the absence of the proposed guidance, such a non-U.S. person could incur the cost of complying with reporting requirements (*e.g.,* reporting of an initial security-based swap transaction to a registered security-based swap data repository) if it considers transactions involving the provision of market color by U.S. personnel to fall within the scope of the test. These burdens are in addition to the assessment costs that unregistered non-U.S. dealing entities would incur to identify transactions that fall within the scope of the test and to determine if they will incur reporting duties under Rule 901(a)(2)(ii)(E).[460]

The proposed guidance may affect the incentives of those non-U.S. persons, if any, who currently interpret the scope of the ''arranged, negotiated, or executed'' test to be different from the proposed guidance, to request substituted compliance determinations for business conduct requirements and regulatory reporting and public dissemination requirements.[461] In the absence of the proposed guidance, a non-U.S. person could incur the cost of applying for a substituted compliance determination if it considers transactions involving the provision of market color by U.S. personnel to fall within the scope of the test and believes that the cost savings from complying with comparable foreign requirements for these transactions outweigh the costs of applying for a substituted compliance determination and complying with any conditions that the Commission may attach to the substituted compliance determination. To the extent that the proposed guidance reduces the likelihood of non-U.S. persons mistakenly believing that transactions involving the provision of market color by U.S. personnel fall within the scope of the test, it may reduce the incentive of non-U.S. persons to apply for substituted compliance determinations and the associated costs.

As discussed above, the proposed guidance could reduce the regulatory burden (including substituted compliance application costs, if any) of those non-U.S. persons that employ U.S. personnel to provide market color to non-U.S. counterparties, and who would otherwise have interpreted the provision of market color to fall within the scope of the ''arranged, negotiated, or executed'' test. Additionally, the proposed guidance may obviate the need for restructuring and potentially limit the associated costs for such non-U.S. persons that employ U.S. personnel to provide market color to non-U.S. counterparties. To the extent that the regulatory cost burden and restructuring costs for such non-U.S. persons are reduced as a result of the proposed guidance, resources could be freed up for investing in profitable projects, which would promote investment efficiency and capital formation. The non-U.S. persons alternatively could pass on the reductions in regulatory cost burden and restructuring costs to their counterparties in the form of a lower price for liquidity provision (*e.g.,* through posting narrower bid-ask spreads), thereby allowing the non-U.S. persons to compete more effectively in providing liquidity to market participants. Such actions in turn may increase competition in the market for liquidity provision if they prompt other liquidity providers to lower their prices for liquidity provision.

D. Proposed Amendment to Rule of Practice 194(c)(2)

Several key economic effects and tradeoffs inform the Commission's analysis of proposed Rule of Practice 194(c)(2).[462]

First, as the Commission discussed in the Rule of Practice 194 Adopting Release,[463] increasing the ability of statutorily disqualified persons to effect or be involved in effecting security-based swaps on behalf of SBS Entities may give rise to higher compliance and counterparty risks, increase costs of adverse selection, decrease market participation, and reduce competition among higher quality associated persons and SBS Entities.

Second, at the same time, the scope of conduct that gives rise to disqualification is broad and includes conduct that may not pose ongoing risks to counterparties.[464] In addition, as

[456] *See* Business Conduct Adopting Release, 81 FR at 30135.

[457] *See* Exchange Act Rule 908(b)(2).

[458] *See* Exchange Act Rule 908(b)(5).

[459] *See* Exchange Act Rule 908(a)(1)(v).

[460] *See* Regulation SBSR Amendments Adopting Release, 81 FR 156 at 53638.

[461] *See* Exchange Act Rule 3a71–6(d) (addressing substituted compliance for business conduct requirements) and Regulation SBSR Rule 908(c) (addressing substituted compliance for regulatory reporting and public dissemination requirements).

[462] *See* Rule of Practice 194 Adopting Release, 84 FR at 4922–43.

[463] *See id.*

[464] As discussed in Section V.A. of the Rule of Practice 194 Adopting Release, the definition of disqualified persons, as applied in the statutory prohibition in Exchange Act Section 15F(b)(6), is broad. That definition disqualifies associated persons due to violations of the securities laws, but also for felonies and misdemeanors not related to the securities laws and/or financial markets, and certain foreign sanctions. *See* Rule of Practice 194 Adopting Release, 84 FR at 4922, 4929.

discussed in the Rule of Practice 194 Adopting Release and in greater detail below, strong disqualification standards can also reduce competition and the volume of service provision.

Third, public information about misconduct can give rise to capital market participants voting with their feet (reputational costs), and labor markets frequently penalize misconduct through firing or worse career outcomes in other settings, as discussed in the Rule of Practice 194 Adopting Release. If counterparties perceive the risks related to disqualified associated persons to be high, counterparties may choose to perform more in-depth due diligence related to their SBS Entity counterparties or to transact with SBS Entities without disqualified associated persons.

Fourth, an overwhelming majority of dealers and most counterparties transact across both swap and security-based swap markets, including in financial products that are similar or identical in their payoff profiles and risks. Differential regulatory treatment of disqualification in swap and security-based swap markets may disrupt existing counterparty relationships and may increase costs of intermediating transactions for some SBS Entities, which may be passed along to certain counterparties in the form of higher transaction costs.

Fifth, as discussed in the Rule of Practice 194 Adopting Release, market participants may value bilateral relationships with SBS Entities, including with SBS Entities dually-registered as Swap Entities, and searching for and initiating bilateral relationships with new SBS Entities may involve costs for counterparties. For example, security-based swaps are long-term contracts that are often renegotiated, and disruptions to existing counterparty relationships can reduce the potential future ability to modify a contract, which may be priced in widening spreads.[465]

1. Costs and Benefits of the Proposed Amendment

Once compliance with SBS Entity registration rules is required, registered SBS Entities will be unable to utilize any statutorily disqualified associated natural person, including natural persons with potentially valuable capabilities, skills, or expertise, to effect or be involved in effecting security-based swaps, absent exemptive relief, including an order under Rule of Practice 194. This restriction would apply to all associated natural persons of all registered SBS Entities, with respect to all counterparties, and regardless of the nature of the conduct giving rise to disqualification. SBS Entities are, under the baseline regulatory regime, unable to rely on disqualified associated persons even if such persons are non-U.S. persons transacting exclusively with non-U.S. counterparties. However, absent the proposed Rule, SBS Entities would still be able to apply to the Commission for relief, and the Commission would still be able to grant relief, including under Rule of Practice 194.

Under the proposed Rule, unless a limitation applies, SBS Entities will be able to allow disqualified associated persons that are not U.S. persons to effect or be involved in effecting security-based swap transactions with non-U.S. counterparties and foreign branches of U.S. counterparties. The Commission preliminarily believes that the proposed Rule involves three groups of benefits.

First, SBS Entities may benefit from greater flexibility in hiring and managing non-U.S. employees transacting with foreign counterparties and foreign branches of U.S. counterparties. To the degree that such employees may have valuable skills, expertise, or counterparty relationships that are difficult to replace and outweigh the reputational and compliance costs of continued association, SBS Entities would be able to continue employing them without being required to apply for relief with the Commission. In addition, cross-registered SBS Entities would experience economies of scope in employing non-U.S. natural persons in their swap and security-based swap businesses. Specifically, SBS Entities will be able to rely on the same non-U.S. natural persons in transactions with the same counterparties across integrated swap and security-based swap markets. In addition, SBS Entities will no longer be required to apply for relief under Rule of Practice 194 with respect to non-U.S. persons transacting with foreign counterparties and foreign branches of U.S. counterparties.[466]

Second, to the degree that SBS Entities currently pass along costs to counterparties in the form of, for example, higher transaction costs, the proposed amendment may benefit non-U.S. counterparties and foreign branches of U.S. counterparties through lower prices of available security-based swaps. In addition, such counterparties of SBS Entities would be able to continue transacting with the same non-U.S. associated persons of the same SBS Entities across interconnected markets without delays related to Commission review under Rule of Practice 194. The Commission notes that both the returns and the risks from security-based swap transactions by foreign branches of U.S. persons may flow to the U.S. business of U.S. persons, contributing to profits and losses of U.S. persons.

Third, the proposed amendment may benefit disqualified non-U.S. natural persons seeking to engage in security-based swap activity. Under the proposal, an SBS Entity would no longer be required to incur costs related to applying for exemptive relief under Rule of Practice 194 in order to allow a disqualified non-U.S. natural person to transact with foreign counterparties and foreign branches of U.S. counterparties. The proposal may reduce direct costs to SBS Entities of hiring and retaining disqualified non-U.S. employees. This may improve employment opportunities for disqualified non-U.S. natural persons in the security-based swap industry. However, research in other contexts points to large reputational costs from misconduct, and some papers show that employers may often fire and replace employees engaging in misconduct to manage these reputational costs, as discussed in the Rule of Practice 194 Adopting Release.[467]

The proposed Rule would result in SBS Entities being less constrained by the general statutory prohibition in their security-based swap activity with foreign counterparties and foreign branches of U.S. counterparties. The Commission continues to recognize that associating with statutorily disqualified natural persons effecting or involved in effecting security-based swaps on behalf of SBS Entities may give rise to counterparty and compliance risks. For example, as the Commission discussed elsewhere, in other settings, individuals engaged in misconduct are significantly more likely to engage in repeated

[465] *See* Rule of Practice 194 Adopting Release, 84 FR at 4922.

[466] As discussed in the economic baseline, we preliminarily believe that the proposed exclusion may reduce the number of applications by between zero and two applications, resulting in potential cost savings of between zero and $24,540 (=2 × 30 hours × Attorney at $409 per hour). The hourly cost figure is based on data from SIFMA's *Management & Professional Earnings in the Securities Industry 2013* (modified by the Commission staff to adjust for inflation and to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead). *See* Rule of Practice 194 Adopting Release, 84 FR at 4922.

[467] *See* Rule of Practice 194 Adopting Release, 84 FR at 4932.

misconduct.[468] Data in the Rule of Practice 194 Adopting Release suggests that, in parallel disqualification review processes in swap and broker-dealer settings, the application rate is low, but there are incidences of repeated misconduct.[469] The Commission also continues to recognize that statutory disqualification and an inability to continue associating with SBS Entities creates disincentives against underlying misconduct for associated persons and that there may be spillover effects on other associated persons within the same SBS Entity.[470] Further, the Commission recognizes that, under the proposed amendment, the Commission would be unable to make an individualized determination about whether permitting a given non-U.S. associated natural person to effect or be involved in effecting security-based swaps on behalf of an SBS Entity is consistent with the public interest.

The Commission also notes that the proposed amendment would allow SBS Entities to rely on disqualified non-U.S. personnel in their transactions with both foreign counterparties and foreign branches of U.S. counterparties. To the degree that statutory disqualification may increase risks to counterparties, to the degree that SBS Entities may choose to rely on disqualified foreign personnel despite reputational and compliance costs of association, and to the extent that such counterparties do not move their business to other personnel or SBS Entity, this may increase risks to foreign branches of U.S. counterparties. Depending on the consolidation and ownership structure of counterparties, some of the returns as well as losses in foreign branches may flow through to some U.S. parent firms. However, the proposed approach provides for identical treatment of foreign counterparties and foreign branches of U.S. counterparties, reducing potential competitive disparities between them in security-based swap markets.

The Commission notes that, importantly, the proposed exclusion would more closely harmonize the Commission's approach with the approach already being followed with respect to foreign personnel of Swap Entities. As such, the Commission's assessment of the benefits and potential counterparty risks of the proposed relief discussed above is informed by experience and data with respect to CFTC/NFA statutory disqualification review in swap markets, including, among others: (i) The low incidence of statutory disqualification of associated persons; (ii) the majority of applications arising out of non-investment related conduct by associated persons; (iii) absence of additional statutory disqualification forms filed by swap dealers to request NFA determination with respect to a new statutory disqualification for any of the individuals.[471] The Commission also notes that parallel swap markets remain large, with multi-name credit default swaps representing an increasing share of credit-default swap notional outstanding, and highly liquid.[472]

Three factors may reduce the magnitude of the above economic costs and benefits. First, the Commission will continue to be able, in appropriate cases, to institute proceedings under Exchange Act Section 15F(l)(3) to determine whether the Commission should censure, place limitations on the activities or functions of such person, suspend for a period not exceeding 12 months, or bar such person from being associated with an SBS Entity.[473]

Second, the security-based swap market is an institutional one, with investment advisers, banks, pension funds, insurance companies, and ISDA-recognized dealers accounting for 99.8% of transaction activity.[474] While security-based swaps may be more opaque than equity and bonds and may give rise to greater information asymmetries between dealers and non-dealer counterparties, institutional counterparties may be more informed and sophisticated compared to retail clients. However, given limited data availability on the domiciles of non-dealer counterparties, the Commission is unable to quantify how many non-institutional foreign counterparties may be affected by the proposed Rule.

Importantly, the concentrated nature of security-based swap market-facing activity may reduce the ability of counterparties to choose to transact with SBS Entities that do not rely on disqualified personnel. As the Commission estimated elsewhere, the top five dealer accounts intermediated approximately 55% of all SBS Entity transactions by gross notional, and the median counterparty transacted with 2 dealers in 2017.[475] While reputational incentives may flow from a customer's willingness to deal with an SBS Entity, the fact that the customer may not have many dealers to choose from weakens those incentives. However, the Commission also notes that market concentration is itself endogenous to market participants' counterparty selection. That is, counterparties trade off the potentially higher counterparty risk of transacting with SBS Entities that rely on disqualified associated persons against the attractiveness of security-based swaps (price and non-price terms) that they may offer. If a large number of counterparties choose to move their business to SBS Entities that do not rely on disqualified associated persons (including those SBS Entities that may currently have lower market share), market concentration itself can decrease.

Third, as discussed above, the exclusion will not be available with respect to an associated person if that associated person is currently subject to an order described in subparagraphs (A) and (B) of Section 3(a)(39) of the Exchange Act, with the limitation that an order by a foreign financial regulatory authority described in subparagraphs (B)(i) and (B)(iii) of Section 3(a)(39) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located. In such circumstances, affected SBS Entities will be required to apply for relief under Rule of Practice 194 and will be unable to allow their disqualified associated person entities to effect or be involved in effecting

[468] For a more detailed discussion, *see* Rule of Practice 194 Adopting Release, 84 FR at 4932.

[469] *See* Rule of Practice 194 Adopting Release, 84 FR at 4928.

[470] For example, as discussed in the Rule of Practice Adopting Release, Dimmock, Gerken, and Graham (2018) examine customer complaints against FINRA-registered representatives in 1999 through 2011, and argue that misconduct of individuals influences the misconduct of their coworkers. Using mergers of firms as a quasi-exogenous shock, the paper examines changes in an adviser's misconduct around changes to an employee's coworkers due to a merger. The paper estimates that an employee is 37% more likely to commit misconduct if her new coworkers encountered in the merger have a history of misconduct. The paper contributes to broader evidence on peer effects, connectedness, and commonality of misconduct, and can help explain the distributional properties in the prevalence of misconduct across firms documented in Egan, Matvos, and Seru (2017). *See* Stephen G. Dimmock, William C. Gerken, & Nathaniel P. Graham, ''Is Fraud Contagious? Coworker Influence on Misconduct by Financial Advisors,'' 73 J. Fin. 1417 (2018); *see also* Mark Egan, Gregor Matvos, & Amit Seru, ''The Market for Financial Adviser Misconduct,'' 127 J. Pol. Econ. 233 (2019), *available at https://papers.ssrn.com/sol3/papers.cfm ?abstract_id=2739170.*

[471] *See* Rule of Practice Adopting Release, 84 FR at 4931.

[472] *See, e.g.,* Inaki Aldasoro & Torsten Ehlers, ''The Credit Default Swap Market: What a Difference a Decade Makes,'' BIS Quarterly Review, June 2018, at 3 (Graph 1), *available at https://www.bis.org/publ/qtrpdf/r_qt1806b.pdf,* last accessed March 26, 2019; *see also* Richard Haynes & Lihong McPhail, ''The Liquidity of Credit Default Index Swap Networks'' (Working Paper, 2017).

[473] *See* 15 U.S.C. 78o–10(l)(3).

[474] *See* Rule of Practice 194 Adopting Release, Table 1 of the economic baseline.

[475] *See* Rule of Practice 194 Adopting Release, 84 FR at 4925.

security-based swaps on their behalf, pending review by the Commission.

2. Effects on Efficiency, Competition, and Capital Formation

The Commission has assessed the effects of the proposed amendment on efficiency, competition, and capital formation. As noted above, limiting the ability of statutorily disqualified persons to effect or be involved in effecting security-based swaps on behalf of SBS Entities may reduce compliance and counterparty risks and may facilitate competition among higher quality associated persons and SBS Entities, thereby enhancing integrity of security-based swap markets. At the same time, limits on the participation of disqualified employees in security-based swap markets may result in costs related to replacing or reassigning an employee to SBS Entities or applying to the Commission for relief. This may disrupt existing counterparty relationships across closely linked swap and security-based swap markets and increase transaction costs borne by counterparties, adversely effecting efficiency and capital formation in swap and security-based swap markets.

In addition, if more SBS Entities seek to avail themselves of the exclusion and retain, hire, or increase their reliance on disqualified foreign personnel in their transactions with foreign counterparties, a greater number of disqualified persons may seek employment and business opportunities in security-based swap markets. As discussed in the Rule of Practice 194 Adopting Release,[476] there is a dearth of economic research on these issues in derivatives markets, and the research in other settings cuts both ways. On the one hand, a greater number of disqualified persons active in security-based swaps could increase the ''lemons'' problem and related costs of adverse selection,[477] since market participants may demand a discount from counterparties if they expect a greater chance that counterparties have employed disqualified persons that are involved in arranging transactions. This effect could lead to a reduction in informational efficiency and capital formation. On the other hand, more flexibility in employing disqualified persons may also increase competition and consumer surplus.[478]

The proposed amendment would preserve an equal competitive standing of U.S. and non-U.S. SBS Entities with disqualified foreign personnel as they compete for business with foreign counterparties and foreign branches of U.S. counterparties. Importantly, under the baseline, both U.S. and non-U.S. Swap Entities are able to transact with foreign counterparties relying on their foreign disqualified personnel without applying to the CFTC for relief from the statutory prohibition. As discussed in the economic baseline, the Commission expects extensive cross-registration of dealers across the two markets. As a result, dually registered U.S. SBS Entities would be able to rely on the same disqualified foreign personnel in transacting with the same counterparties in both swap (*e.g.,* index CDS) and security-based swap (*e.g.,* single-name CDS) markets.

The proposed amendment may create incentives for SBS Entities to relocate their personnel (or the activities performed by U.S. personnel) outside the U.S. to be able to avail themselves of the proposed exclusion and avoid being bound by the statutory prohibition. The cost of relocation will depend on many factors, such as the number of positions being relocated, the location of new operations, the costs of operating at the new location, and other factors. These factors will, in turn, depend on the relative volumes of market-facing activity that a firm carries out on different underliers and with counterparties in different jurisdictions. As a result of these dependencies, the Commission cannot reliably quantify the costs of these alternative approaches to compliance. However, the Commission believes that firms would seek to relocate their personnel (or the activities performed by U.S. personnel) only if they expect the relocations to be profitable.

Further, the proposed amendment may improve the employment and career outcomes of disqualified foreign personnel relative to disqualified U.S. personnel. As a result, disqualified personnel may seek to relocate outside the U.S. and seek employment by SBS Entities in their foreign business. To the degree that such relocation occurs, it may reduce the effective scope of application of the statutory prohibition. This may also lead to a separating equilibrium: It may decrease counterparty risks and adverse selection costs of security-based swaps in SBS Entities and in transactions with U.S. counterparties, and increase counterparty risks and adverse selection costs in transactions with foreign counterparties and foreign branches of U.S. counterparties.

3. Alternatives Considered

The Commission has considered several alternatives to the proposed amendment to Rule of Practice 194(c)(2).

a. Relief for All SBS Entities With Respect to Non-U.S. Personnel Transacting With Non-U.S. Counterparties But Not With Foreign Branches of U.S. Counterparties

The Commission could have proposed an exclusion for all SBS Entities with respect to foreign personnel transacting with foreign counterparties, without making the exclusion available to foreign personnel transacting with foreign branches of U.S. counterparties. As discussed above, a history of statutorily disqualifying conduct may signal higher ongoing risks to counterparties. SBS Entities may choose to replace disqualified foreign personnel due to reputational and compliance costs. In addition, the security-based swap market is institutional in nature, and better informed institutional counterparties may choose to move their business to another employee or another SBS Entity without disqualified personnel. To the degree that SBS Entities do not replace disqualified personnel and counterparties do not move their business, the alternative may decrease risks to foreign branches of U.S. counterparties relative to the proposed approach. Since both potential returns and potential risks of foreign branches may flow through to some U.S. parents (depending on the counterparty's ownership and organizational structure), the alternative could reduce the returns and risks of such U.S. counterparties' parents.

At the same time, the alternative approach would involve unequal effects on foreign counterparties and foreign

[476] *See* Rule of Practice 194 Adopting Release, 84 FR at 4923.

[477] *See, e.g.,* George A. Akerlof, ''The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,'' 84 Q. J. Econ. 488 (1970). Informational asymmetry about quality can negatively affect market participation and decrease the amount of trading—a problem commonly known as adverse selection. When information about counterparty quality is scarce, market participants may be less willing to enter into transactions, and the overall level of trading may fall.

[478] *See* Jonathan Berk & Jules H. van Binsbergen, ''Regulation of Charlatans in High-Skill Professions'' (Stanford University Graduate School of Business, Research Paper No. 17–43, 2017), *available at https://ssrn.com/abstract=2979134.* The paper models the costs and benefits of both disclosure and standards regulation of ''charlatans'' (professionals who sell a service they do not deliver) in high skill professions. When there is a mismatch between high demand for a skill and short supply of the skill, the presence of charlatans in a profession is an equilibrium outcome. Importantly, reducing the number of charlatans by regulation decreases consumer surplus in their model. Both standards and disclosure regulations drive charlatans out of the market, but the resulting reduction in competition amongst producers actually reduces consumer surplus. In turn, producers strictly benefit from such regulation.

branches of U.S. counterparties. Specifically, under the alternative, foreign counterparties would be able to choose between transacting with those SBS Entities that employ statutorily disqualified personnel and those that do not, whereas foreign branches of U.S. counterparties would only be able to transact with SBS Entities that do not employ statutorily disqualified personnel. If SBS Entities with disqualified personnel compensate for potentially higher counterparty risks with, for example, more attractive terms of security-based swaps, the alternative may introduce disparities in access and cost of security-based swaps available to foreign counterparties as compared to those available to foreign branches of U.S. counterparties.

b. Relief for Non-U.S. Person SBS Entities With Respect to Non-U.S. Personnel Transacting With Non-U.S. Counterparties and Foreign Branches of U.S. Counterparties

The Commission has considered a narrower alternative exclusion limited to non-U.S. person SBS Entities relying on non-U.S. personnel in their transactions with foreign counterparties and foreign branches of U.S. counterparties. The alternative exclusion would be subject to the same limitation as the proposal, discussed above: An SBS Entity would not be able to rely on the exclusion with respect to an associated person currently subject to an order that prohibits such person from participating in the U.S. financial markets, including the securities or swap market, or foreign financial markets.

Relative to the proposed amendment, this alternative would broaden the effective scope of application of the statutory prohibition and might reduce ongoing compliance and counterparty risks for foreign counterparties and foreign branches of U.S. counterparties. Under the alternative, disqualified foreign personnel of U.S. SBS Entities would be unable to transact without the costs and delays related to applications for relief. This might decrease the number of disqualified foreign personnel transacting in security-based swap markets and seeking to associate with U.S. SBS Entities. Lower market participation of disqualified personnel on behalf of U.S. SBS Entities in their foreign transactions may reduce the costs of adverse selection and increase foreign counterparty willingness to transact with U.S. SBS Entities in security-based swaps.

At the same time, it would result in a disparate competitive standing between U.S. SBS Entities and non-U.S. person SBS Entities as they are competing for business with foreign counterparties and foreign branches of U.S. counterparties. This alternative would allow non-U.S. SBS Entities to enjoy flexibility in hiring, retaining, and replacing non-U.S. personnel and in staffing foreign offices with personnel engaged in transactions with foreign counterparties. However, U.S. SBS Entities would be unable to rely on the exclusion and would have to either replace an employee or apply under Rule of Practice 194, incurring related costs and delays. To the degree that SBS Entities pass along costs to their counterparties, relative to the proposed exclusion, this narrower alternative may result in somewhat lower availability or worse terms of security-based swaps and may somewhat reduce the choice of dealers for foreign counterparties and foreign branches of U.S. counterparties. Finally, this approach would be inconsistent with the CFTC's relief for Swap Entities. Given expected extensive cross-registration and active cross-market participation by counterparties, a lack of comparable treatment of disqualification across swaps and security-based swaps would make it harder for the same U.S. SBS Entities to transact relying on the same foreign personnel with the same foreign counterparties in related markets.

Further, under the alternative, foreign personnel of U.S. SBS Entities would not have the same competitive standing as foreign personnel of non-U.S. SBS Entities when engaging in business with the same foreign counterparties. The Commission also notes that the definition of a U.S. person is based on a natural person's residency in the United States. As discussed above, excluding foreign personnel of foreign SBS Entities creates incentives for all disqualified U.S. personnel employed by foreign SBS Entities to be transferred to a foreign office in order to legally become non-U.S. personnel eligible for the alternative exclusion. Of course, the choice made by a non-U.S. SBS Entity to transfer disqualified U.S. personnel abroad will reflect the value of an employee's skills and expertise, costs to reputation with counterparties, the number of positions being moved, and internal organizational structures of a non-U.S. SBS Entity. However, SBS Entities are commonly part of large financial groups with many domestic and foreign regional offices. Therefore many non-U.S. SBS Entities may be able to relocate statutorily disqualified U.S. personnel to foreign offices and rely on the exclusion.

Under this alternative, however, disqualified personnel of U.S. SBS Entities would be unable to relocate to a foreign office and rely on the exclusion, adding to the competitive disparities between disqualified personnel of U.S. and foreign SBS Entities transacting with the same foreign counterparties. As a result, under the alternative, statutorily disqualified personnel of U.S. SBS Entities may seek employment with foreign SBS Entities and continue to transact with the same foreign counterparties on behalf of non-U.S. SBS Entities.

The Commission continues to recognize that, due to adverse selection costs and compliance risks related to hiring and retaining disqualified persons, many SBS Entities may choose not to hire or may fire and replace statutorily disqualified employees. However, this incentive may be weaker with respect to personnel whose conduct giving rise to disqualification occurred in jurisdictions where statutory disqualification is not public information.

c. Relief for Non-U.S. SBS Entities With Respect to Both U.S. and Non-U.S. Personnel Transacting With Foreign Counterparties and Foreign Branches of U.S. Counterparties

The Commission has considered excluding from the statutory prohibition both U.S. and foreign disqualified personnel, but limiting the relief to non-U.S. person SBS Entities transacting exclusively with foreign counterparties or foreign branches of U.S. counterparties. The alternative exclusion would be subject to the same limitation as the proposal, discussed above: An SBS Entity would not be able to rely on the exclusion with respect to an associated person currently subject to an order that prohibits such person from participating in the U.S. financial markets, including the securities or swap market, or foreign financial markets.

Under the alternative, non-U.S. SBS Entities would enjoy full flexibility in hiring, retaining, and replacing personnel and in staffing both U.S. and non-U.S. offices with personnel engaged in transactions with foreign counterparties. To the degree that non-U.S. SBS Entities pass along costs to their counterparties, this may result in somewhat higher availability or improved terms of security-based swaps for foreign counterparties. Further, under the alternative, disqualified U.S. personnel would have the same competitive standing as disqualified foreign personnel with similar skills and expertise transacting on behalf of non-U.S. SBS Entities with the same foreign

counterparties. For example, disqualified U.S. personnel transacting with foreign counterparties and foreign branches of U.S. counterparties would not need to relocate to a foreign office of a foreign SBS Entity to avail themselves of the exclusion.

Relative to the proposed Rule, this alternative would increase the competitive gap between U.S. and non-U.S. SBS Entities in their ability to hire, retain, and locate disqualified personnel as they compete for business with foreign counterparties. To the degree that U.S. SBS Entities may wish to begin or continue to associate with disqualified personnel despite potential reputation costs, U.S. SBS Entities would be required to apply with the Commission and disallow disqualified personnel from effecting security-based swaps pending Commission action. At the same time, foreign SBS Entities would be able to freely hire and retain disqualified personnel in the U.S. and allow them to engage in security-based swap transactions with foreign counterparties and foreign branches of U.S. counterparties.

As noted in the economic baseline, this alternative approach is inconsistent with the relief from the CFTC's requirements that is available to both U.S. and non-U.S. SBS Entities with respect to only foreign personnel. Given expected extensive cross-registration and active cross-market participation by counterparties, differential treatment of disqualification may disrupt counterparty relationships between the same dually registered SBS Entities transacting with the same foreign counterparties in related markets.

Under the alternative and relative to the proposed amendment, disqualified U.S. personnel of non-U.S. SBS Entities may enjoy better employment and career outcomes, which may increase the number of disqualified personnel transacting in security-based swap markets and seeking to associate with SBS Entities. Greater market participation of disqualified personnel on behalf of non-U.S. SBS Entities, particularly in jurisdictions where conduct giving rise to disqualification is not public or easily accessible information, may increase the costs of adverse selection and decrease counterparty willingness to transact with non-U.S. SBS Entities in security-based swaps. As a result, some foreign counterparties may choose to move their transaction activity from non-U.S. to U.S. SBS Entities.

The magnitude of the above economic effects of the alternative approach may be limited by three factors. First, many non-U.S. SBS Entities may choose to locate personnel transacting with foreign counterparties in foreign offices if most of their business is in foreign underliers trading in foreign jurisdictions.[479] As a result, some non-U.S. SBS Entities may already locate personnel, including statutorily disqualified personnel, dedicated to transacting with foreign counterparties outside the United States.

Second, due to reputational and adverse selection costs and compliance risks related to hiring and retaining disqualified persons, many SBS Entities may choose not to hire, or may fire and replace disqualified employees. The incentive to disassociate is strongest in jurisdictions in which conduct giving rise to statutory disqualification is public information (as in the U.S). As a result, it is not clear how often non-U.S. SBS Entities would choose to hire or continue to employ disqualified U.S. personnel even if they were able to rely on an exclusion and avoid applying for relief under Rule of Practice 194.

Third, the Commission notes that the primary difference between the proposed approach and the alternative is in the treatment of U.S. SBS Entity personnel. Specifically, under the proposal, U.S. SBS Entities may permit non-U.S. personnel to transact with foreign counterparties and foreign branches of U.S. counterparties, whereas under the alternative they may not. With respect to non-U.S. SBS Entities, the proposal provides relief for foreign personnel only; the alternative provides relief with respect to both U.S. and foreign personnel. As discussed above, the definition of a U.S. person in Rule 3a71–3(a)(4)(i)(A) under the Exchange Act with respect to a natural person is based on residency in the United States. Under the proposal, non-U.S. SBS Entities may be able to simply transfer statutorily disqualified U.S. personnel transacting with foreign counterparties to a foreign office in order to become eligible for the proposed exclusion. Of course, each non-U.S. SBS Entity's choice to continue to employ disqualified U.S. personnel and relocate them abroad would likely reflect the value of an employee's skills and expertise, reputational costs of continued association, the number of positions being moved, and internal organizational structures of each entity, among others. However, non-U.S. SBS Entities are commonly members of large financial groups with many domestic and foreign regional offices, and such relocation is likely to be feasible for some non-U.S. SBS Entities. As a result, depending on the ease and costs of such relocation and the value of disqualified personnel to the non-U.S. SBS Entity, the scope of this alternative with respect to non-U.S. SBS Entities may be similar to the effective scope of the proposed exclusion with respect to non-U.S. SBS Entities.

d. Relief for All SBS Entities With Respect to All Personnel Transacting With Non-U.S. Counterparties and Foreign Branches of U.S. Counterparties

The Commission has considered an exclusion for both U.S. and foreign SBS Entities with respect to all personnel transacting with foreign counterparties and foreign branches of U.S. counterparties. The alternative exclusion would be subject to the same limitation as the proposal, discussed above: An SBS Entity would not be able to rely on the exclusion with respect to an associated person currently subject to an order that prohibits such person from participating in the U.S. financial markets, including the securities or swap market, or foreign financial markets.

This alternative would allow both non-U.S. and U.S. SBS Entities to enjoy full flexibility in hiring, retaining, and replacing personnel, and in staffing both U.S. and non-U.S. offices with personnel engaged in transacting with foreign counterparties and foreign branches of U.S. counterparties. To the degree that SBS Entities currently pass along costs to their counterparties or to the degree disqualified personnel may have superior skills or expertise, this may benefit the terms of security-based swaps and choice of dealers available to foreign counterparties. Further, disqualified U.S. personnel would have the same competitive standing as disqualified foreign personnel with similar skills and expertise transacting on behalf of SBS Entities with the same foreign counterparties.

Relative to the proposed exclusion, this alternative provides more relief from the statutory prohibition and may, thus, increase ongoing compliance and counterparty risks for foreign counterparties and foreign branches of U.S counterparties. Since all disqualified personnel of all SBS Entities transacting with foreign counterparties and foreign branches of U.S. counterparties would be excluded from the statutory prohibition, more disqualified personnel may seek to associate with both U.S. and foreign SBS Entities and to transact with foreign counterparties and foreign branches of

[479] As discussed in part VII.A.2.c, *supra,* we understand that many market participants engaged in market-facing activity prefer to use traders and manage risk for security-based swaps in the jurisdiction where the underlier is traded.

U.S. counterparties. However, as discussed elsewhere in this release and in the Rule of Practice 194 Adopting Release, one of the key disincentives against continued association with disqualified personnel may be reputational. To the degree that information about the disqualifying conduct by U.S. personnel may be public and institutional customers perceive disqualification as increasing counterparty risk, counterparties may move their business, and SBS Entities may simply replace disqualified U.S. personnel. As a result, it is not clear that SBS Entities would significantly increase their reliance on disqualified personnel in transactions with foreign counterparties and foreign branches of U.S. counterparties relative to the baseline or the proposed approach. Nevertheless, to the degree that they may do so, greater market participation of disqualified personnel may increase adverse selection costs and decrease such counterparties' willingness to participate in security-based swap markets.

As noted above, a natural person's residency in the United States is endogenous. As a result, any exclusion for foreign personnel, but not U.S. personnel, transacting with foreign counterparties may result in SBS Entities simply transferring disqualified U.S. personnel to a foreign office. As the Commission recognized above, this decision by an SBS Entity will reflect the uniqueness and value of an employee's skills, expertise, and client relationships relative to the reputational costs and compliance risks of continuing to employ disqualified personnel and directs costs of personnel transfers. However, SBS Entities that belong to large global financial groups are less likely to be constrained by the location of disqualified personnel that they prefer to retain. As a result, the economic effects of this alternative may be similar to those of the proposed approach.

e. Relief for All SBS Entities With Respect to Non-U.S. Personnel Effecting and Involved in Effecting Security-Based Swaps With U.S. and Non-U.S. Counterparties

The Commission has also considered alternatives excluding from the statutory prohibition non-U.S. associated persons involved in effecting security-based swaps with both U.S. and non-U.S. counterparties in general, or under certain circumstances. For example, the Commission has considered excluding from the statutory prohibition non-U.S. associated persons involved in effecting security-based swaps with U.S. counterparties, if such activity is limited in level or scope (*e.g.,* collateral management).

As discussed in the economic baseline, security-based swap markets are global and many SBS Entities actively participate across U.S. and non-U.S. markets. Due to economies of scale and scope, some SBS Entities may choose not to separate customer facing and/or operational activities, such as collateral management and clearing, related to security-based swaps with U.S. and non-U.S. counterparties. To the degree that some SBS Entities rely on the same personnel across their U.S. and non-U.S. business, they are currently unable to hire and retain statutorily disqualified personnel absent exemptive relief by the Commission. As discussed above, SBS Entities may face reputational costs from retaining disqualified employees. To the degree that SBS Entities would prefer to hire and retain certain disqualified employees due to their superior expertise, skills, and abilities, and despite such reputational costs, the alternative would provide beneficial flexibility in personnel decisions without necessitating an SBS Entity to completely separate the operational side of their U.S and non-U.S. businesses (and more flexibility relative to the proposal). Some of these benefits may flow through to counterparties in the form of more efficient execution of security-based swaps and related services, or better price and non-price terms.

To the degree that statutory disqualification of associated persons may increase compliance and counterparty risks, the alternative may involve greater risks to U.S. counterparties of SBS Entities relative to the proposal. The Commission continues to note that the scope of conduct that gives rise to statutory disqualification is broad and includes conduct that is not related to investments or financial markets. Moreover, the security-based swap market is an institutional one, and conduct that gives rise to statutory disqualification in the U.S. is generally public. U.S. counterparties that believe statutory disqualification is a meaningful signal of quality may vote with their feet and choose to transact with non-disqualified personnel or SBS Entities that do not rely on disqualified personnel.

The Commission notes that the alternative would provide broader relief compared to CFTC's requirements in swap markets and would not result in a harmonized regulatory regime with respect to statutory disqualification. Importantly, the full costs and benefits of an alternative that provides broader relief from the statutory prohibition in security-based swaps compared to the relief available in swap markets may not be realized. Specifically, to the degree that market participants transact across swap and security-based swap markets with the same SBS Entity counterparties, SBS Entities may continue to rely on the same personnel who are allowed to effect or be involved in both swaps and security-based swap transactions.

E. Certification, Opinion of Counsel, and Employee Questionnaires

In addition, the Commission is proposing certain guidance on requirements regarding the certification and opinion of counsel under Rule 15Fb2–4, amendments to registration Rule 15Fb2–1, and modifications to the requirement to obtain employee questionnaires under proposed Rules 18a–5(a)(10) and (b)(8).

1. Guidance Regarding Rule 15Fb2–4 and Proposed Amendments to Rule 15Fb2–1

a. Background

The Commission's proposal retains the adopted certification and opinion of counsel requirements, but proposes additional guidance regarding the scope of the requirements. Specifically, the guidance would clarify that the requirement applies only with respect to the foreign laws of the jurisdiction or jurisdictions in which the nonresident SBS Entity maintains the covered books and records and that covered records include only records that relate to the ''U.S. business'' of the nonresident SBS Entity and financial records necessary for the Commission to assess compliance with its capital and margin rules (if applicable). In addition, the proposed guidance would clarify that the certification and opinion of counsel can be predicated on the consent of persons whose information is or will be included in the books and records, and can consider, under certain circumstances, whether the relevant regulatory authority in the foreign jurisdiction has previously approved or consented to the Commission requesting and obtaining documents from, and conducting on-site inspections or examinations at office of, nonresident SBS Entities located in the jurisdiction. Finally, the proposed guidance would clarify that the certification and opinion of counsel requirements would not need to address open contracts predating the filing of the registration application. In addition, the proposal would amend

Rule 15Fb2–1 and establish a conditional registration regime discussed in Section IV.A.5 above.

b. Costs, Benefits, and Effects on Efficiency, Competition, and Capital Formation

(1) Proposed Guidance

As the Commission stated in the Registration Adopting Release, the Commission's access to books and records and the ability to inspect and examine registered SBS Entities facilitates Commission oversight of security-based swap markets.[480] To the degree that the certification and opinion of counsel requirements provide assurances regarding the Commission's ability to oversee and inspect and examine nonresident SBS Entities, the baseline rules may reduce counterparty and compliance risks and adverse selection. However, certain nonresident entities may lack clarity concerning the certification and opinion of counsel requirements.

The recent passage of the EU General Data Protection Regulation (GDPR), as well as the potential exit of the United Kingdom from the European Union may create significant uncertainty for market participants currently intermediating large volumes of security-based swaps regarding their ability to comply with the certification and opinion of counsel requirements, as well as the background check recordkeeping requirements discussed below. In addition, since the adoption of SBS Entity registration rules, the Commission has received questions regarding specific aspects of the certification and opinion of counsel requirements and is aware of concerns about the ability of some nonresident market participants to comply with these requirements.[481]

The Commission estimates that nonresident SBS Entities currently intermediating approximately 59.8% of all security-based swap notional are subject to foreign privacy and secrecy laws, blocking statutes, and other legal barriers that may make it difficult or create uncertainty about their ability to provide certification and opinion of counsel and/or to be subject to inspections and examinations by the Commission.[482] To that extent, such nonresident SBS entities may be less likely to apply or become unable to register as SBS Entities when compliance with SBS Entity registration rules is required. As a result, some nonresident SBS Entities currently intermediating large volumes of security-based swap transactions may cease transaction activity or be forced to relocate certain operations, books, and records. This may result in disruptions to valuable counterparty relationships or increased costs to counterparties (to the degree that nonresident SBS Entities may pass along the costs of such restructuring in the form of higher transaction costs or less attractive security-based swaps). In addition, depending on whether and which SBS Entities step in to intermediate the newly available market share, there may be significant competitive effects.

The proposed approach could benefit some nonresident entities currently intermediating security-based swap markets by reducing uncertainty, allowing them to more easily comply with the certification and opinion of counsel requirements, and register with the Commission while avoiding disruptions to counterparty relationships and potential competitive effects to security-based swap markets. For example, based on an analysis of foreign privacy and secrecy laws, blocking statutes, and other legal barriers and information from market participants, the proposed guidance regarding consent may help SBS Entities currently intermediating approximately 47.2% of all security-based swap notional intermediated by SBS Entities to comply with the certification and opinion of counsel requirements, to the extent that those entities would otherwise have understood that the certification and opinion of counsel cannot be predicated on customer consent.[483]

To the extent that aspects of the proposed guidance may reduce the scope of the certification and opinion of counsel by nonresident SBS Entities relative to their baseline understanding of Rule 15Fb2–4, the proposed guidance may decrease the burden on nonresident SBS Entities and the assurances that the Commission will be able to effectively and efficiently oversee, inspect, and examine nonresident SBS Entities. However, as discussed above, the proposed amendment to Rule 15Fb2–1 regarding the certification and opinion of counsel requirements would not reduce or eliminate independent ongoing obligations of nonresident SBS Entities to provide the Commission with direct access to their books and records and to permit onsite inspections and examinations.

Importantly, the Commission recognizes that the magnitude of the economic effects of the proposed guidance is influenced by how market participants currently understand the scope of the certification and opinion of counsel requirements. Specifically, the proposed guidance will only have the economic effects discussed below, to the extent that SBS Entities and their counterparties have a broader baseline understanding of the scope of existing rules. If market participants are

[480] *See* 80 FR at 48972.

[481] *See, e.g.,* IIB/SIFMA 8/26/2016 Letter; *see also* IIB 11/16/2016 Email; Memo to File dated July 24, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-4107153-170272.pdf;* Memo to File dated June 5, 2018, available at *https://www.sec.gov/comments/s7-08-12/s70812-3785770-162712.pdf;* Memo to File dated April 30, 2018, available at *https://www.sec.gov/comments/s7-05-14/s70514-4042895-168865.pdf;* Memo to File dated April 30, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-4042895-168865.pdf;* Memo to file dated April 11, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-4035093-168391.pdf;* Memo to file dated April 4, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-3405597-162172.pdf;* Memo to file dated April 3, 2018, *available at https://www.sec.gov/comments/s7-05-14/s70514-3405388-162169.pdf.*

[482] Since we expect a large number of U.S. SBS Entities will have dually registered as Swap Entities, to inform our analysis we considered foreign jurisdictions where CFTC staff previously provided no-action relief for trade repository reporting requirements as they apply to swap dealers (*available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-01.pdf*). This estimate was also informed by a legal analysis of the EU General Data Protection Regulation, foreign blocking statutes, bank secrecy and employment laws, jurisdiction specific privacy laws, and other legal barriers that may inhibit compliance with regulatory requirements. These jurisdictions were matched to the domicile classifications of TIW accounts likely to trigger requirements to register with the Commission as SBS Entities when compliance with registration requirements becomes effective, using 2017 DTCC–TIW data. If foreign jurisdictions amend their data privacy and blocking laws, provide guidance, or enter into international agreements that would facilitate compliance with Commission SBS Entity registration requirements before compliance with SBS Entity registration rules becomes effective, or if SBS Entities choose to restructure their operations and/or relocate their books and records to other jurisdictions (for example, in response to the potential exit of the U.K. from the E.U. or GDPR restrictions), this figure may over- or under-estimate the security-based swap market share impacted by the proposed guidance.

[483] This estimate is based on an analysis of 2017 DTCC TIW account-level data on the transaction activity of entities likely to trigger requirements to register with the Commission as SBS Entities when compliance with registration requirements becomes effective. We note that customer consent may serve as a part of a broader legal basis for the opinion of counsel, and the proposed guidance may help those nonresident SBS Entities that are subject to foreign privacy, but not necessarily foreign secrecy laws, to comply with the certification and opinion of counsel requirements. If foreign jurisdictions amend their data privacy and blocking laws, provide guidance, or enter into international agreements that would facilitate compliance with the opinion of counsel requirement before compliance with SBS Entity registration rules become effective, or if SBS Entities choose to restructure their operations and/or relocate their books and records to other jurisdictions (for example, in response to the potential exit of the U.K. from the E.U. or GDPR restrictions), this figure may over- or under-estimate the security-based swap market share impacted by the proposed guidance.

currently interpreting the scope of the certification and opinion of counsel requirements in a manner similar to that provided by the proposed guidance, the economic effects of the proposed guidance may be de minimis.

(2) Proposed Conditional Registration

The proposal would also amend Exchange Act Rule 15Fb2–1 to allow applicants unable to provide the certification and opinion of counsel to become conditionally registered for up to 24 months after the compliance date for registration rules. Under the proposal, if an entity fails to provide the requisite certification and opinion of counsel within 24 months, the Commission may institute proceedings to determine whether ongoing registration should be denied.

The Commission is cognizant of the fact that SBS Entity Registration rules and other elements of the Title VII regime will apply to an active market. As analyzed in the economic baseline, the Commission recognizes that security-based swap markets involve extensive cross-border activity, and nonresident SBS Entities intermediate a large percentage of security-based swaps. The Commission preliminarily believes that the nonresident SBS entities that may face uncertainty about their ability to comply with certification and opinion of counsel requirements, and are likely to utilize conditional registration, are those SBS Entities located in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers described above.

The conditional registration element of the proposal may provide SBS Entities currently active in security-based swap markets with beneficial flexibility and time to relocate some of their operations and/or books and records around the constraints of foreign privacy and secrecy laws, blocking statutes, and other legal barriers, without disrupting ongoing counterparty relationships and market activity. In addition, the proposal may facilitate smooth functioning of active security-based swap markets as compliance with the Commission's Title VII rules becomes required, may benefit both SBS Entities and counterparties by preserving SBS Entity—counterparty relationships, and may enhance efficiency and capital formation in security-based swaps.

However, conditional registration may reduce the assurances of the certification and opinion of counsel regarding the Commission's ability to inspect and examine some SBS Entities during the 24-month period. In addition, 24 months may not be sufficient for the more complex SBS Entities to relocate and restructure their security-based swap market activity outside the reach of foreign privacy and secrecy laws, blocking statutes, and other legal barriers, particularly as foreign laws, statutes and legal barriers evolve. Thus, under the proposal there may still be a risk of disruptions to counterparty relationships and market activity if conditionally registered SBS Entities having large market shares, and transacting with hundreds and thousands of counterparties, are unable to meet the certification and opinion of counsel requirements within the 24-month period. Moreover, counterparties that may rely on the Commission's ability to inspect and examine a registered SBS Entity as a signal of higher quality may reduce their participation in security-based swap markets, which may increase adverse selection. Alternatively, they may vote with their feet and shift business from conditionally registered SBS Entities to non-conditionally registered SBS Entities. This may enhance competition between conditionally registered and non-conditionally registered SBS Entities and may create a market incentive for conditionally registered SBS Entities to provide the certification and opinion of counsel.

c. Alternatives Considered

The Commission considered alternative approaches to the proposed guidance and amendments regarding the certification and opinion of counsel requirements. Specifically, the Commission considered proposing some, but not other, aspects of the above relief. For example, the Commission considered proposing only elements of the guidance concerning covered foreign laws and covered records. The Commission has also considered proposing guidance about covered foreign laws and covered records, as well as open contracts and timing of certification, but not aspects of the relief allowing certification and opinion of counsel to be predicated on customer consent or arrangements with foreign regulators. The Commission has also considered shortening the conditional registration period (*e.g.,* to 12 or 18 months). Relative to the proposal, these alternatives would provide less relief and greater uncertainty to nonresident entities that may seek to register with the Commission as an SBS Entity, which may increase the likelihood of disruptions of counterparty relationships and risks of adverse effects on market activity in security-based swaps. At the same time, these alternatives may increase the scope, strength, and/or timeliness of the certification and opinion of counsel requirement, which may give the Commission further assurances regarding its ability to oversee security-based swap activity of nonresident entities applying for registration. Importantly, regardless of the certification and opinion of counsel requirement, all nonresident SBS Entities would continue to have independent ongoing obligations to provide the Commission with access to their books and records and to permit on-site inspections and examinations.

The Commission has considered an alternative under which all conditionally registered SBS Entities would be required to provide disclosures to U.S. counterparties or to all counterparties regarding their conditional registration. Such disclosures may help inform counterparties regarding the conditional registration status of SBS Entities with which they may wish to transact. To the degree that counterparties may consider conditional registration as a signal of lower quality or may seek to build long-term relationships with non-conditionally registered SBS Entity counterparties, and to the degree such counterparties are otherwise uninformed about SBS Entities' registration status, this alternative may facilitate more efficient counterparty selection. The alternative may also create reputational incentives for conditionally registered SBS Entities to provide the requisite certification and opinion of counsel to the Commission, to the degree that some counterparties may interpret conditional registration as a signal of reduced quality.

However, such disclosure requirements would involve burdens on SBS Entities related to the preparation and production of such disclosures. Related costs may be partly or fully passed along to SBS Entities' counterparties in the form of more expensive security-based swaps. As noted above, the Commission preliminarily believes that nonresident SBS Entities most likely to utilize conditional registration are those SBS Entities that face uncertainty regarding their ability to comply with certification and opinion of counsel requirements due to privacy and secrecy laws, blocking statutes, and other legal barriers in their foreign jurisdictions. Based on the analysis of 2017 TIW data, the Commission estimates that there are approximately 9,611 unique relationships (pairs of counterparties and accounts likely to trigger SBS Entity registration requirements with

registered office locations in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers) or approximately 72.6% of all unique dealer-counterparty pairs active in security-based swap market that may become subject to the disclosure requirement.[484] Limiting such disclosure requirements to relationships between dealer accounts in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers and U.S. non-dealer counterparties may affect 4,322 unique dealer-U.S. counterparty relationships. Since many of the dealer accounts belong to large financial groups, the Commission can also use the domicile of the parent organization to categorize dealers at the level of the financial group (at the firm-level) instead of at the level of the dealer (at the account-level). Using this more conservative approach, there may be 779 unique dealer-counterparty ties (or 25.7% of all ties) that may be affected by foreign privacy and secrecy laws, blocking statutes, and other legal barriers and the alternative disclosure requirement. The Commission also notes that, as a baseline matter, SBS Entity registration forms are public and the Commission may, in the course of Commission business, publish a list of registered SBS Entities and note the conditional registration status of such entities on the Commission's public website.

As an alternative, the Commission has also considered lengthening the conditional registration period (to, *e.g.,* 5 or 10 years) or eliminating the certification and opinion of counsel requirements. As discussed in prior sections, the Commission continues to believe that access to books and records and the ability to inspect and examine registered SBS Entities facilitates Commission oversight of security-based swap markets. These alternatives may limit the scope of assurances provided to the Commission by SBS Entity applicants regarding the Commission's ability to inspect and examine SBS Entities. To the degree that some nonresident SBS Entities may be unable to provide certification or opinion of counsel due to their inability to become subject to Commission inspections and examinations (as a result of, for example, foreign privacy and secrecy laws, blocking statutes, and other legal barriers), these alternatives may reduce the extent of Commission inspections and examinations. However, these alternatives would reduce or eliminate certification and opinion of counsel burdens, related uncertainty, and liability risk. Importantly, under these alternatives, all nonresident SBS Entities would continue to have independent ongoing obligations to provide the Commission with access to their books and records and to permit onsite inspections and examinations. The Commission preliminarily believes that the proposed approach better balances these competing considerations and that 24 months is sufficient time for nonresident SBS Entities to comply with the certification and opinion of counsel requirements (and relocate their books, records, and other operations, if needed).

2. Proposed Modifications to Proposed Rules 18a–5(a)(10) and (b)(8)

a. Background

As discussed in the economic baseline, in the Recordkeeping and Reporting Proposing Release, the Commission proposed a background questionnaire recordkeeping requirement for stand-alone and bank SBS Entities that parallels similar broker-dealer recordkeeping requirements. The Commission is proposing modifications to the proposed questionnaire recordkeeping requirement, which would modify proposed Rules 18a–5(a)(10) and 18a–5(b)(8). The proposed modifications would tailor the proposed questionnaire requirement in two ways. First, under the proposed modifications, an SBS Entity would not be required to make and keep current questionnaires if the SBS Entity is excluded from the statutory prohibition in Section 15F(b)(6) with respect to the associated person. Second, the questionnaire or application for employment executed by an associated person who is not a U.S. person need not include certain information if the law of the jurisdiction where the associated person is located or employed prohibits the receipt of that information or the creation or maintenance of records reflecting that information.

b. Costs, Benefits, and Effects on Efficiency, Competition, and Capital Formation

The proposed questionnaire recordkeeping requirements are intended to support Commission oversight and entity compliance with the substantive requirements of Rule 15Fb6 regarding statutory disqualification. The proposed modifications to proposed Rule 18a–5 eliminate the questionnaire requirement with respect to associated persons excluded from the statutory prohibition. These modifications are unlikely to adversely affect Commission oversight of SBS Entity compliance with the statutory prohibition since those associated persons are already excluded from the statutory prohibition. At the same time, the proposed modifications may involve modest reductions to corresponding paperwork burdens. To the degree that SBS Entities may pass along these burdens to counterparties, the proposed modifications may also result in some benefits to counterparties of these SBS Entities.

As discussed in section VIII.B, the Commission estimates that the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) to proposed Rule 18a–5 would reduce initial costs associated with proposed rule 18a–5 by $51,943 and ongoing costs by $64,622.[485] Therefore, the cost savings to SBS Entities and counterparties from this proposed modification are likely to be modest.

In addition, as discussed above, the Commission is proposing to modify, by adding paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B), the questionnaire requirement with respect to non-U.S. associated persons of SBS Entities if the receipt of that information, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located. The primary intended benefit of this proposed modification is to enable certain nonresident SBS Entities to continue intermediating transactions with their counterparties. Specifically, due to the existence of foreign privacy and secrecy laws, blocking statutes, and other legal barriers, the proposed tailoring of the questionnaire requirement can enable more nonresident market participants to register as SBS Entities without a potentially costly relocation or business restructuring of certain operations and records to jurisdictions outside the reach of such laws. This may also reduce costs for counterparties (as nonresident SBS Entities may pass along related costs to counterparties in the form of more expensive security-

[484] This estimate includes unique dealer-counterparty pairs where the counterparty is another dealer. Excluding dealer-dealer pairs reduces the estimate by 279, with an estimate of 9,332 unique pairs between non-dealer counterparties and dealer accounts with registered office locations in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers (or approximately 70.5% of all unique dealer-counterparty pairs).

[485] Initial cost reduction for all stand-alone and bank SBS Entities reduction: (127 × Attorney at $409 per hour) = $51,943. Ongoing cost reduction for all stand-alone and bank SBS Entities reduction: (158 × Attorney at $409 per hour) = $64,622.

based swaps) and may preserve valuable counterparty relationships.

In addition, this proposed modification may also involve some modest burden reductions. As discussed in section VIII.B, the proposed modification to add paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to proposed Rule 18a–5 is expected to decrease the initial costs associated with proposed rule 18a–5 by $25,767 and ongoing costs by $32,311.[486] In aggregate, as estimated in section VIII.B, under both of the proposed modifications, initial and ongoing costs of all stand-alone and bank SBS Entities related to complying with proposed Rule 18a–5 are estimated at $233,130 and $291,617 respectively.[487]

The Commission continues to recognize that certain recordkeeping requirements may facilitate compliance and Commission oversight of SBS Entities. In proposing a tailored questionnaire requirement with respect to non-U.S. associated persons, the Commission has considered the value of such recordkeeping for compliance with Rule 15Fb6–2 and related oversight, as well as the costs and potential disruptions to counterparty relationships and market activity that may result when foreign jurisdictions do not allow nonresident SBS Entities to receive, create, or maintain such records. Importantly, as discussed above, the Commission continues to note that the proposed tailoring of the requirement in (a)(10)(iii)(B) and (b)(8)(iii)(B) does not eliminate or affect the scope of all SBS Entities' ongoing obligations to comply with Section 15F(b)(6) of the Exchange Act and Rule 15Fb6–2, with respect to every associated person that effects or is involved in effecting security-based swaps and is not subject to an exclusion from the statutory disqualification prohibition in Section 15F(b)(6) of the Exchange Act.

Finally, the proposed approach involves a disparate treatment of broker-dealer SBS Entities and stand-alone and bank SBS Entities. Based on an analysis of 2017 TIW data and filings with the Commission, out of 50 participants likely to register with the Commission as security-based swap dealers, the Commission estimates that 16 market participants have already registered with the Commission as broker-dealers; 9 market participants will be stand-alone security-based swap dealers, and up to 25 participants will be bank security-based swap dealers.[488]

Under the proposal, SBS Entities that are not stand-alone or bank SBS Entities would be required to make and keep current a questionnaire or application for employment for associated persons with respect to whom the broker-dealer SBS Entity is excluded from the prohibition in Exchange Act 15F(b)(6), incurring corresponding compliance burdens, albeit modest, estimated above. In addition, to the extent that some SBS Entities that are not stand-alone or bank SBS Entities are heavily reliant on employees in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers in their security-based swap business, they may be unable to comply with the employee questionnaire requirement and register with the Commission. These SBS Entities would be unable to register without a relocation or restructuring of various records and or operations, involving costs for such SBS Entities—costs that may be passed along to counterparties or disrupt existing counterparty relationships. This may reduce the competitive standing of SBS Entities cross-registered as broker-dealers and their employees in certain foreign jurisdictions and improve the competitive standing of stand-alone and bank SBS Entities and their employees in foreign data privacy jurisdictions.

The Commission notes that broker-dealer SBS Entities are already subject to a questionnaire requirement under Rule 17a–3(a)(12). The Commission preliminarily believes that such entities are making and keeping current employment questionnaires and applications for all of their associated persons in their normal course of business. In addition, the Commission preliminarily believes that such SBS Entities have already structured their security-based swap business in a manner that would enable them to comply with this requirement without disrupting transaction activity or ongoing counterparty relationships. The sunk cost nature of such structuring of broker-dealers' security-based swap business may partly mitigate the above competitive effects.

c. Alternatives Considered

The Commission has considered an alternative approach, which would provide the same relief (by also amending Rule 17a–3(a)(12) and providing the same relief to broker-dealer SBS Entities) with respect to: (i) Exemption based on the non-U.S. associated SBS Entity's exclusion from the prohibition under Section 15F(b); and (ii) exemption based on local law.

The alternative would benefit a greater number of SBS Entities and counterparties by extending the proposed relief (with its benefits discussed above) to all SBS Entities in their security-based swap business. Moreover, the alternative would eliminate the competitive disparities between broker-dealer and stand-alone and bank SBS Entities discussed above.

However, the Commission continues to recognize that recordkeeping requirements are essential to the inspection and examination process and facilitate effective oversight of the markets the Commission regulates. Importantly, as discussed above, broker-dealer SBS Entities are already subject to a questionnaire requirement under Rule 17a–3(a)(12). The Commission preliminarily believes that broker-dealer SBS Entities have already located and structured their security-based swap business in a way that would allow them to comply with the questionnaire requirement. At the same time, the Commission understands that stand-alone and bank SBS Entities active in security-based swap markets are not currently subject to similar recordkeeping requirements and that the questionnaire requirement, as proposed, may require these entities to relocate their security-based swap business and staff to other jurisdictions. This may disrupt counterparty relationships and ongoing business transactions between stand-alone and bank SBS Entities and their customers.

The Commission also understands that broker-dealer SBS Entities are routinely making and keeping current employment questionnaires and applications for all of their associated persons, which may reduce the benefits of the above alternative. However, if such baseline behavior of broker-dealer SBS Entities is a result of Rule 17a–3 currently in effect and not of compliance practices optimal for each broker-dealer SBS Entity, the alternative

[486] Initial cost reduction for all stand-alone and bank SBS Entities reduction: (63 × Attorney at $409 per hour) = $25,767. Ongoing cost reduction for all stand-alone and bank SBS Entities reduction: (79 × Attorney at $409 per hour) = $32,311.

[487] Initial costs for all stand-alone and bank SBS Entities reduction under the proposed modifications to proposed Rule 18a–5(a)(10) and (b)(8): ((760 − 127 − 63) × Attorney at $409 per hour) = $233,130. Ongoing costs for all stand-alone and bank SBS Entities reduction: ((950 − 158 − 79) × Attorney at $409 per hour) = $291,617.

[488] We note that these figures are based on current market activity in security-based swaps. We are unable to quantify the number of market participants currently expected to register as broker-dealer, bank, or stand-alone security-based swap dealers that may choose to restructure their U.S. security-based swap market participation in response to the pending substantive requirements of Title VII, such as capital and margin requirements.

may reduce burdens [489] and provide beneficial flexibility in recordkeeping practices for broker-dealer SBS Entities with respect to associated persons excluded from the statutory prohibition. The Commission continues to note that the proposed recordkeeping requirement in Rule 18a–5 is intended to support substantive obligations with respect to statutory disqualification and that such substantive obligations would no longer exist with respect to associated persons of broker-dealer SBS Entities effecting or involved in effecting security-based swaps and exempt from the statutory prohibition under, for instance, proposed Rule of Practice 194(c)(2).

F. Request for Comment

The Commission requests comment on all aspects of the economic analysis of the proposed amendment to Rule 3a71–3. To the extent possible, the Commission requests that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendment or any reasonable alternatives. In particular, the Commission asks commenters to consider the following questions:

1. Are there costs and benefits associated with the proposed amendment that the Commission has not identified? If so, please identify them and if possible, offer ways of estimating these costs and benefits.
2. In the commenter's view, what are the costs and benefits associated with Alternative 1, and what are the costs and benefits associated with Alternative 2?
3. Are there effects on efficiency, competition, and capital formation stemming from the proposed amendment that the Commission has not identified? If so, please identify them and explain how the identified effects result from the proposed amendment.
4. Are there data sources or data sets that can help the Commission refine its estimates of the costs and benefits associated with the proposed amendment? If so, please identify them.
5. Are there alternatives to the proposed amendment that the Commission has not considered? If so, please identify and describe them.
6. In the commenter's view, is the estimation of the initial costs of current Exchange Act Rules 17a–3 and 17a–4, including the assumptions used, appropriate? If not, please explain how the estimation can be improved.
7. In the commenter's view, is the estimation of the ongoing costs of meeting registration requirements as a broker-dealer,[490] including the assumption used, appropriate? If not, please explain how the estimation can be improved.

The Commission also requests comment on all aspects of the economic analysis of the proposed guidance regarding the scope of the ''arranged, negotiated, or executed'' test. To the extent possible, the Commission requests that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed guidance. In addition, the Commission asks commenters to consider the following questions:

8. Are there costs and benefits associated with the proposed guidance that the Commission has not identified? If so, please identify them and if possible, offer ways of estimating these costs and benefits.
9. Are there effects on efficiency, competition, and capital formation stemming from the proposed guidance that the Commission has not identified? If so, please identify them and explain how the identified effects result from the proposed amendment.
10. Are there data sources or data sets that can help the Commission refine its estimates of the costs and benefits associated with the proposed guidance? If so, please identify them.
11. Are there alternatives to the proposed guidance that the Commission has not considered? If so, please identify and describe them.

The Commission also requests comment on all aspects of the economic analysis of the proposed amendment to Rule of Practice 194. To the extent possible, the Commission requests that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendment or any reasonable alternatives. In addition, the Commission asks commenters to consider the following questions:

12. What additional qualitative or quantitative information should the Commission consider as part of the baseline for its economic analysis of the proposed Rule of Practice 194(c)(2)? To what extent do entities likely to register with the Commission as SBS Entities rely on non-U.S. personnel dealing with U.S. versus non-U.S. counterparties?
13. Has the Commission accurately characterized the costs and benefits of proposed Rule of Practice 194(c)(2)? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the Commission take into account? Would entities likely to register with the Commission as SBS Entities choose not to register or deregister if Rule of Practice 194(c)(2) is not adopted? If possible, please offer ways of estimating these costs and benefits. What additional considerations can the Commission use to estimate the costs and benefits of the proposed amendment?
14. Has the Commission accurately characterized the effects on competition, efficiency, and capital formation arising from proposed Rule of Practice 194(c)(2)? If not, why not?
15. Has the Commission accurately characterized the costs, benefits, and effects on competition, efficiency, and capital formation of the above alternatives to the proposed Rule of Practice 194(c)(2)? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the Commission take into account?
16. Are there other reasonable alternatives to the proposed Rule of Practice 194(c)(2) that the Commission should consider? What are the costs, benefits, and effects on competition, efficiency, and capital formation of any other alternatives?

The Commission also requests comment on all aspects of the economic analysis of the proposed guidance and amendments related to certification and opinion of counsel, conditional registration, and the employee questionnaire requirements. To the extent possible, the Commission requests that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendment or any reasonable alternatives. In addition, the Commission asks commenters to consider the following questions:

17. What additional qualitative or quantitative information should the Commission consider as part of the baseline for its economic analysis of these amendments? Which jurisdictions and security-based swap market participants are affected by foreign privacy and secrecy laws, blocking statutes, and other legal barriers? To what extent do entities likely to register with the Commission as bank, stand-alone, or broker-dealer SBS Entities rely on nonresident personnel located or employed in jurisdictions with foreign privacy and secrecy laws, blocking statutes, and other legal barriers? To what extent do such personnel transact across reference security and security-based swap markets, and with institutional versus retail clientele?
18. Has the Commission accurately characterized the costs and benefits of the proposed conditional registration in Rule 15Fb2–1 and guidance regarding the certification and opinion of counsel requirements in Rule 15Fb2–4? Has the Commission accurately characterized the costs and benefits of the proposed modifications to the questionnaire recordkeeping requirement in Rule 18a–5(a)(10) and Rule 18a–5(b)(8)? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the Commission take into account? Would entities likely to register with the Commission as SBS Entities choose

[489] As acknowledged above, the overall burdens of compliance with proposed Rule 18a–5 are relatively modest; however, fixed costs may be more significant for smaller entities.

[490] *See* part VII.B.1.a, *supra.*

not to register or deregister without the proposed conditional registration in Rule 15Fb2–1 or guidance regarding Rule 15Fb2–4? If possible, please offer ways of estimating these costs and benefits. What additional considerations can the Commission use to estimate the costs and benefits of the proposed guidance?

19. Has the Commission accurately characterized the effects on competition, efficiency, and capital formation arising from proposed guidance, amendments, and modifications regarding Rules 15Fb2–1 and 15Fb2–4, and proposed Rule 18a–5? If not, in what way?

20. Has the Commission accurately characterized the costs, benefits, and effects on competition, efficiency, and capital formation of the above alternatives to the proposed guidance and amendments regarding conditional registration, certification and opinion of counsel, and employee questionnaires? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the Commission take into account?

21. Has the Commission accurately characterized the costs, benefits, and effects on competition, efficiency, and capital formation of alternatives to the proposed guidance, amendments, and modifications regarding conditional registration, certification and opinion of counsel, and employee questionnaires? Are there other reasonable alternatives the Commission should consider? What are the costs, benefits, and effects on competition, efficiency, and capital formation of any other alternatives?

VIII. Paperwork Reduction Act

Certain provisions of the proposed amendments and modifications to Exchange Act Rules 3a71–3 and 18a–5 contain ''collection of information'' [491] requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''), and the Commission is submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The title of the new collection of information associated with the proposed changes to Rule 3a71–3 is ''Rule 3a71–3(d)—Conditional Exception from *De Minimis* Counting Requirement in Connection with Certain Transactions Arranged, Negotiated or Executed in the United States.'' [492] OMB has not yet assigned a control number to this new collection of information.

The title and OMB control number for the collection of information the Commission is proposing to modify is Rule 18a–5—Records to be made by certain security-based swap dealers and major security-based swap participants, OMB Control Number 3235–0745. The Commission's earlier PRA assessments have been revised to reflect the modifications to proposed Rule 18a–5 from those that were proposed in the Recordkeeping and Reporting Proposing Release.

A. Proposed Amendment to Rule 3a71–3

1. Summary of the Collection of Information [493]

a. Disclosure of Limited Title VII Applicability

Both alternatives to the proposed exception to Rule 3a71–3 would be conditioned in part on the registered entity engaged in arranging, negotiating or executing activity in the United States notifying the counterparties of the non-U.S. person relying on the exception, contemporaneously with and in the same manner as the conduct at issue, that the non-U.S. person is not registered with the Commission as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable in connection with the transaction. This disclosure would be required only so long as the identity of the counterparty is known to that registered entity at a reasonably sufficient time prior to the execution of the transaction to permit the disclosure.[494]

b. Business Conduct Condition

Alternative 1 would be conditioned in part on the registered security-based swap dealer that engages in arranging, negotiating or executing activity in the United States in connection with the transactions at issue complying with certain security-based swap dealer business conduct requirements—related to: Disclosure of material risks, characteristics, incentives and conflicts of interest; suitability of recommendations; and fair and balanced communications—''as if'' the counterparty to the non-U.S. person relying on the exception also were a counterparty to that registered security-based swap dealer.[495] Each of those underlying business conduct requirements itself is associated with a collection of information.[496]

Alternative 2 would be conditioned in part on the registered broker or a registered security-based swap dealer that engages in such activity in the United States in connection with the transaction at issue complying with those same business conduct requirements, ''as if'' the counterparty to the non-U.S. person relying on the exception also were a counterparty to that registered entity.[497]

c. Trade Acknowledgment and Verification Condition

Alternative 1 would be conditioned in part on the registered security-based swap dealer that engages in arranging, negotiating or executing activity in the United States in connection with the transactions at issue complying with trade acknowledgment and verification requirements—which themselves are associated with collections of information [498]—''as if'' the counterparty to the non-U.S. person relying on the exception also were a counterparty to that registered security-based swap dealer.[499]

---

[491] 44 U.S.C. 3502(3).

[492] This new collection of information is distinct from an existing collection of information related to Exchange Act Rule 3a71–3(c), which provides an exception from the application of certain business conduct requirements in connection with a security-based swap dealer's ''foreign business.'' *See generally* Business Conduct Adopting Release, 81 FR at 30082.

[493] Because the proposed amendment to Rule 3a71–3 would require the use of a registered security-based swap dealer or a registered broker in connection with the transactions at issue, the proposed amendment also would implicate collections of information associated with security-based swap dealer or broker status (apart from the collections associated with the specific conditions of the exception). Separate collections of information address the registration of security-based swap dealers and brokers, as well as the requirements associated with those registered entities as a matter of course, including recordkeeping requirements applicable to such registered entities. The separate collections of information associated with requirements of general applicability for registered security-based swap dealers and brokers are not addressed as part of this rulemaking, and instead are addressed by the collections of information associated with those separate requirements.

[494] *See* Alternatives 1 and 2—proposed paragraph (d)(1)(iv) of Rule 3a71–3.

[495] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*1*)–(*3*) of Rule 3a71–3.

[496] *See* Business Conduct Adopting Release, 81 FR at 30083–85 (discussing collections of information regarding security-based swap dealer requirement for disclosure of information regarding material risks, characteristics, incentives and conflicts of interest, suitability of recommendations, and fair and balanced communications).

[497] *See* Alternative 2—proposed paragraph (d)(1)(ii)(B)(*1*)–(*3*) of Rule 3a71–3.

[498] *See* Business Conduct Adopting Release, 81 FR at 30083–85 (discussing collections of information regarding security-based swap dealer requirement for disclosure of information regarding material risks, characteristics, incentives and conflicts of interest, disclosure of information regarding clearing rights, suitability of recommendations, and fair and balanced communications).

[499] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*4*) of Rule 3a71–3.

Alternative 2 would be conditioned in part on the registered broker or security-based swap dealer that engages in such activity in the United States in connection with the transactions at issue complying with those trade acknowledgment and verification requirements ''as if'' the counterparty to the non-U.S. person relying on the exception also were a counterparty to that registered entity.[500]

d. Portfolio Reconciliation Condition

Alternative 1 would be conditioned in part on the registered security-based swap dealer that engages in arranging, negotiating or executing activity in the United States in connection with the transactions at issue complying with proposed portfolio reconciliation requirements, but only with respect to the initial portfolio reconciliation required by the rule, ''as if'' the counterparty to the non-U.S. person relying on the exception also is a counterparty to that registered security-based swap dealer.[501] That underlying proposed portfolio reconciliation requirement itself is associated with a collection of information.[502]

Alternative 2 for the exception would be conditioned in part on the registered broker or security-based swap dealer that engages in such activity in the United States in connection with the transactions at issue complying with the proposed portfolio reconciliation requirement with regard to the initial reconciliation ''as if'' that registered entity is a counterparty to the non-U.S. person's counterparty (and ''as if'' that entity is registered as a security-based swap dealer if it is not so registered).[503]

e. Recordkeeping Condition

Both proposed alternatives would be conditioned in part on the registered entity engaged in arranging, negotiating or executing activity in the United States obtaining from the non-U.S. person relying on the exception, and maintaining, trading relationship documentation involving the counterparty to the transaction.[504]

f. Consent to Service Condition

Both proposed alternatives for the exception to Rule 3a71–3 would be conditioned in part on the registered entity engaged in arranging, negotiating or executing activity in the United States obtaining from the non-U.S. person relying on the exception written consent to service of process for any civil action brought by or proceeding before the Commission, providing that process may be served on the non-U.S. person by service on the registered entity in the manner set forth in the registered entity's current Form BD, SBSE, SBSE–A or SBSE–BD, as applicable.[505]

g. ''Listed Jurisdiction'' Condition

Both proposed alternatives for the exception to Rule 3a71–3 would be conditioned in part on the non-U.S. person relying on the exception being subject to the margin and capital requirements of a ''listed jurisdiction.'' [506] The proposal specifies that applications for orders requesting listed jurisdiction status may be made by persons that may rely on the exception, or by foreign financial authorities, or made on the Commission's own initiative, and must be filed pursuant to the procedures set forth in Exchange Act Rule 0–13.[507]

2. Use of Information

a. Disclosure of Limited Title VII Applicability

The proposed disclosure condition is intended to help guard against counterparties reasonably presuming that the involvement of U.S. personnel in an arranging, negotiating or executing capacity as part of the transaction would be accompanied by the safeguards associated with Title VII security-based swap dealer regulation applying to the non-U.S. person.

b. Business Conduct Condition

The use of the information associated with the business conduct condition would be the same as the use of information associated with the currently extant security-based swap dealer business conduct requirements, given that the relevant condition simply would expand the existing requirements to apply to transactions where they currently do not apply. Accordingly, the condition requiring the registered entity to comply with requirements for the disclosure of risks, characteristics, incentives and conflicts, particularly would assist the counterparty in assessing the transaction by providing it with a better understanding of the expected performance of the security-based swap, and provide additional transparency and insight into pricing.[508] The condition requiring the registered entity to comply with requirements regarding the suitability of recommendations would assist the registered entity in making appropriate recommendations.[509] The condition requiring the registered entity to comply with fair and balanced communication requirements in part would better equip the counterparty to make more informed investment decisions.[510]

c. Trade Acknowledgment and Verification Condition

The use of the information associated with the trade acknowledgement and verification condition would be the same as the use of information associated with the currently extant security-based swap dealer trade acknowledgment and verification requirements, given that the relevant condition simply would expand the existing requirements to apply to transactions where they currently do not apply. In general, the trade acknowledgment would serve as a written record by which the counterparties to the transaction may memorialize the terms of a transaction, and the verification requirements are intended to ensure that the written record of the transaction accurately reflects the terms of the transaction as understood by the respective counterparties.[511]

---

[500] *See* Alternative 2—proposed paragraph (d)(1)(ii)(B)(*4*) of Rule 3a71–3.

[501] *See* Alternative 1—proposed paragraph (d)(1)(ii)(B)(*5*) of Rule 3a71–3.

[502] *See* Risk Mitigation Proposing Release, 83 FR at 4640 (discussing collection of information regarding proposed security-based swap dealer portfolio reconciliation requirement).

[503] *See* Alternative 2—proposed paragraph (d)(1)(ii)(B)(*5*) of Rule 3a71–3.

[504] *See* Alternatives 1 and 2—proposed paragraph (d)(1)(iii)(B)(*2*) of Rule 3a71–3.

The proposed exception also would be conditioned in part on the registered entity engaged in market facing activity in the United States creating and maintaining books and records relating to the transactions subject to this exception that are required, as applicable, by Rule 17a–3 and 17a–4, or Rule 18a–5 and 18a–6, including books and records relating to: Disclosure of risks, characteristics, incentives and conflicts; suitability; fair and balanced communications; trade acknowledgment and verification; and portfolio reconciliation. *See* Alternatives 1 and 2—proposed paragraph (d)(1)(iii)(B) of Rule 3a71–3 (requiring creation and maintenance of books and records relating to the requirements specified in proposed paragraph (d)(1)(ii)(B).

Because that part of the condition subsumes the collection of information that the Commission would expect to be associated with the final rules adopting those security-based swap dealer books and records requirements, it does not constitute a separate collection of information attributable to this proposed exception. *See* note 493, *supra*.

[505] *See* Alternatives 1 and 2—proposed paragraph (d)(1)(iii)(B)(*3*) of Rule 3a71–3.

[506] *See* Alternatives 1 and 2—proposed paragraph (d)(1)(v) of Rule 3a71–3.

[507] *See* Alternatives 1 and 2—proposed paragraph (d)(2)(i) of Rule 3a71–3.

[508] *See* Business Conduct Adopting Release, 81 FR at 30088.

[509] *See id.*

[510] *See id.*

[511] *See* Trade Acknowledgement Adopting Release, 81 FR at 39830.

d. Portfolio Reconciliation Condition

The use of the information associated with the portfolio reconciliation condition would be the same as the use of information associated with the proposed security-based swap dealer portfolio reconciliation requirement. In general, that proposed requirement is intended to help ensure the accuracy of the data reported to SDRs, and to help facilitate the ability of registered security-based swap data repositories to comply with requirements that they verify the information they receive.[512]

e. Recordkeeping Condition

The proposed condition requiring the registered entity to obtain and maintain trading relationship documentation involving the non-U.S. person relying on the exception and its counterparty is intended to help the Commission obtain a full view of the dealing activities connected with transactions relying on the proposed exception, including such activities that occur in the non-U.S. person taking advantage of the exception. Absent such access, the Commission may be impeded in identifying fraud and abuse in connection with transactions that have been arranged, negotiated or executed in the United States, where such fraud or abuse may be apparent only in light of relevant information obtained from the non-U.S. person relying on the exception or its associated persons.

f. Consent to Service Condition

The proposed use of the consent to service condition is to facilitate the Commission's ability to serve process on the non-U.S. person relying on the exception, to assist the Commission in efficiently taking action to address potential violations of the federal securities laws in connection with the transactions at issue.

g. ''Listed Jurisdiction'' Condition

The proposed use of information provided by applicants in connection with ''listed jurisdiction'' applications is to assist the Commission in evaluating the effectiveness of the financial responsibility requirements of jurisdictions regulating non-U.S. persons taking advantage of the exception. This is intended to help avoid creating an incentive for persons engaged in a security-based swap dealing business in the United States to book their transactions into entities that solely are subject to the regulation of jurisdictions that do not effectively require security-based swap dealers or comparable entities to meet certain financial responsibility standards. That should help avoid providing an unwarranted competitive advantage to non-U.S. persons that conduct security-based swap dealing activity in the United States without being subject to strong financial responsibility standards. The condition also is consistent with the view that applying financial responsibility requirements to such transactions between two non-U.S. persons can help mitigate the potential for financial contagion to spread to U.S. market participants and to the U.S. financial system more generally.

3. Respondents

As discussed above, the Commission preliminarily estimates that up to 24 entities that engage in security-based swap dealing activity may rely on the proposed conditional exception from having to count dealing transactions with non-U.S. counterparties against the *de minimis* thresholds.[513] To satisfy the proposed exception, each of those up to 24 entities would make use of an affiliated registered security-based swap dealer and/or registered broker that would be required to comply with—and incur collections of information in connection with—conditions related to compliance with relevant Title VII security-based swap dealer requirements related to business conduct, trade acknowledgment and verification, and portfolio reconciliation. Each of those up to 24 registered entities also would have to provide disclosures to counterparties of the non-U.S. persons relying on the exception, to obtain and maintain trading relationship documentation involving the non-U.S. persons relying on the proposed exception and their counterparties, and to comply with the condition that the registered entity obtain from the non-U.S. person a consent to service of process.

Applications for listed jurisdiction determinations may be submitted by the up to 24 non-U.S. persons that would rely on the proposed exception. In practice the Commission expects that the greater portion of such listed jurisdiction applications will be submitted by foreign financial authorities, given their expertise in connection with the relevant financial responsibility requirements and information access provisions, and in connection with their supervisory and enforcement oversight with regard to the financial responsibility requirements.[514]

4. Total Annual Reporting and Recordkeeping Burdens (Summarized in Table 3)

a. Disclosure of Limited Title VII Applicability

The Commission preliminarily estimates that the up to 12 U.S. entities that may book transactions into their non-U.S. affiliates to make use of the proposed conditional exception in the aggregate would annually engage in nearly 76,000 security-based swap dealing transactions with non-U.S. counterparties.[515] Here—and in connection with the other two groups addressed below—the analysis doubles that amount to estimate the number of total disclosures, recognizing that there will be situations in which the registered entity engaged in arranging, negotiating or executing activity in the United States makes the required disclosures but a transaction does not result.[516]

The Commission also preliminary estimates that the two non-U.S. persons that may fall below the *de minimis* thresholds due to the proposed conditional exception in the aggregate would annually engage approximately 20,000 security-based swap dealing transactions with non-U.S. counterparties,[517] doubled here to

[512] *See* Risk Mitigation Proposing Release, 83 FR at 4641.

[513] This estimate is based on data (*see* part VII.A.7, *supra*) indicating that: (1) Six U.S. entities are engaged in security-based swap dealing activity above the *de minimis* thresholds may have the incentive to book future security-based swaps with non-U.S. counterparties into U.S. affiliates to make use of the proposed exception in connection with those transactions. (2) One non-U.S. entity would fall below the $3 billion *de minimis* threshold if its transactions with non-U.S. counterparties were not counted. (3) The ''arranged, negotiated, or executed'' counting standard would result in five additional non-U.S. entities incurring assessment costs in connection with the *de minimis* exception.

The analysis has doubled those numbers—to up to twelve U.S. persons that may change its booking practices involving security-based swaps to make use of the exception, plus up to twelve additional non-U.S. persons—to address potential growth of the security-based swap market and to account for uncertainty associated with the availability of data, leading to the final estimate of 24 entities. *See id.*

[514] As discussed below, the Commission estimates that three non-U.S. persons will submit listed jurisdiction applications.

[515] Available data indicates that the six U.S. entities that are engaged in security-based swap dealing activity above the *de minimis* thresholds in the aggregate annually engage in 37,827 transactions with non-U.S. counterparties. To address potential growth in the market and data-related uncertainty, the analysis doubles that estimate to 75,654 transactions annually (and, as noted above, have doubled the estimated number of entities).

[516] This produces an estimate of 151,308 (75,654 × 2) annual disclosures pursuant to the proposed condition.

[517] Available data indicates that the one non-U.S. entity that would fall below the *de minimis* thresholds due to the exception annually engages in

Continued

account for disclosures that are not followed by a transaction.[518]

The Commission further preliminarily estimates that the additional ten non-U.S. entities that may rely on the proposed conditional exception in the aggregate would annually engage in approximately 2,100 security-based swap dealing transactions, with non-U.S. persons, that may be subject to the proposed exception,[519] doubled here to account for disclosures that are not followed by a transaction.[520]

In light of the limited contents of those contemporaneous disclosures, the Commission preliminarily believes that each such disclosure on average would be expected to take no more than five minutes.[521] Accordingly, the Commission preliminarily estimates that the 12 U.S. entities that may book transactions into their non-U.S. affiliates to make use of the proposed conditional exception in the aggregate will annually spend a total of approximately 12,609 hours to provide the disclosures required by the conditions.[522] The Commission further preliminarily estimates that the two non-U.S. entities that may fall below the *de minimis* thresholds due to the exception in the aggregate will annually spend a total of approximately 3,355 hours to provide the disclosures required by the conditions,[523] while the other ten non-U.S. entities that may rely on the proposed conditional exception in the aggregate will annually spend a total of approximately 352 hours to provide the disclosures required by the conditions.[524]

The Commission also preliminarily believes that each of those 24 total entities would initially spend 100 hours and incur approximate costs of $29,715 to develop policies and procedures to help ensure that appropriate disclosures are provided.[525]

b. Business Conduct Condition

The Commission estimated the reporting and recordkeeping burdens associated with the relevant security-based swap dealer business conduct requirements under Title VII when it adopted those requirements. The Commission believes that those estimates are instructive for calculating the per-entity reporting and recordkeeping burdens associated with the proposed business conduct condition, given that the condition in effect would require compliance with those business conduct requirements.

• *Disclosures of material risks, characteristics, and conflicts and incentives.* When the Commission earlier considered the compliance burdens associated with those disclosure requirements (along with clearing rights and daily mark disclosure requirements not applicable under this proposal),[526] the Commission estimated that implementation of those requirements: (i) Initially would require three persons from trading and structuring, three persons from legal, two persons from operations and four persons from compliance, for 100 hours each;[527] (ii) half of those persons would be required to spend 20 hours annually to re-evaluate and modify disclosures and systems requirements;[528] and (iii) those entities would require eight full-time persons for six months of systems development, programming and testing,[529] along with two full-time persons annually for maintenance of this system.[530]

• *Suitability of recommendations.* When the Commission previously analyzed the burdens associated with the security-based swap dealer recommendation suitability requirement, it estimated that most security-based swap dealers would obtain representations from counterparties to comply with the institutional suitability provisions of the requirement.[531] The Commission further particularly estimated: (i) That for security-based swap market participants that also are swap market participants, most of the requisite representations have been drafted for the swaps context, and that to the extent that any modifications are necessary to adapt those representations to the security-based swap context, each market participant would require two hours to assess the need for modifications and make any required modifications;[532]

10,064 transactions with non-U.S. counterparties. To address potential growth in the market and data-related uncertainty, the analysis doubles that estimate to 20,128 transactions annually (and, as noted above, have doubled the estimated number of entities).

[518] This produces an estimate of 40,256 (20,128 × 2) annual disclosures pursuant to the proposed condition.

[519] Available data indicates that would result in five additional non-U.S. persons that would be expected to incur assessment costs due to the ''arranged, negotiated, or executed'' counting standard engage in a total of 1,056 annual security-based swap transactions with non-U.S. counterparties. To address potential growth in the market and data-related uncertainty, the analysis doubles that estimate to 2,112 transactions annually (and have doubled the estimated number of entities).

[520] This produces an estimate of 4,224 (2,112 × 2) annual disclosures pursuant to the proposed condition.

[521] Given that the disclosure must be provided contemporaneously with the market-facing activity by the registered entity engaged in market-facing activity in the United States, the disclosure could not reasonably be provided via inclusion in standard trading documentation and would require the creation of specific disclosure documentation.

[522] 151,308 aggregate annual disclosures × 5 minutes per transaction. This averages to approximately 1,050.75 hours for each of those 12 firms.

[523] 40,256 aggregate annual disclosures × 5 minutes per transaction. This averages to approximately 1,677 hours for each of those two firms.

[524] 4,224 aggregate annual disclosures × 5 minutes per transaction. This averages to 35.2 hours for each of those ten firms.

[525] Applied to the estimated 24 entities at issue here, this would amount to 2,400 hours and $713,160.

These estimates are based on prior estimates, made in connection with the adoption of the ''arranged, negotiated, or executed'' counting standard, that non-U.S. persons would incur 100 hours and $28,300 to establish policies and procedures to restrict communications with U.S. personnel in connection with the non-U.S. persons' dealing activity. *See* ANE Adopting Release, 81 FR at 8628. That $28,300 estimate has been adjusted to $29,715 in current dollars (28,300 × 1.05).

[526] *See* Business Conduct Adopting Release, 81 FR at 30091–92. In connection with those prior estimates, the Commission noted that entities that are dually registered with the CFTC already provide their counterparties with similar disclosures.

[527] Applied to the 24 entities at issue here, this would amount to an aggregate initial burden of 28,800 hours (24 entities × 12 persons × 100 hours).

[528] Applied to the 24 entities at issue here, this would amount to an aggregate annual burden of 2,880 hours (24 entities × 6 persons × 20 hours).

[529] Applied to the 24 entities at issue here, this would amount to an aggregate initial burden of 192,000 hours (24 entities × 8 persons × 1,000 hours).

[530] Applied to the 24 entities at issue here, this would amount to an aggregate annual burden of 96,000 hours (24 entities × 2 persons × 2,000 hours).

In adopting those disclosure requirements, the Commission also incorporated an estimate of one hour per security-based swap for an entity to evaluate whether more particularized disclosures are necessary and to develop additional disclosures. *See* Business Conduct Adopting Release, 81 FR at 30092. The Commission does not believe that particular category of costs would be applicable in the context of the transactions at issue here.

Under the proposed exception, the disclosure condition extends not only to incentives and conflicts of the registered entity, but also disclosures and conflicts of its non-U.S. affiliate. The Commission believes, however, that the existing burden estimates are sufficient to account for this aspect of the disclosure, given that the two entities' affiliation should facilitate the transfer of any relevant incentive and conflict information for the registered entity to convey.

[531] *See id.* at 30092–93.

[532] Analysis of current data indicates that the six U.S. entities engaged in security-based swap dealing activity above the *de minimis* thresholds in the aggregate have 161 unique non-U.S. counterparties that are swap market participants, and 70 unique non-U.S. counterparties that are not swap market participants. The one non-U.S. entity that may fall below the *de minimis* threshold due to the exception has 391 unique non-U.S. counterparties that are swap market participants, and 178 unique non-U.S. counterparties that are not swap market participants. The five additional non-U.S. persons that would be expected to incur assessment costs in connection with the ''arranged, negotiated, or executed'' counting standard in the aggregate have six unique non-U.S. counterparties that are swap market participants, and one unique non-U.S. counterparty that are not swap market participants. Adding together those estimates and then doubling them (in light of the uncertainty

and (ii) other market participants (apart from special entities not relevant here) would require five hours for each market participant to review and agree to the relevant representations.[533]

• *Fair and balanced communications.* The Commission's earlier analysis of the burdens associated with the fair and balanced communications requirement[534] took the view that each registered entity would incur: (i) $6,000 in initial legal costs to draft or review statements of potential opportunities and corresponding risks in marketing materials;[535] (ii) an additional initial six hours for internal review of other communications such as emails and Bloomberg messages;[536] and (iii) $8,400 in initial legal costs associated with marketing materials for more bespoke transactions.[537]

c. Trade Acknowledgment and Verification Condition

The Commission estimated the reporting and recordkeeping burdens associated with the trade acknowledgment and verification requirements under Title VII when it adopted those requirements.[538] The Commission believes that those estimates are instructive for calculating the per-entity reporting and recordkeeping burdens associated with the proposed trade acknowledgment and verification condition, given that the condition in effect would require compliance with that trade acknowledgment and verification requirement by additional persons and/or in additional circumstances.

When the Commission earlier considered the compliance burdens associated with the trade acknowledgement and verification requirements, the Commission estimated that each applicable entity would incur: (i) 355 hours initially to develop an internal order and trade management system;[539] (ii) 436 hours annually for day-to-day technical support, as well as amortized annual burden associated with system or platform upgrades and updates;[540] (iii) 80 hours initially for the preparation of written policies and procedures to obtain verification of transaction terms;[541] and (iv) 40 hours annually to maintain those policies and procedures.[542]

d. Portfolio Reconciliation Condition

The Commission estimated the recordkeeping burdens associated with the portfolio reconciliation requirements under Title VII when it proposed those requirements.[543] The Commission believes that those estimates are instructive for calculating the per-entity recordkeeping burdens associated with the proposed portfolio reconciliation condition, given that the condition in effect would require compliance with that portfolio reconciliation requirement by additional persons and/or in additional circumstances.

When the Commission considered the recordkeeping burden associated with the portfolio reconciliation requirement, it estimated that each respondent on average would incur an annual burden of 190 hours in connection with proposed Rule 15Fi–3(a), which addresses portfolio reconciliation obligations in connection with transactions where the counterparty to the registered entity is a security-based swap dealer and major security-based swap participant.[544] The Commission further estimated that each respondent on average would incur an annual burden of 227.5 hours in connection with proposed Rule 15Fi–3(b), which addresses portfolio reconciliation obligations in connection with transactions where the counterparty to the registered entity is not a security-based swap dealer and major security-based swap participant,[545] for a total of 417.5 hours.

While recognizing that the proposed condition requires only the initial reconciliation of any particular instrument, the Commission nonetheless believes that these estimates provide a useful upper bound for the per-entity burden associated with this condition.[546]

associated with the estimate and to account for potential growth of the security-based swap market) produces a total estimate of 1,116 unique non-U.S counterparties that are swap market participants, and 498 that are not. Only non-U.S. counterparties are relevant for purposes of this analysis because the proposed exception does not address security-based swap transactions involving U.S. person counterparties.

Consistent with these assumptions, the potential burden associated with such modifications in connection with the proposed condition would amount to 2,232 hours (1,116 non-U.S. security-based swap market participants that also are swap market participants × two hours).

[533] Consistent with the above assumptions, the potential burden associated with such modifications in connection with the proposed condition would amount to 2,490 hours (498 non-U.S. security-based swap market participants that are not also swap market participants × five hours).

[534] *See* Business Conduct Adopting Release, 81 FR at 30093.

[535] In connection with the proposed exception, the potential burden associated with such drafting or review would amount to $151,200 (24 entities × $6,000 × 1.05 adjustment to current dollars).

[536] In connection with the proposed exception, the potential burden associated with such internal review would amount to 144 hours (24 entities × 6 hours).

[537] In connection with the proposed exception, the potential burden associated with such drafting or review would amount to $211,680 (24 entities × $8,400 × 1.05 adjustment to current dollars).

In adopting the fair and balanced communication requirement, the Commission also incorporated an estimate of ongoing compliance costs (associated with review of email communications sent to counterparties) over the term of the security-based swap. *See* Business Conduct Adopting Release, 81 FR at 30093. Those costs are not incorporated into this estimate because the registered entity that engaged in market-facing activity in the United States in connection with the transactions at issue here would not be expected to have ongoing communications with the counterparty to the security-based swap.

[538] *See id.* at 39830–31.

[539] In connection with the proposed exception, the potential burden associated with such system development would amount to 8,520 hours (24 entities × 355 hours).

[540] In connection with the proposed exception, the potential annual burden associated with such support and updates would amount to 10,464 hours (24 entities × 436 hours).

[541] In connection with the proposed exception, the potential burden associated with such preparation would amount to 1,920 hours (24 entities × 80 hours).

[542] In connection with the proposed exception, the potential annual burden associated with such policies and procedures would amount to 960 hours (24 entities × 40 hours).

[543] *See* Risk Mitigation Proposing Release, 84 FR at 4642–43.

[544] *See* Risk Mitigation Proposing Release, 84 FR at 4642. That was based on estimates regarding the time to perform each reconciliation, and the number of counterparties associated with each required frequency of portfolio reconciliation (*i.e.,* daily reconciliations for portfolios with more than 500 security-based swaps, weekly reconciliations for portfolios with more than 50 but fewer than 500 security-based swaps, and quarterly reconciliations for portfolios with no more than 50 security-based swaps).

[545] *See id.* at 4642–43. That was based on estimates regarding the time to perform each reconciliation, and the number of counterparties associated with each required frequency of portfolio reconciliation (*i.e.,* quarterly reconciliations for portfolios with more than 100 security-based swaps, and annual reconciliations for portfolios with no more than 100 security-based swaps).

[546] In connection with the proposed exception, the estimated aggregate annual burden associated with this condition would be 10,020 hours (24 entities × 417.5 hours).

The Commission believes that the above estimate of 10,020 appropriately reflects the burden associated with the portfolio reconciliation condition. At the same time, the Commission recognizes that, depending on the applicable facts and circumstances, the registered entity engaged in arranging, negotiating or executing conduct in the United States may need to obtain, from the non-U.S. affiliate relying on the transaction, information needed to perform the initial portfolio reconciliation. The Commission typically would not expect such transfers of information to constitute an independent collection of information, because the registered entity generally would be expected to possess that information to comply with regulatory reporting obligations pursuant to Regulation SBSR (leading any resulting burdens to be subsumed within the collection of information associated with Regulation SBSR).

Nonetheless, in the event that the registered entity is not otherwise subject to regulatory reporting obligations pursuant to Regulation SBSR, such transfers of information from the non-U.S. affiliate to the registered entity may constitute an independent collection of information. In those

Continued

e. Recordkeeping Condition

To comply with the proposed condition that the affiliated registered entity obtain from the non-U.S. person, and maintain, copies of trading relationship documentation the registered entity and the non-U.S. person jointly would need to develop policies and procedures to provide for the identification of such records and for their transfer to the registered affiliate. For each use of the proposed exception, the Commission preliminarily estimates that such policies and procedures would impose require a one-time initial burden of 20 hours.[547]

The Commission also preliminarily estimates that the non-U.S. person relying on this exception also would need to expend two hours per week to identify such records and to electronically convey the records to its registered affiliate.[548] The Commission further preliminarily estimates that the registered affiliate would need to expend one hour per week in connection with the receipt and maintenance of those records.[549]

f. Consent to Service Condition

To comply with the proposed condition that the affiliated registered entity obtain from the non-U.S. person relying on the exception written consent to service of process for civil actions, one or the other of those parties would have to draft such a consent or use an industry-standard consent provision, and the registered entity must obtain that consent from the non-U.S. person. The Commission preliminarily estimates that the parties jointly must expend [two] hours in connection with this process.[550]

g. ''Listed Jurisdiction'' Condition

The Commission believes that burden estimates associated with applications for substituted compliance determinations are instructive with regard to the burdens that would be associated with applications by market participants in connection with ''listed jurisdiction'' status.[551]

When the Commission initially adopted Rules 0–13 and 3a71–6, providing for substituted compliance in connection with security-based swap dealer business conduct requirements, the Commission concluded that the ''great majority'' of substituted compliance applications would be submitted by foreign authorities, and that ''very few'' applications would be submitted by security-based swap dealers (or major security-based swap participants), and the Commission concluded that three such registered entities would submit substituted compliance applications.[552] The Commission further estimated that the one-time paperwork burden associated with preparing and submitting all three substituted compliance requests in connection with those requirements would be approximately 240 hours, plus $240,000 for the services of outside professionals.[553] The Commission subsequently relied on those estimates in connection with the paperwork burdens associated with amendments to Rule 3a71–6 related to trade acknowledgement and verification.[554]

The Commission similarly believes that the majority of ''listed jurisdiction'' applications would be made by foreign authorities rather than by the up to 24 non-U.S. persons that potentially would rely on the exception. Consistent with the estimates in connection with the substituted compliance rule, moreover, the Commission estimates that three non-U.S. persons that seek to rely on the exception would file listed jurisdiction applications, and that in the aggregate those three persons would incur initial paperwork burdens, associated with preparing and submitting the requests, of approximately 240 hours, plus $252,000 for the services of outside professionals (incorporating a five percent addition to reflect current dollars).

TABLE 3—PROPOSED RULE 3a71–3 AMENDMENT—SUMMARY OF PAPERWORK REDUCTION ACT BURDENS

Burden type	Initial burden		Annual burden	
	Per-firm	Aggregate	Per-firm (hr)	Aggregate (hr)
*Disclosure of limited Title VII applicability:**				
disclosure by 12 U.S. dealing entities (A)			1,050.75	12,609
disclosure by 2 non-U.S. dealing entities (B)			1,677.3	3,355
disclosure by other non-U.S. entities (C)			35.2	352
related policies and procedures (same)	100 hr.	2,400 hr.		
	$29,715	$713,160		
Disclosure of risks, characteristics et al.:				
structuring, legal, operations, compliance	1,200 hr	28,800 hr		

circumstances, and consistent with the Paperwork Reduction Act analysis associated with Regulation SBSR, the Commission anticipates that the upper bound on the initial burden for each non-U.S. affiliate to construct an infrastructure to provide for the transfer of this information would amount to 1,394 hours (*see* Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14564, 14676 (Mar. 19, 2015)), or 33,456 hours in the aggregate (24 non-U.S. entities × 1,394 hours). Also, based on prior estimates that it would take 0.005 hours to report each security-based swap transaction (*see id.*), and the estimate that this proposed exception in the aggregate would address 97,894 transactions annually (*see* notes 515, 517 and 519 *supra*), the Commission estimates that the upper bound on the aggregate annual burden associated with such transfers of information would amount to approximately 489 hours (97,894 transactions × 0.005 hours).

Such burdens likely would be mitigated if, for example, the registered entity and its non-U.S. affiliate jointly make use of unified back-office systems, or if the counterparty relationship largely is managed by personnel of the registered entity, or if the non-U.S. entity independently is subject to Regulation SBSR or has developed similar types of systems to comply with foreign reporting requirements.

[547] Across the 24 potential uses of the proposed exception, this would amount to a total of 480 hours (24 entities × 20 hours).

[548] Across the 24 potential uses of the proposed exception, this would amount to a total of 2,496 hours annually (24 entities × 2 hours × 52 weeks).

[549] Across the 24 potential uses of the proposed exception, this would amount to a total of 1,248 hours annually (24 entities × 1 hour × 52 weeks).

The recordkeeping condition also specifies that, for the exception to be available, the registered entity must create and maintain books and records as required by applicable rules, including any books and records requirements relating to the provisions specified in paragraph (d)(1)(ii)(B) (*i.e.,* relating to disclosure of risks, characteristics, incentives and conflicts; suitability; fair and balanced communications; trade acknowledgment and verification; and portfolio reconciliation). Because that part of the condition subsumes the collection of information that we would expect to be associated with the final rules adopting those security-based swap dealer books and records requirements, it does not constitute a separate collection of information. *See* note 493, *supra.*

[550] Across the 24 expected uses of the proposed exception, this would amount to a total of 48 hours (24 entities × 2 hours).

[551] Notwithstanding the substantive differences between the standards associated with listed jurisdiction determinations and substituted compliance assessments, *see* part III.B.5, *supra,* the two sets of applications will be submitted pursuant to Rule 0–13 and may be expected to address certain analogous elements.

[552] *See* Business Conduct Adopting Release, 81 FR at 30097.

[553] This was based on the estimate that each request would require approximately 80 hours of in-house counsel time, plus $80,000 for the services of outside professionals (based on 200 hours of outside time × $400/hour). *See id.*

[554] *See* Trade Acknowledgement Adopting Release, 81 FR at 39832.

TABLE 3—PROPOSED RULE 3a71–3 AMENDMENT—SUMMARY OF PAPERWORK REDUCTION ACT BURDENS—Continued

Burden type	Initial burden		Annual burden	
	Per-firm	Aggregate	Per-firm (hr)	Aggregate (hr)
re-evaluation and modification			120	2,880
systems development, programming, testing	8,000 hr	192,000 hr		
system maintenance			4,000	96,000
Suitability:				
reps. by participants also in swap market	2 hr	2,232 hr		
representations by other counterparties	5 hr	2,490 hr		
Fair and balanced communications:				
statement drafting	$6,300	$151,200		
additional internal review	6 hr	144 hr		
legal costs	$8,820	$211,680		
Trade acknowledgement and verification:				
internal order and trade mgt. systems	355 hr	8,520 hr		
daily tech. support/amortized upgrades			436	10,464
initial preparation of policies and procedures	80 hr	1,920 hr		
maintenance of policies and procedures			40	960
Portfolio reconciliation:				
initial reconciliation of transactions			417.5	10,020
Copies of trading relationship documentation:				
joint development of policies/procedures	20 hr	480 hr		
non-US entity identification and conveyance			104	2,496
registered entity receipt and maintenance			52 hr	1,248 hr
Consent to service of process:				
joint drafting/transfer to registered entity	2 hr	48 hr		
"*Listed jurisdiction*" *applications:*				
applications by non-regulators	80 hr	240 hr		
(same)	$84,000	$252,000		

*(A) Twelve U.S. dealing entities may book future security-based swaps with non-U.S. counterparties into non-U.S. affiliates. (B) Two non-U.S. entities may fall below the *de minimis* threshold if "arranged, negotiated, or executed" transactions are not counted. (C) Ten additional non-U.S. entities may make use of the exception to avoid incurring assessment costs in connection with the "arranged, negotiated, or executed" *de minimis* test.

5. Collection of Information Is Mandatory

The collections of information associated with the proposed amendments to Rule 3a71–3 are mandatory to the availability of the exception.

6. Confidentiality

Any disclosures to be provided in connection with the arranging, negotiating or executing of a registered security-based swap dealer or of a registered broker (depending on the alternative adopted) in compliance with the requirements of the proposed exception would be provided to the non-U.S. counterparties of the non-U.S. person relying on this exception; therefore, the Commission would not typically receive confidential information as a result of this collection of information. To the extent that the Commission receives records related to such disclosures from a registered security-based swap dealer or registered broker through the Commission's examination and oversight program, or through an investigation, or some other means, such information would be kept confidential, subject to the provisions of applicable law.

Any applications for listed jurisdiction status will be made public.

7. Retention Period of Recordkeeping Requirements

By virtue of being registered as a security-based swap dealer and/or as a broker (depending on the alternative), the entity-engaged in market facing conduct in the United States will be required to retain the records and information required under the proposed amendment to Rule 3a71–3 for the retention periods specified in Exchange Act Rules 17a–4 and 18a–6, as applicable.[555]

B. Proposed Modifications to Proposed Rule 18a–5

1. Summary of Collections of Information To Be Modified

The Commission is proposing to modify proposed Rule 18a–5—which is modeled on Exchange Act Rule 17a–3, as amended—with respect to the requirement that stand-alone and bank SBS Entities make and keep current certain records.[556] The proposed modifications to proposed Rule 18a–5 would reduce the burden associated with Rule 18a–5, as originally proposed, by providing generally that a stand-alone or bank SBS Entity need not: (i) Make and keep current a questionnaire or application for employment for an associated person if the SBS Entity is excluded from the prohibition under Exchange Act Section 15F(b)(6) with respect to such associated person (*e.g.,* the exclusion proposed in Rule of Practice 194(c)(2)), and (ii) include the information generally required to be included on the questionnaire or application for employment executed by an associated person if the associated person is not a U.S. person and the receipt of that information, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located.

2. Use of Information

Proposed Rule 18a–5, as proposed to be modified, is designed, among other things, to promote the prudent operation of SBS Entities, and to assist the Commission, SROs, and state securities regulators in conducting

[555] The registered entity would have to create and/or maintain certain records in connection with the following proposed conditions (in conjunction with proposed Commission books and record rules and rule amendments related to Title VII): Disclosure of limited Title VII applicability; business conduct; trade acknowledgement and verification; portfolio reconciliation; obtaining and maintaining relationship documentation and questionnaires; consent to service of process.

The proposed conditions do not require the non-U.S. person relying on the exception to make or retain any particular types of records (although that non-U.S. person will be required to convey existing trading relationship documentation to its registered affiliate).

[556] *See* proposed Rule 18a–5, Recordkeeping and Reporting Proposing Release.

effective examinations.[557] Thus, the collections of information under proposed Rule 18a–5 are expected to facilitate inspections and examinations of SBS Entities.

3. Respondents

The Commission estimated the number of respondents in the Recordkeeping and Reporting Proposing Release. The Commission received no comment on these estimates and continues to believe they are appropriate.

Consistent with the Recordkeeping and Reporting Proposing Releases, based on available data regarding the single-name CDS market—which the Commission believes will comprise the majority of security-based swaps—the Commission estimates that the number of major security-based swap participants likely will be five or fewer and, in actuality, may be zero.[558] Therefore, to capture the likely number of major security-based swap participants that may be subject to the collections of information for purposes of this PRA, the Commission estimates for purposes of this PRA that five entities will register with the Commission as major security-based swap participants. Also consistent with the Recordkeeping and Reporting Proposing Release, the Commission estimates that approximately four major security-based swap participants will be stand-alone entities.[559]

Consistent with prior releases, the Commission estimates that 50 or fewer entities ultimately may be required to register with the Commission as security-based swap dealers, of which 16 are broker-dealers that will likely seek to register as security-based swap-dealers.[560] [561] The Commission continues to estimate that approximately 75% of the 34 non-broker-dealer security-based swap dealers (*i.e.,* 25 firms) will register as bank security-based swap dealers, and the remaining 25% (*i.e.,* 9 firms) will register as stand-alone security-based swap dealers.[562]

Further, the Commission continues to estimate that each security-based swap dealer will employ approximately 420 associated persons that are natural persons and each major security-based swap participant will employ approximately 62 associated persons that are natural persons.[563] The Commission has no data regarding how many associated persons of SBS Entities who are non-U.S. natural persons may: (a) Not effect or be involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person); (b) effect or be involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, but who may be employed or located in jurisdictions where the receipt of information required by the questionnaire or employment application, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law; or (c) effect or be involved in effecting security-based swap transactions with or for counterparties that are U.S. persons, who are employed or located in jurisdictions where local law would not restrict the receipt, creation or maintenance of information required by the questionnaire or employment application. Given that, the Commission will estimate, for purposes of this Paperwork Reduction Act analysis, that non-U.S. associated persons are evenly split into each of these categories.

4. Total Initial and Annual Recordkeeping and Reporting Burden

As indicated in the Recordkeeping and Reporting Proposing Release, proposed Rule 18a–5 will impose collection of information requirements that result in initial and annual burdens for SBS Entities. The proposed modifications to Rule 18a–5 will decrease these burdens for certain SBS Entities.

In the Recordkeeping and Reporting Proposing Release, the Commission indicated that proposed Rule 18a–5 would require that stand-alone SBS Entities make and keep current 13 types of records, including records on associated persons,[564] and estimated that those 13 paragraphs would impose on each firm an initial burden of 260 hours and an ongoing annual burden of 325 hours.[565] In addition, the Commission indicated that proposed Rule 18a–5 would require that bank SBS Entities make and keep current 10 types of records, including records on associated persons,[566] and estimated that these ten paragraphs will impose on each firm an initial burden of 200 hours per firm and an ongoing burden of 250 hours per firm.[567] The Commission further stated that while proposed Rule 18a–5 would impose a burden to make and keep current these records, it would not require the firm to perform the underlying task.[568]

The Commission received no comments regarding its hour and cost burden estimates for proposed Rule

[557] As noted above, proposed Rule 18a–5 is patterned after Exchange Act Rule 17a–3, the recordkeeping rule for registered broker-dealers. *See, e.g.,* Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934, Exchange Act Release No. 47910 (Oct. 26, 2001), 66 FR 55818 (Nov. 2, 2001) (''The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, [SROs], and State Securities Regulators . . . may conduct effective examinations of broker-dealers'' (footnote omitted)).

[558] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25260; *see also* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants; Final Rule, 80 FR at 48990; Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'' Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 at 30727 (May 23, 2012).

[559] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25260.

[560] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25260.

[561] *See* Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants; Final Rule, 80 FR at 79002.

[562] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25261. The Commission does not anticipate that any firms will be dually registered as a broker-dealer and a bank.

[563] *Id.*

1 *See* Rule of Practice 194 Adopting Release, 84 FR at 4926. Commission staff also checked with the staff at the National Futures Association regarding an approximate number of associated persons employed by registered swap dealers. NFA staff provided anecdotal information indicating that the number of natural persons that are associated persons of swap dealers is substantially similar to Commission staff estimates. NFA staff further indicated that they believe about half of the total number of natural persons that are associated persons of swap dealers are located in the U.S. and the other half are located in foreign jurisdictions.

[564] *See* paragraph (a)(10) of proposed Rule 18a–5, Recordkeeping and Reporting Proposing Release, 79 FR at 25308.

[565] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25264. Of these total initial and ongoing annual burdens for the 13 types of records a firm would be required to make and keep current under paragraph (a)(10) of proposed Rule 18a–5, Commission staff believes that the burdens associated with making and keeping current questionnaires or applications for employment would be an initial burden of 20 hours (or 260/13) and an ongoing burden of 25 hours (or 325/13).

[566] *See* paragraph (b)(8) of proposed Rule 18a–5; Recordkeeping and Reporting Proposing Release, 79 FR at 25309–10.

[567] *See id.* at 25264. Of these total initial and ongoing annual burdens for the 10 types of records a firm would be required to make and keep current under paragraph (b)(8) of proposed Rule 18a–5, Commission staff believes that the burdens associated with making and keeping current questionnaires or applications for employment would be an initial burden of 20 hours (or 200/10) and an ongoing burden of 25 hours (or 250/10).

[568] In estimating the burden associated with Rule 18a–5, the Commission recognizes that entities that will register stand-alone SBS Entities likely make and keep current some records today as a matter of routine business practice, but the Commission does not have information about the records that such entities currently keep. Therefore, the Commission assumes that these entities currently keep no records when it estimates the PRA burden for these entities.

18a–5 and continues to believe they are appropriate.

The proposed modifications to paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5 would (a) exempt stand-alone and bank SBS Entities from the requirement to make and keep current a questionnaire or application for employment for an associated person if the SBS Entity is excluded from the prohibition in section 15F(b)(6) of the Exchange Act with respect to the associated person (*e.g.,* the exclusion proposed in Rule of Practice 194(c)(2)), and (b) allow SBS Entities to exclude certain information from their associated person records if receipt of that information or the creation or maintenance of records reflecting that information would result in a violation of applicable law in the jurisdiction where the associated person is employed or located.

Proposed Addition of Paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A)

The Commission estimates that the proposed modification to add paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) to proposed Rule 18a–5 would eliminate the paperwork burden for stand-alone and bank security-based swap dealers and major security-based swap participants associated with making and keeping current questionnaires or applications for employment records, otherwise required by proposed Rule 18a–5, with respect to any associated person if the SBS Entity is excluded from the prohibition in Exchange Act Section 15F(b)(6), including the exclusion proposed in Rule of Practice 194(c)(2) with respect to a natural person who is (i) not a U.S. person and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person).

As indicated above, the Commission estimates that there will be approximately 4 stand-alone major security-based swap participants, 9 stand-alone security-based swap dealers and 25 bank security-based swap dealers. Further, as indicated above, each security-based swap dealer would have approximately 420 associated persons and half of those associated persons, or 210, would not be employed or located in the U.S. The Commission estimates that stand-alone and bank SBS dealers would not need to obtain the questionnaire or application for employment for one third of those associated persons, or 70, because proposed Rule of Practice 194(c)(2) would provide an exclusion from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to associated persons who are not located in the U.S. and do not effect and are not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (other than a security-based swap transaction conducted through a foreign branch of a counterparty that is a U.S. person).[569] Similarly, as indicated above, each major security-based swap participant would have approximately 62 associated persons and half of those associated persons, or 31, would not be employed or located in the U.S. The Commission estimates that stand-alone and bank major security-based swap participants would not need to obtain the questionnaire or application for employment for one third of those associated persons, or 10, because proposed Rule of Practice 194(c)(2) would provide an exclusion from the prohibition in Section 15F(b)(6) of the Exchange Act with respect to those associated persons.[570]

Given this, the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) to proposed Rule 18a–5 would reduce the initial burden associated with proposed Rule 18a–5 by 127 hours [571] and it would reduce the ongoing burden associated with proposed Rule 18a–5 by 158 hours.[572]

Proposed Addition of Paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B)

The Commission estimates that the proposed modification to add paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to proposed Rule 18a–5 would decrease the paperwork burden for stand-alone and bank SBS Entities by permitting the exclusion of certain information mandated by the questionnaire requirement with respect to associated natural persons who effect or are involved in effecting security-based swap transactions with U.S. counterparties where the receipt of that information, or the creation or maintenance of records reflecting such information, would result in a violation of applicable law in the jurisdiction where the associated person is employed or located.

As indicated above, the Commission estimates that there will be approximately 4 stand-alone major security-based swap participants, 9 stand-alone security-based swap dealers and 25 bank security-based swap dealers. Further, as indicated above, each security-based swap dealer would have approximately 420 associated persons and half of those associated persons, or 210, would not be employed or located in the U.S. The Commission estimates that these new paragraphs would permit stand-alone and bank security-based swap dealers to exclude certain information mandated by the questionnaire requirement for approximately one third of those

[569] 70 associated persons/420 associated persons per security-based swap dealer = a reduction of approximately 16.7%. Security-based swap dealers would be able to utilize this paragraph relative to other exclusions from the requirements of Exchange Act Section 15F(b)(6) that the Commission may provide, however the analysis is focusing solely on the exclusion provided by proposed new paragraph (c)(2) to Rule of Practice 194 for purposes of the Paperwork Reduction Act estimate.

[570] 10 associated persons/62 associated persons per major security-based swap participant = a reduction of approximately 16.1%. Major security-based swap participants would be able to utilize this paragraph relative to other exclusions from the requirements of Exchange Act Section 15F(b)(6) that the Commission may provide, however the analysis is focusing solely on the exclusion provided by proposed new paragraph (c)(2) to Rule of Practice 194 for purposes of this Paperwork Reduction Act estimate.

[571] *Initial burden hours associated with paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants, as proposed—*

20 hours × [9 stand-alone security-based swap dealers + 25 bank security-based swap dealers] = 20 hours × 34 security-based swap dealers = 680 initial burden hours for security-based swap dealers.

20 hours × 4 stand-alone major security-based swap participants = 80 initial burden hours for major security-based swap participants.

Initial burden hour reduction:

680 initial burden hours for security-based swap dealers × 16.7% (*see supra* note 569) = 114 hours. 80 initial burden hours for major security-based swap participants × 16.1% (*see supra* note 570) = 13 hours. A 114 hour reduction in the initial burden for security-based swap dealers + a 13 hour reduction in the initial burden for major security-based swap participants = a 127 hour reduction in initial burden hours across all entities able to rely on paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

[572] *Ongoing burden hours associated with paragraph (a)(10) and (b)(8) of proposed Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants, as proposed—*

25 hours × [9 stand-alone security-based swap dealers + 25 bank security-based swap dealers] = 20 hours × 34 security-based swap dealers = 850 ongoing burden hours for security-based swap dealers.

25 hours × 4 stand-alone major security-based swap participants = 100 ongoing burden hours for major security-based swap participants.

Ongoing burden hour reduction:

850 ongoing burden hours for security-based swap dealers × 16.7% (*see supra* note 569) = 142 hours. 100 ongoing burden hours for major security-based swap participants × 16.1% (*see supra* note 570) = 16 hours. A 142 hour reduction in the ongoing burden for security-based swap dealers + a 16 hour reduction in the ongoing burden for major security-based swap participants = a 158 hour reduction in ongoing burden hours across all entities able to rely on paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

associated persons, or 70.[573] Similarly, as indicated above, each major security-based swap participant would have approximately 62 associated persons and half of those associated persons, or 31, would not be employed or located in the U.S. The Commission estimates that these new paragraphs would permit stand-alone and bank major security-based swap participants to exclude certain information mandated by the questionnaire requirement for approximately one third of those associated persons, or 10.[574]

The Commission estimates that this will reduce the burdens associated with obtaining the information specified in the questionnaire requirement by 50% for the affected associated persons. Given this, the addition of paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) to proposed Rule 18a–5 would reduce the initial burden associated with proposed Rule 18a–5 by 63 hours [575] and would reduce the ongoing burden associated with proposed Rule 18a–5 by 79 hours.[576]

Thus, in total, the addition of both paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) and paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) would reduce the initial burden associated with the questionnaire requirement in proposed Rule 18a–5 by 190 hours,[577] and the ongoing burden associated with the questionnaire requirement in proposed Rule 18a–5 by 237 hours.[578]

5. Collection of Information Is Mandatory

The collections of information pursuant to the proposed modifications to the proposed new rule would be mandatory, as applicable, for SBS Entities.

6. Confidentiality

Information that an SBS Entity would be required to make and keep current under proposed Rule 18a–5 would be maintained by the firm. To the extent that the Commission collects such records during an inspection or examination of a registered SBS Entity, or through some other means, such records would generally be kept confidential, subject to the provisions of applicable law.[579]

7. Retention Period for Recordkeeping Requirements

Proposed Rule 18a–6 would establish the required retention periods for SBS Entities to maintain records collected in accorded with proposed Rule 18a–5.[580] Under paragraph (d)(1) of proposed Rule 18a–6, an SBS Entity would be required to maintain and preserve in an easily accessible place the records required under paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5 until at least three years after the associated person's employment and any other connection with the SBS Entity has terminated.

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

- Are the Commission's estimates regarding the numbers of respondents relative to the proposed modifications to proposed Rule 18a–5 accurate? If so, please provide empirical support for the Commission's estimate. If not, please provide a suggested estimate and empirical support for it.
- Are the Commission's estimates regarding the amount of time it would take to make and keep current the questionnaire or application for employment or other related records accurate? If so, please provide empirical support for the Commission's estimate. If not, please provide a suggested estimate and empirical support for it.
- Do stand-alone SBS Entities already have established record making and record preservation systems? If so, please explain those systems so they can be taken into account in the Commission's burden estimates.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to [ ], Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File Number [ ]. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number [ ] and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information

[573] *See* note 569, *supra.*

[574] *See* note 570, *supra.*

[575] *Initial burden hours associated with paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants, as proposed—*

20 hours × [9 stand-alone security-based swap dealers + 25 bank security-based swap dealers] = 20 hours × 34 security-based swap dealers = 680 initial burden hours for security-based swap dealers.

20 hours × 4 stand-alone major security-based swap participants = 80 initial burden hours for major security-based swap participants.

Initial burden hour reduction:

[680 initial burden hours for security-based swap dealers × 16.7% (*see supra* note 569 × 50%] = 57 hours. [80 initial burden hours for major security-based swap participants × 16.1% (*see supra* note 570) × 50%] = 6 hours. A 57 hour reduction in the initial burden for security-based swap dealers + a 6 hour reduction in the initial burden for major security-based swap participants = a 63 hour reduction in initial burden hours across all entities able to rely on paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

[576] *Ongoing burden hours associated with paragraph (a)(10) and (b)(8) of proposed Rule 18a–5 for stand-alone and bank security-based swap dealers and major security-based swap participants, as proposed—*

25 hours × [9 stand-alone security-based swap dealers + 25 bank security-based swap dealers] = 20 hours × 34 security-based swap dealers = 850 ongoing burden hours for security-based swap dealers.

25 hours × 4 stand-alone major security-based swap participants = 100 ongoing burden hours for major security-based swap participants.

Ongoing burden hour reduction:

[850 ongoing burden hours for security-based swap dealers × 16.7% (*see supra* note 569) × 50%] = 71 hours. [100 ongoing burden hours for major security-based swap participants × 16.1% (*see supra* note 570) × 50%] = 8 hours. A 71 hour reduction in the ongoing burden for security-based swap dealers + a 8 hour reduction in the ongoing burden for major security-based swap participants = a 79 hour reduction in ongoing burden hours across all entities able to rely on paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

[577] A 127 hour reduction in initial burden hours associated with the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) and a 63 hour reduction in initial burden hours associated with the addition of paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) = a 190 hour reduction in initial burden hours.

[578] A 158 hour reduction in ongoing burden hours associated with the addition of paragraphs (a)(10)(iii)(A) and (b)(8)(iii)(A) and a 79 hour reduction in ongoing burden hours associated with the addition of paragraphs (a)(10)(iii)(B) and (b)(8)(iii)(B) = a 237 hour reduction in ongoing burden hours.

[579] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[580] *See* proposed Rule 18a–6, Recordkeeping and Reporting Proposing Release.

between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'') [581] the Commission requests comment on the potential effect of this proposal on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 (''RFA'') [582] requires the Commission to undertake an initial regulatory flexibility analysis of the impact of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant impact on a substantial number of ''small entities.'' [583]

For purposes of Commission rulemaking in connection with the RFA,[584] a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less; [585] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[586] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[587] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (i) For entities engaged in credit intermediation and related activities, entities with $175 million or less in assets; [588] (ii) for entities engaged in non-depository credit intermediation and certain other activities, entities with $7 million or less in annual receipts;–[589] (iii) for entities engaged in financial investments and related activities, entities with $7 million or less in annual receipts; [590] (iv) for insurance carriers and entities engaged in related activities, entities with $7 million or less in annual receipts; [591] and (v) for funds, trusts, and other financial vehicles, entities with $7 million or less in annual receipts.[592]

For purposes of the proposed exception to Exchange Act rule 3a71–3, the Commission continues to believe that the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps would not be ''small entities'' for purposes of the RFA.[593] Moreover, based on feedback from market participants and information about the security-based swap markets, the Commission expects that all of the firms that are likely to make use of the proposed exception to Rule 3a71–3—are part of large financial institutions that exceed the thresholds defining ''small entities'' as set forth above.[594]

As discussed, the proposed exception to Exchange Act Rule 3a71–3 would be subject to conditions requiring arranging, negotiating or executing activity to be conducted by affiliated registered security-based swap dealers (under alternatives 1 or 2) or by affiliated registered brokers or security-based swap dealers (under alternative 2) that are affiliated with the non-U.S. persons relying on the exception. It is possible that some non-U.S. persons may set up new security-based swap dealers or new brokers to make use of the exception, while recognizing that other non-U.S. persons that seek to make use of the proposed exception instead may make use of affiliated security-based swap dealers that have an additional business of engaging in dealing activity above the *de minimis* thresholds with U.S. counterparties (under either alternative), or would make use of existing affiliated registered broker-dealers (under alternative 2).[595] By definition, any such affiliated existing or new broker-dealer would not be a ''small entity.'' [596] Moreover, even in the unlikely event that some non-U.S. persons were to satisfy the exception's conditions via the use of affiliated registered security-based swap dealers that fall within the definition of ''small entity'' for purposes of the RFA,[597] the Commission preliminarily believes that there would not be a substantial number of such entities.[598]

Based on feedback from industry participants about the security-based swap markets, the Commission continues to believe that entities that will qualify as SBS Entities exceed the thresholds defining ''small entities.'' Thus, the Commission believes that any SBS Entities that may seek to rely on the proposed amendment to Rule 15Fb2–1

[581] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[582] 5 U.S.C. 603(a).

[583] 5 U.S.C. 605(b).

[584] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the Exchange Act, 17 CFR 240.0–10. *See* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982) (File No. AS–305).

[585] *See* 17 CFR 240.0–10(a).

[586] *See* 17 CFR 240.17a–5(d).

[587] *See* 17 CFR 240.0–10(c).

[588] *See* 13 CFR 121.201 (Subsector 522).

[589] *See id.* at Subsector 522.

[590] *See id.* at Subsector 523.

[591] *See id.* at Subsector 524.

[592] *See id.* at Subsector 525.

[593] *See* Cross-Border Adopting Release, 79 FR at 47368.

[594] *See* part VII.A.7, *supra* (discussing persons potentially likely to use the proposed exception to Rule 3a71–3); *see also* U.S. Activity Proposing Release, 80 FR at 27508 (''we believe that firms that are likely to engage in security-based swap dealing activity at levels that may lead them to perform *de minimis* calculations under the ''security-based swap dealer'' definition are large financial institutions that exceed the thresholds defining ''small entities'').

[595] *See* part VII.A.7, *supra* (discussing likely broker-dealer or security-based swap dealer affiliates of persons expected to rely on exemption).

[596] The ''small entity'' definition applied to broker-dealers excludes broker-dealers that are affiliated with a person that is not a ''small entity.'' *See* Exchange Act Rule 0–10(c)(2), (i)(1) (basing affiliation on an 25 percent ownership standard that is narrower than the majority ownership standard used in connection with this proposed conditional exception). Because the non-U.S. persons relying on this exception would not be ''small entities,'' any such affiliated broker also would not be a ''small entity.''

[597] As noted, if the person engaged in market-facing activity in the United States is a registered security-based swap dealer (as required by alternative 1 and permitted by alternative 2) that has an additional business of engaging in dealing activity above the *de minimis* thresholds with U.S. counterparties, the Commission preliminarily believes that the person would not be a ''small entity.''

[598] Similarly, the Commission preliminarily believes that there would not be a significant number of ''small entities'' that may file ''listed jurisdiction'' applications pursuant to the proposed amendments to Exchange Act Rule 0–13. This conclusion reflects the same reasons, as well as the expectation that the majority of such applications would be filed by foreign authorities.

would not be ''small entities'' for purposes of the RFA.[599]

The Commission also continues to believe that any SBS Entities—*i.e.,* registered security-based swap dealers and registered major security-based swap participants—with associated persons that may be the subject of the proposed amendments to Rule of Practice 194 would not be ''small entities'' for purposes of the RFA.[600]

The Commission further continues to believe that it is unlikely that the requirements applicable to SBS Entities that would be established under the proposed modifications to proposed Rule 18a-5 would have a significant economic impact on any small entity because no SBS Entity will be a small entity.[601]

Accordingly, the Commission preliminarily believes that it is unlikely that the proposed amendments regarding the security-based swap dealer cross-border *de minimis* counting requirement and regarding associated persons of SBS Entities would have a significant economic impact on a substantial number of small entities.[602]

For the foregoing reasons, the Commission certifies that the proposed amendments to Exchange Act Rules 3a71–3, 15Fb2–1, 0–13, and Rule of Practice 194 and the proposed modifications to proposed Rule 18a–5 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission encourages written comments regarding this certification, and requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

XI. Statutory Basis and Text of Proposed Rules

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly Sections 3(a)(71), 3(b), 15F (as added by Section 764(a) of the Dodd-Frank Act), 17(a), 23(a), and 30(c) thereof, and Section 761(b) of the Dodd-Frank Act, the Commission is proposing to amend Rule of Practice 194 and Rules 0–13, 3a71–3, 15Fb2–1, and proposing to modify proposed Rule 18a-5 under the Exchange Act.

List of Subjects

17 CFR Part 201

Administrative practice and procedure, Brokers, Claims, Confidential business information, Equal access to justice, Lawyers, Penalties, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons stated in the preamble, the SEC is proposing to amend Title 17, Chapter II of the Code of the Federal Regulations as follows:

PART 201—RULES OF PRACTICE

■ 1. The general authority citation for Subpart D is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 77sss, 77ttt, 78(c)(b), 78d–1, 78d–2, 78*l,* 78m, 78n, 78o(d), 78o–3, 78o–10(b)(6), 78s, 78u–2, 78u–3, 78v, 78w, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

* * * * *

■ 2. Amend § 201.194 by re-designating paragraph (c) as paragraph (c)(1), adding a new heading to paragraph (c) and paragraph (c)(2) to read as follows:

§ 201.194 Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved In Effecting Security-Based Swaps.

* * * * *

(c) *Exclusions.* (1) * * *.

(2) *Exclusion for Certain Associated Natural Persons.* A security-based swap dealer or major security-based swap participant shall be excluded from the prohibition in Section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)) with respect to an associated person who is a natural person who (i) is not a U.S. person (as defined in 17 CFR 240.3a71–3(a)(4)(i)(A)) and (ii) does not effect and is not involved in effecting security-based swap transactions with or for counterparties that are U.S. persons (as defined in 17 CFR 240.3a71–3(a)(4)), other than a security-based swap transaction conducted through a foreign branch (as that term is defined in 17 CFR 240.3a71–3(a)(3)) of a counterparty that is a U.S. person; *provided, however,* that this exclusion shall not be available if the associated person of that security-based swap dealer or major security-based swap participant is currently subject to any order described in subparagraphs (A) and (B) of Section 3(a)(39) of the Exchange Act, with the limitation that an order by a foreign financial regulatory authority described in subparagraphs (B)(i) and (B)(iii) of Section 3(a)(39) (15 U.S.C. 78c(a)(39)(B)(i) and (B)(iii)) shall only apply to orders by a foreign financial regulatory authority in the jurisdiction where the associated person is employed or located.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1887 (2010); and secs. 503 and 602, Pub. L. 112–106, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 240.0–13 by revising the heading and paragraphs (a), (b) and (e) to read as follows:

§ 240.0–13 Commission procedures for filing applications to request a substituted compliance or listed jurisdiction order under the Exchange Act.

(a) The application shall be in writing in the form of a letter, must include any supporting documents necessary to make the application complete, and otherwise must comply with § 240.0–3. All applications must be submitted to the Office of the Secretary of the Commission, by a party that potentially would comply with requirements under the Exchange Act pursuant to a substituted compliance or listed jurisdiction order, or by the relevant foreign financial regulatory authority or authorities. If an application is incomplete, the Commission may request that the application be withdrawn unless the applicant can justify, based on all the facts and circumstances, why supporting materials have not been submitted and

[599] *See* Registration Adopting Release, 80 FR at 49013.

[600] We previously have concluded, based on feedback from market participants and the Commission's information regarding the security-based swap market, that the types of entities that may have security-based swap positions above the level required to register as SBS Entities would not be ''small entities'' for purposes of the RFA. *See* Cross-Border Adopting Release, 79 FR at 47368; *see also* ''Applications by Security-based Swap Dealers or Major Security-Based Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swaps,'' 80 FR 51684 (Aug 25, 2015), at 51718, and Rule of Practice 194 Adopting Release, 84 FR at 4944.

[601] *See* Recordkeeping and Reporting Proposing Release, 79 FR at 25296.

[602] *See also* parts VI (Economic Analysis) and VII (Paperwork Reduction Act) (discussing, among other things, the economic impact, including the estimated compliance costs and burdens, of the amendments).

undertakes to submit the omitted materials promptly.

(b) An applicant may submit a request electronically. The electronic mailbox to use for these applications is described on the Commission's website at *www.sec.gov* in the ''Exchange Act Substituted Compliance and Listed Jurisdiction Applications'' section. In the event electronic mailboxes are revised in the future, applicants can find the appropriate mailbox by accessing the ''Electronic Mailboxes at the Commission'' section.

* * * * *

(e) Every application (electronic or paper) must contain the name, address, telephone number, and email address of each applicant and the name, address, telephone number, and email address of a person to whom any questions regarding the application should be directed. The Commission will not consider hypothetical or anonymous requests for a substituted compliance or listed jurisdiction order. Each applicant shall provide the Commission with any supporting documentation it believes necessary for the Commission to make such determination, including information regarding applicable requirements established by the foreign financial regulatory authority or authorities, as well as the methods used by the foreign financial regulatory authority or authorities to monitor and enforce compliance with such rules. Applicants should also cite to and discuss applicable precedent.

* * * * *

■ 5. Amend § 240.3a71–3 by adding paragraphs (a)(10), (a)(11), and (a)(12), amending paragraph (b)(1)(iii)(C), and adding paragraph (d) to read as follows:

§ 240.3a71–3 Cross-border security-based swap dealing activity.

(a) * * *

(10) An entity is a *majority-owned affiliate* of another entity if the entity directly or indirectly owns a majority interest in the other, or if a third party directly or indirectly owns a majority interest in both entities, where ''majority interest'' is the right to vote or direct the vote of a majority of a class of voting securities of an entity, the power to sell or direct the sale of a majority of a class of voting securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

(11) *Foreign associated person* means a natural person domiciled outside the United States who—with respect to a non-U.S. person relying on the exception set forth in paragraph (d) of this section—is a partner, officer, director, or branch manager of such non-U.S. person (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such non-U.S. person, or any employee of such non-U.S. person.

(12) *Listed jurisdiction* means any jurisdiction that the Commission by order has designated as a listed jurisdiction for purposes of the exception specified in paragraph (d) of this section.

(b) * * *

(1) * * *

(iii) * * *

(C) Except as provided in paragraph (d) of this section, or unless such person is a person described in paragraph (a)(4)(iii) of this section, security-based swap transactions connected with such person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office; and

* * * * *

Alternative 1

(d) *Exception from counting certain transactions.* The counting requirement described by paragraph (b)(1)(iii)(C) of this section will not apply to the security-based swap dealing transactions of a non-U.S. person if the conditions of paragraph (d)(1) of this section have been satisfied.

(1) *Conditions.* (i) *Entity conducting U.S. activity.* All activity that otherwise would cause a security-based swap transaction to be described by paragraph (b)(1)(iii)(C) of this section—namely, all arranging, negotiating or executing activity that is conducted by personnel of the entity (or its agent) located in a branch or office in the United States—is conducted by such U.S. personnel in their capacity as persons associated with an entity that:

(A) Is registered with the Commission as a security-based swap dealer; and

(B) Is a majority-owned affiliate of the non-U.S. person relying on this exception.

(ii) *Compliance with specified security-based swap dealer requirements.* (A) Compliance required. In connection with such transactions, the registered entity described in paragraph (d)(1)(i) of this section complies with the requirements described in paragraph (d)(1)(ii)(B) of this section as if the counterparties to the non-U.S. person relying on this exception also were counterparties to the registered entity.

(B) Applicable requirements. The compliance obligation described in paragraph (d)(1)(ii)(A) of this section applies to the following provisions of the Act and the rules and regulations thereunder:

(*1*) Section 15F(h)(3)(B)(i), (ii) and rule 15Fh–3(b) thereunder, including in connection with material incentives and conflicts of interest associated with the non-U.S. person relying on the exception;

(*2*) Rule 15Fh–3(f);

(*3*) Section 15F(h)(3)(C) of the Act and rule 15Fh–3(g) thereunder;

(*4*) Rules 15Fi–1 and 15Fi–2; and

(*5*) Rule 15Fi–3, provided, however, that the registered entity described in paragraph (d)(1)(i) of this section will not be required to comply with rule 15Fi–3 in connection with the transaction following the initial portfolio reconciliation of the security-based swap resulting from the transaction.

(C) Other compliance requirements. The compliance obligation described in paragraph (d)(1)(ii)(A) of this section does not apply to the following provisions of the Act and the rules and regulations thereunder:

(*1*) Section 15F(h)(3)(A) of the Act and rule 15Fh–3(a)(1) thereunder;

(*2*) Section 15F(h)(3)(B)(iii) and rule 15Fh–3(c) thereunder; and

(*3*) Rule 15Fh–3(d);

(*4*) Rule 15Fh–3(e);

(*5*) Rule 15Fi–4; and

(*6*) Rule 15Fi–5.

(iii) *Commission access to books, records and testimony.* (A) The non-U.S. person relying on this exception promptly provides representatives of the Commission (upon request of the Commission or its representatives or pursuant to a supervisory or enforcement memorandum of understanding or other arrangement or agreement reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information or documents within the non-U.S. person's possession, custody, or control, promptly makes its foreign associated persons available for testimony, and provides any assistance in taking the evidence of other persons, wherever located, that the Commission or its representatives requests and that relates to transactions subject to this exception, provided, however, that if, after exercising its best efforts, the non-U.S. person is prohibited by applicable foreign law or regulations from providing such information, documents, testimony, or assistance, the non-U.S.

person may continue to rely on this exception until the Commission issues an order modifying or withdrawing an associated ''listed jurisdiction'' determination pursuant to paragraph (d)(2)(iii) of this section.

(B) The registered entity described in paragraph (d)(1)(i) of this section:

(*1*) Creates and maintains books and records relating to the transactions subject to this exception that are required, as applicable, by rules 17a–3 and 17a–4, or by rules 18a–5 and 18a–6, including any books and records requirements relating to the provisions specified in paragraph (d)(1)(ii)(B) of this section;

(*2*) Obtains from the non-U.S. person relying on the exception, and maintains, documentation encompassing all terms governing the trading relationship between the non-U.S. person and its counterparty relating to the transactions subject to this exception, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation, and dispute resolution; and

(*3*) Obtains from the non-U.S. person relying on this exception written consent to service of process for any civil action brought by or proceeding before the Commission, providing that process may be served on the non-U.S. person by service on the registered entity in the manner set forth in the registered entity's current Form SBSE, SBSE–A or SBSE–BD, as applicable.

(iv) *Disclosures.* In connection with the transaction, the registered entity described in paragraph (d)(1)(i) of this section notifies the counterparties of the non-U.S. person relying on this exception that the non-U.S. person is not registered with the Commission as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable in connection with the transaction, including provisions affording clearing rights to counterparties. Such disclosure shall be provided contemporaneously with, and in the same manner as, the arranging, negotiating, or executing activity at issue. This disclosure will not be required if the identity of that counterparty is not known to that registered entity at a reasonably sufficient time prior to the execution of the transaction to permit such disclosure.

(v) *Subject to regulation of a listed jurisdiction.* The non-U.S. person relying on this exception is subject to the margin and capital requirements of a listed jurisdiction when engaging in transactions subject to this exception.

(2) *Order for listed jurisdiction designation.* The Commission by order, may conditionally or unconditionally determine that a foreign jurisdiction is a listed jurisdiction for purposes of this section. The Commission may make listed jurisdiction determinations in response to applications, or upon the Commission's own initiative.

(i) *Applications.* Applications for an order requesting listed jurisdiction status may be made by a party or group of parties that potentially would seek to rely on the exception provided by paragraph (d) of this section, or by any foreign financial regulatory authority or authorities supervising such a party or its security-based swap activities. Applications must be filed pursuant to the procedures set forth in § 240.0–13.

(ii) *Criteria considered.* In considering a foreign jurisdiction's potential status as a listed jurisdiction, the Commission may consider factors relevant for purposes of assessing whether such an order would be in the public interest, including:

(A) Applicable margin and capital requirements of the foreign financial regulatory system; and

(B) The effectiveness of the supervisory compliance program administered by, and the enforcement authority exercised by, the foreign financial regulatory authority in connection with such requirements, including the application of those requirements in connection with an entity's cross-border business.

(iii) *Withdrawal or modification of listed jurisdiction status.* The Commission may, on its own initiative, by order after notice and opportunity for comment, modify or withdraw a jurisdiction's status as a listed jurisdiction, if the Commission determines that continued listed jurisdiction status no longer would be in the public interest, based on:

(A) The criteria set forth in paragraph (d)(2)(ii) of this section;

(B) Any laws or regulations that have had the effect of preventing the Commission or its representatives, on request, to promptly access information or documents regarding the activities of persons relying on the exception provided by this paragraph (d), to obtain the testimony of foreign associated persons, and to obtain the assistance of persons relying on this exception in taking the evidence of other persons, wherever located, as described in paragraph (d)(1)(iii)(A) of this section; and

(C) Any other factor the Commission determines to be relevant to whether continued status as a listed jurisdiction would be in the public interest.

Alternative 2

(d) *Exception from counting certain transactions.* The counting requirement described by paragraph (b)(1)(iii)(C) of this section will not apply to the security-based swap dealing transactions of a non-U.S. person if the conditions of paragraph (d)(1) of this section have been satisfied.

(1) *Conditions.* (i) *Entity conducting U.S. activity.* All activity that otherwise would cause a security-based swap transaction to be described by paragraph (b)(1)(iii)(C) of this section—namely, all arranging, negotiating or executing activity that is conducted by personnel of the entity (or its agent) located in a branch or office in the United States—is conducted by such U.S. personnel in their capacity as persons associated with an entity that:

(A) Is registered with the Commission as a broker or as a security-based swap dealer; and

(B) Is a majority-owned affiliate of the non-U.S. person relying on this exception.

(ii) *Compliance with specified security-based swap dealer requirements.* (A) Compliance required. In connection with such transactions, the registered entity described in paragraph (d)(1)(i) of this section complies with the requirements described in paragraph (d)(1)(ii)(B) of this section: (*a*) As if the counterparties to the non-U.S. person relying on this exception also were counterparties to that entity; and (*b*) as if that entity were registered with the Commission as a security-based swap dealer, if it is not so registered.

(B) *Applicable requirements.* The compliance obligation described in paragraph (d)(1)(ii)(A) of this section applies to the following provisions of the Act and the rules and regulations thereunder:

(*1*) Section 15F(h)(3)(B)(i), (ii) and rule 15Fh–3(b) thereunder, including in connection with material incentives and conflicts of interest associated with the non-U.S. person relying on the exception;

(*2*) Rule 15Fh–3(f);

(*3*) Section 15F(h)(3)(C) of the Act and rule 15Fh–3(g) thereunder;

(*4*) Rules 15Fi–1 and 15Fi–2; and

(*5*) Rule 15Fi–3, provided, however, that the registered entity described in paragraph (d)(1)(i) will not be required to comply with rule 15Fi–3 in connection with the transaction following the initial portfolio

reconciliation of the security-based swap resulting from the transaction.

(C) Other compliance requirements. The compliance obligation described in paragraph (d)(1)(ii)(A) of this section does not apply to the following provisions of the Act and the rules and regulations thereunder:

(*1*) Section 15F(h)(3)(A) of the Act and rule 15Fh–3(a)(1) thereunder;

(*2*) Section 15F(h)(3)(B)(iii) and rule 15Fh–3(c) thereunder;

(*3*) Rule 15Fh–3(d);

(*4*) Rule 15Fh–3(e);

(*5*) Rule 15Fi–4; and

(*6*) Rule 15Fi–5.

(iii) *Commission access to books, records and testimony.* (A) The non-U.S. person relying on this exception promptly provides representatives of the Commission (upon request of the Commission or its representatives or pursuant to a supervisory or enforcement memorandum of understanding or other arrangement or agreement reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information or documents within the non-U.S. person's possession, custody, or control, promptly makes its foreign associated persons available for testimony, and provides any assistance in taking the evidence of other persons, wherever located, that the Commission or its representatives requests and that relates to transactions subject to this exception, provided, however, that if, after exercising its best efforts, the non-U.S. person is prohibited by applicable foreign law or regulations from providing such information, documents, testimony, or assistance, the non-U.S. person may continue to rely on this exception until the Commission issues an order modifying or withdrawing an associated ''listed jurisdiction'' determination pursuant to paragraph (d)(2)(iii) of this section.

(B) The registered entity described in paragraph (d)(1)(i) of this section:

(*1*) Creates and maintains books and records relating to the transactions subject to this exception that are required, as applicable, by rules 17a–3 and 17a–4, or by rules 18a–5 and 18a–6, including any books and records requirements relating to the provisions specified in paragraph (d)(1)(ii)(B) of this section;

(*2*) Obtains from the non-U.S. person relying on the exception, and maintains, documentation encompassing all terms governing the trading relationship between the non-U.S. person and its counterparty relating to the transactions subject to this exception, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, allocation of any applicable regulatory reporting obligations, governing law, valuation, and dispute resolution; and

(*3*) Obtains from the non-U.S. person relying on this exception written consent to service of process for any civil action brought by or proceeding before the Commission, providing that process may be served on the non-U.S. person by service on the registered entity in the manner set forth in the registered entity's current Form BD, SBSE, SBSE–A or SBSE–BD, as applicable.

(iv) *Disclosures.* In connection with the transaction, the registered entity described in paragraph (d)(1)(i) of this section notifies the counterparties of the non-U.S. person relying on this exception that the non-U.S. person is not registered with the Commission as a security-based swap dealer, and that certain Exchange Act provisions or rules addressing the regulation of security-based swaps would not be applicable in connection with the transaction, including provisions affording clearing rights to counterparties. Such disclosure shall be provided contemporaneously with, and in the same manner as, the arranging, negotiating, or executing activity at issue. This disclosure will not be required if the identity of that counterparty is not known to that registered entity at a reasonably sufficient time prior to the execution of the transaction to permit such disclosure.

(v) *Subject to regulation of a listed jurisdiction.* The non-U.S. person relying on this exception is subject to the margin and capital requirements of a listed jurisdiction when engaging in the transactions subject to this exception.

(2) *Order for listed jurisdiction designation.* The Commission by order, may conditionally or unconditionally determine that a foreign jurisdiction is a listed jurisdiction for purposes of this section. The Commission may make listed jurisdiction determinations in response to applications, or upon the Commission's own initiative.

(i) *Applications.* Applications for an order requesting listed jurisdiction status may be made by a party or group of parties that potentially would seek to rely on the exception provided by paragraph (d) of this section, or by any foreign financial regulatory authority or authorities supervising such a party or its security-based swap activities. Applications must be filed pursuant to the procedures set forth in § 240.0–13.

(ii) *Criteria considered.* In considering a foreign jurisdiction's potential status as a listed jurisdiction, the Commission may consider factors relevant for purposes of assessing whether such an order would be in the public interest, including:

(A) Applicable margin and capital requirements of the foreign financial regulatory system; and

(B) The effectiveness of the supervisory compliance program administered by, and the enforcement authority exercised by, the foreign financial regulatory authority in connection with such requirements, including the application of those requirements in connection with an entity's cross-border business.

(iii) *Withdrawal or modification of listed jurisdiction status.* The Commission may, on its own initiative, by order after notice and opportunity for comment, modify or withdraw a jurisdiction's status as a listed jurisdiction, if the Commission determines that continued listed jurisdiction status no longer would be in the public interest, based on:

(A) The criteria set forth in paragraph (d)(2)(ii) of this section;

(B) Any laws or regulations that have had the effect of preventing the Commission or its representatives, on request, to promptly access information or documents regarding the activities of persons relying on the exception provided by this paragraph (d), to obtain the testimony of their foreign associated persons, and to obtain the assistance of persons relying on this exception in taking the evidence of other persons, wherever located, as described in paragraph (d)(1)(iii)(A) of this section; and

(C) Any other factor the Commission determines to be relevant to whether continued status as a listed jurisdiction would be in the public interest.

(4) *Exception for person that engages in arranging, negotiating or executing activity as agent.* The registered entity described in paragraph (d)(1)(i) of this section need not count, against the *de minimis* thresholds described in § 240.3a71–2(a)(1), the transactions described by paragraph (d) of this section.

* * * * *

■ 6. Amend Section 240.15Fb2–1 by revising paragraphs (d) and (e) to read as follows:

The additions read as follows.

§ 240.15Fb2–1 Registration of security-based swap dealers and major security-based swap participants.

* * * * *

(d) *Conditional registration.* (1) An applicant that has submitted a complete Form SBSE–C (§ 249.1600c of this chapter) and a complete Form SBSE (§ 249.1600 of this chapter) or Form SBSE–A (§ 249.1600a of this chapter) or Form SBSE–BD (§ 249.1600b of this chapter), as applicable, in accordance with paragraph (b) within the time periods set forth in § 240.3a67–8 (if the person is a major security-based swap participant) or § 240.3a71–2(b) (if the person is a security-based swap dealer), and has not withdrawn its registration shall be conditionally registered.

(2) Notwithstanding paragraph (d)(1) of this section, an applicant that is a nonresident security-based swap dealer or nonresident major security-based swap participant (each as defined in Rule 15Fb2–4(a)) that is unable to provide the certification and opinion of counsel required by Rule 15Fb2–4(c)(1) shall be conditionally registered, for up to 24 months after the compliance date for Rule 15Fb2–1, if the nonresident applicant submits a Form SBSE–C (§ 249.1600c of this chapter) and a Form SBSE (§ 249.1600 of this chapter), SBSE–A (§ 249.1600a of this chapter) or SBSE–BD (§ 249.1600b of this chapter), as applicable, in accordance with paragraph (b) within the time periods set forth in Rule 3a67–8 (if the person is a major security-based swap participant) or Rule 3a71–2(b) (if the person is a security-based swap dealer), that is complete in all respects but for the failure to provide the certification and the opinion of counsel required by Rule 15Fb2–4(c)(1), and has not withdrawn from registration.

(e) Commission decision. (1) The Commission may deny or grant ongoing registration to a security-based swap dealer or major security-based swap participant based on a security-based swap dealer's or major security-based swap participant's application, filed pursuant to paragraph (a) of this section. The Commission will grant ongoing registration if it finds that the requirements of Section 15F(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(b)) are satisfied. The Commission may institute proceedings to determine whether ongoing registration should be denied if it does not or cannot make such finding or if the applicant is subject to a statutory disqualification (as described in Sections 3(a)(39)(A) through (F) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(A)–(F)), or the Commission is aware of inaccurate statements in the application. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing. At the conclusion of such proceedings, the Commission shall grant or deny such registration.

(2) If an applicant that is a nonresident security-based swap dealer or nonresident major security-based swap participant (each as defined in Rule 15Fb2–4(a)) has become conditionally registered in reliance on paragraph (d)(2) of this section and provides the certification and opinion of counsel required by Rule 15Fb2–4(c)(1) within 24 months of the compliance date for Rule 15Fb2–1, the applicant will remain conditionally registered until the Commission acts to grant or deny ongoing registration in accordance with (e)(1) of this section. If such applicant fails to provide the certification and opinion of counsel required by Rule 15Fb2–4(c)(1) within 24 months of the compliance date for Rule 15Fb2–1, the Commission may institute proceedings to determine whether ongoing registration should be denied, in accordance with paragraph (e)(1) of this section.

■ 7. Section 240.18a–5, as proposed to be added at 79 FR 25193, May 2, 2014, is further amended by adding paragraphs (a)(10)(iii) and (b)(8)(iii) to read as follows:

§ 240.18a–5 Records to be made by certain security-based swap dealers and major security-based swap participants.

* * * * *

(a) * * *

(10) * * *

(iii) Notwithstanding paragraph (a)(10)(i) of this section:

(A) A security-based swap dealer or major security-based swap participant is not required to make and keep current a questionnaire or application for employment executed by an associated person if the security-based swap dealer or major security-based swap participant is excluded from the prohibition in Section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)) with respect to such associated person; and

(B) a questionnaire or application for employment executed by an associated person who is not a U.S. person (as that term is defined in § 240.3a71–3(a)(4)(i)(A)) need not include the information described in paragraphs (a)(10)(i)(A) through (H) of this section if the receipt of that information, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located; *provided, however,* the security-based swap dealer or major security-based swap participant must comply with Section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)).

* * * * *

(b) * * *

(8) * * *

(iii) Notwithstanding paragraph (b)(8)(i) of this section;

(A) a security-based swap dealer or major security-based swap participant is not required to make and keep current a questionnaire or application for employment executed by an associated person if the security-based swap dealer or major security-based swap participant is excluded from the prohibition in Section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)) with respect to such associated person; and

(B) a questionnaire or application for employment executed by an associated person who is not a U.S. person (as that term is defined in § 240.3a71–3(a)(4)(i)(A)) need not include the information described in paragraphs (b)(8)(i)(A) through (H) of this section if the receipt of that information, or the creation or maintenance of records reflecting that information, would result in a violation of applicable law in the jurisdiction in which the associated person is employed or located; *provided, however,* the security-based swap dealer or major security-based swap participant must comply with Section 15F(b)(6) of the Exchange Act (15 U.S.C. 78o–10(b)(6)).

By the Commission.

Dated: May 10, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–10016 Filed 5–23–19; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 101 May 24, 2019

Part III

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 50, 217, et al.

Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 50

[Docket ID OCC–2019–0009]

RIN 1557–AE63

FEDERAL RESERVE SYSTEM

12 CFR Parts 217 and 249

[Regulations Q, WW; Docket No. R–1628B]

RIN 7100–AF21

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 329

RIN 3064–AE96

Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (collectively, the agencies) are inviting comment on a proposal that would determine the application of regulatory capital requirements to certain U.S. intermediate holding companies of foreign banking organizations and their depository institution subsidiaries and the application of standardized liquidity requirements with respect to certain U.S. operations of large foreign banking organizations and certain of their depository institution subsidiaries, each according to risk-based categories. For liquidity, the proposal would require a foreign banking organization that meets certain criteria to comply with liquidity coverage ratio and net stable funding ratio requirements with respect to any U.S. intermediate holding company and certain depository institution subsidiaries thereof; in addition, the Board is not proposing but is requesting comment on whether it should impose standardized liquidity requirements on such foreign banking organizations with respect to their U.S. branch and agency networks, as well as possible approaches for doing so. The proposal is consistent with a separate proposal issued by the Board that would apply certain prudential standards to foreign banking organizations based on the same categories, and is similar to a proposal issued by the agencies in 2018 that would determine the application of regulatory capital and standardized liquidity requirements for large U.S. banking organizations according to risk-based categories (the domestic interagency proposal). In addition, the Board is modifying one aspect of the proposed requirements under the domestic interagency proposal with respect to certain banking organizations; specifically, to propose the application of a standardized liquidity requirement to certain U.S. depository institution holding companies that meet specified criteria relating to their liquidity risk profile. The agencies are also making technical amendments to certain provisions of the domestic interagency proposal.

DATES: Comments on the proposal, including the Board's proposal to apply liquidity requirements to certain domestic holding companies discussed in section VI of the **SUPPLEMENTARY INFORMATION**, must be received by June 21, 2019.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Proposed changes to applicability thresholds for regulatory capital requirements for certain U.S. subsidiaries of foreign banking organizations and application of liquidity requirements for foreign banking organizations'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2019–0009'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0009'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2019–0009'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments and supporting materials can be filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1628, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE96, by any of the following methods:

• *Agency Website: http://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the FDIC website.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.* Include RIN 3064–AE96 on the subject line of the message.

• *Public Inspection:* All comments received must include the agency name and RIN 3064–AE96 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, or by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Ginsberg, Senior Risk Expert, or Venus Fan, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; James Weinberger, Technical Expert, Treasury & Market Risk Policy, (202) 649–6360; or Carl Kaminski, Special Counsel, Henry Barkhausen, Counsel, or Daniel Perez, Attorney, Chief Counsel's Office, (202) 649–5490, or for persons who are hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 475–6216; Brian Chernoff, Lead Financial Institution Policy Analyst, (202) 452–2952; J. Kevin Littler, Lead Financial Institution Policy Analyst, (202) 475–6677; Mark Handzlik, Lead Financial Institution Policy Analyst, (202) 475–6636; Matthew McQueeney, Senior Financial Institution Policy Analyst, (202) 452–2942; Christopher Powell, Senior Financial Institution Policy Analyst, (202) 452–3442, Division of Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel, (202) 452–2036; Asad Kudiya, Counsel, (202) 475–6358; Jason Shafer, Counsel (202) 728–5811; Mary Watkins, Senior Attorney, (202) 452–3722; Joshua Strazanac, Attorney, (202) 452–2457; Alyssa O'Connor, Attorney, (202) 452–3886, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov; regulatorycapital@fdic.gov;* Michael E. Spencer, Chief, Capital Markets Strategies Section, *michspencer@fdic.gov;* Eric W. Schatten, Senior Policy Analyst, *eschatten@fdic.gov;* Andrew D. Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Acting Supervisory Counsel, *cawood@fdic.gov;* Suzanne Dawley, Counsel, *sudawley@fdic.gov;* Andrew B. Williams II, Counsel, *andwilliams@fdic.gov;* or Gregory Feder, Counsel, *gfeder@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
A. Current Prudential Regulatory Regime
B. Tailoring in the Current Prudential Regulatory Regime
C. Structure and Activities of Foreign Banking Organizations
III. Overview of the Proposal
A. Categories of Standards
B. Scoping Criteria
C. Determination of Applicable Category of Standards
IV. Capital Requirements
A. Category II Standards
B. Category III Standards
C. Category IV Standards
V. Liquidity Requirements
A. Categories of Liquidity Requirements for a Foreign Banking Organization
B. LCR Requirement With Respect to Foreign Banking Organizations
C. NSFR Requirement With Respect to Foreign Banking Organizations
D. LCR and NSFR Public Disclosure for Foreign Banking Organizations and U.S. Banking Organizations
E. Request for Comment on Standardized Liquidity Requirements With Respect to U.S. Branches and Agencies of a Foreign Banking Organization
F. LCR and NSFR Requirements for Certain Depository Institution Subsidiaries of a Foreign Banking Organization
G. Transition Period; Cessation of Applicability
VI. Re-Proposal of Standardized Liquidity Requirements for Certain U.S. Depository Institution Holding Companies Subject to Category IV Standards
VII. Technical Amendments
VIII. Impact Assessment
IX. Administrative Law Matters
A. Solicitation of Comments and Use of Plain Language
B. Paperwork Reduction Act Analysis
C. Regulatory Flexibility Act Analysis
D. Riegle Community Development and Regulatory Improvement Act of 1994
E. OCC Unfunded Mandates Reform Act of 1995 Determination

I. Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are inviting comment on a proposed rule (the proposal) that would apply regulatory capital and standardized liquidity requirements with respect to the U.S. operations of foreign banking organizations according to risk-based categories.[1] U.S. law permits foreign banking organizations to operate in the United States through a variety of structures. For example, a foreign banking organization might conduct U.S. banking activities through

[1] Foreign banking organization means a foreign bank that operates a branch, agency, or commercial lending company subsidiary in the United States; controls a bank in the United States; or controls an Edge corporation acquired after March 5, 1987; and any company of which the foreign bank is a subsidiary. *See* 12 CFR 211.21(o); 12 CFR 252.2(k).

a U.S. branch or agency,[2] a U.S. depository institution, or both. In addition, many foreign banking organizations conduct a range of nonbank activities through separately incorporated U.S. subsidiaries.

For capital requirements, the Board is proposing to modify the capital requirements applicable to large U.S. intermediate holding companies of foreign banking organizations [3]—specifically, those with at least $100 billion in total consolidated assets—and the agencies are proposing to modify the capital requirements applicable to depository institution subsidiaries of these U.S. intermediate holding companies according to the proposed risk-based categories.

For liquidity requirements, the proposed framework would apply standardized liquidity requirements to foreign banking organizations with respect to their combined U.S. operations [4] according to the proposed risk-based categories. Specifically, the Board is proposing to require a foreign banking organization that meets certain criteria—including having combined U.S. assets [5] of $100 billion or more—to comply with liquidity coverage ratio (LCR) and net stable funding ratio (NSFR) requirements with respect to any U.S. intermediate holding company. The Board is not currently proposing but is requesting comment on whether it should impose standardized liquidity requirements on foreign banking organizations with respect to their U.S. branch and agency networks, as well as possible approaches for doing so.[6] In addition, the agencies are proposing to determine the application of LCR and NSFR requirements to certain depository institution subsidiaries of a foreign banking organization according to the proposed risk-based categories.

The proposal would generally align with the framework the agencies proposed for large U.S. banking organizations (the domestic interagency proposal).[7] The agencies noted in the domestic interagency proposal that they were not at that time proposing to amend the capital and liquidity requirements currently applicable to a U.S. intermediate holding company of a foreign banking organization or to its depository institution subsidiaries. This proposal would tailor the agencies' capital and liquidity requirements for foreign banking organizations and their U.S. subsidiaries.

The Board is also modifying one aspect of the domestic interagency proposal with respect to certain banking organizations.[8] Specifically, the Board is proposing to apply standardized liquidity requirements to a U.S. depository institution holding company that would be subject to Category IV standards under the domestic interagency proposal if the depository institution holding company significantly relies on short-term wholesale funding relative to its total consolidated assets.[9] The proposed requirement for such Category IV U.S. depository institution holding companies would align with a similar requirement for foreign banking organizations under this proposal.

Concurrently with this proposal, the Board is separately inviting comment on a proposed rule (the Board-only foreign banking organization enhanced prudential standards proposal) that would revise the framework for determining the applicability of enhanced prudential standards for foreign banking organizations with total consolidated assets of $100 billion or more, based on the risk profile of their U.S. operations. The agencies encourage commenters to review this proposal together with the Board-only foreign banking organization enhanced prudential standards proposal.

[2] An agency is place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United States. A branch is a place of business of a foreign bank, located in any state, at which deposits are received and that is not an agency. *See* 12 CFR 211.21(b) and (e).

[3] A foreign banking organization with U.S. non-branch assets of $50 billion or more must establish a U.S. intermediate holding company. 12 CFR 252.153.

[4] The combined U.S. operations of a foreign banking organization include any U.S. subsidiaries (including any U.S. intermediate holding company, which would reflect on a consolidated basis any U.S. depository institution subsidiaries thereof), U.S. branches, and U.S. agencies. *See* section II.C of this **SUPPLEMENTARY INFORMATION** section.

[5] Combined U.S. assets means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any company whose assets are held pursuant to section 2(h)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(h)(2), if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q).

[6] This **SUPPLEMENTARY INFORMATION** section uses the term ''U.S. branch and agency network'' to refer to the U.S. branches and agencies of a foreign banking organization in the aggregate, including any consolidated subsidiaries thereof.

[7] Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 83 FR 66024 (December 21, 2018).

[8] The agencies are also making a technical amendment to the proposed regulation text included in the domestic interagency proposal, discussed in section VII of this **SUPPLEMENTARY INFORMATION** section.

[9] Currently, no U.S. depository institution holding company that would be subject to Category IV standards has a risk profile that would meet the proposed criteria.

II. Background

A. Current Prudential Regulatory Regime

In 2013, the agencies adopted a revised regulatory capital rule (the capital rule) that, among other things, addressed weaknesses in the regulatory framework that became apparent in the 2007–2009 financial crisis.[10] The capital rule strengthened the capital requirements applicable to banking organizations,[11] including U.S. banking organization subsidiaries of foreign banking organizations, by improving both the quality and quantity of regulatory capital and increasing the risk-sensitivity of capital requirements. In addition, to improve the banking sector's resiliency to liquidity stress and the ability of large and internationally active banking organizations to monitor and manage liquidity risk, in 2014, the agencies adopted the liquidity coverage ratio rule (LCR rule).[12] Banking organizations subject to the LCR rule must maintain an amount of high-quality liquid assets (HQLA) equal to or greater than their projected total net cash outflows over a prospective 30-calendar-day period.[13] Finally, on June 1, 2016, the agencies invited comment on a proposed rule to implement an NSFR requirement for large and internationally active banking organizations (the NSFR proposed rule).[14] The NSFR proposed rule would establish a quantitative metric to measure and help ensure the stability of the funding profile of a banking organization over a one-year time horizon. During this period, the Board also implemented further enhanced capital and liquidity standards for the largest bank holding companies and foreign banking organizations, such as capital planning requirements and liquidity risk-management standards.[15]

B. Tailoring in the Current Prudential Regulatory Regime

Many of the agencies' current rules, including the capital rule, the LCR rule, and the NSFR proposed rule, differentiate requirements among banking organizations, including U.S. intermediate holding companies of foreign banking organizations, based on one or more risk indicators, such as total asset size and on-balance sheet foreign exposure.

All banking organizations subject to the capital rule must meet minimum risk-based and leverage capital requirements, among other requirements.[16] All banking organizations must calculate risk-weighted assets for purposes of their risk-based capital requirements using the generally applicable capital rule and calculate a leverage ratio that measures regulatory capital relative to on-balance sheet assets.[17] In addition, banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure (the advanced approaches thresholds), together with depository institution subsidiaries of banking organizations meeting those thresholds (advanced approaches banking organizations),[18] are subject to additional requirements. A U.S. advanced approaches banking organization must calculate its risk-weighted assets using the advanced approaches,[19] and all advanced approaches banking organizations must calculate a supplementary leverage ratio, which measures regulatory capital relative to on-balance sheet and certain off-balance sheet exposures, in addition to the leverage ratio described above.[20] In addition, when calculating their regulatory capital levels, advanced approaches banking organizations are required to include most elements of accumulated other comprehensive income (AOCI) in regulatory capital, which better reflects the loss-absorbing capacity of a banking organization at a specific point in time, but can also result in regulatory capital volatility and require more sophisticated capital planning and asset-liability management. Advanced approaches banking organizations must also increase their capital conservation buffers by the amount of a countercyclical capital buffer under certain circumstances.

The LCR rule and NSFR proposed rule also distinguish between banking organizations based on total asset size and total on-balance sheet foreign exposure. Under the LCR rule, the full LCR requirement generally applies to depository institution holding companies and depository institutions that meet or exceed the advanced approaches thresholds and to their depository institution subsidiaries that have total consolidated assets of $10 billion or more.[21] The Board's regulations also apply a less stringent, modified LCR requirement to depository institution holding companies that do not meet the advanced approaches thresholds but have more than $50 billion in total consolidated assets. Under the NSFR proposed rule, the proposed NSFR requirement would apply to the same banking organizations as the current full LCR requirement. Similarly, under the NSFR proposed rule, the Board proposed to apply a less stringent, modified NSFR requirement

[10] The Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). On April 14, 2014 (79 FR 20754), the FDIC adopted the interim final rule as a final rule with no substantive changes.

[11] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, federal and state savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, appendix C, and 12 CFR 238.9), excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[12] *See* Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, 79 FR 61440 (October 10, 2014) (LCR FR rule), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[13] For depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in on-balance sheet foreign exposure, the Board separately adopted a modified LCR requirement, described further below. 12 CFR part 249, subpart G.

[14] ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements; Proposed Rule,'' 81 FR 35124 (June 1, 2016). For depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure, the Board separately proposed a modified NSFR requirement.

[15] *See* Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 FR 17240 (March 27, 2014) (the enhanced prudential standards rule), codified at 12 CFR part 252.

[16] *See* 12 CFR part 217 (Board); 12 CFR part 3 (OCC); 12 CFR part 324 (FDIC).

[17] *See* Subpart D of the regulatory capital rule, 12 CFR part 217 (Board); 12 CFR part 3 (OCC); 12 CFR part 324 (FDIC).

[18] *See* 12 CFR 217.1(c), 12 CFR 217.100(b) (Board); 12 CFR 3.1(c), 12 CFR 3.100(b) (OCC); 12 CFR 324.1(c), 12 CFR 324.100(b) (FDIC). U.S. global systemically important bank holding companies (GSIBs) form a sub-category of advanced approaches banking organizations.

[19] *See* Subpart E of the regulatory capital rule, 12 CFR part 217 (Board); 12 CFR part 3 (OCC); 12 CFR part 324 (FDIC).

[20] U.S. intermediate holding companies that are advanced approaches banking organizations are not required to calculate risk-weighted assets using the advanced approaches, given the costs associated with maintaining different home country and U.S. models for the calculation. Relatedly, in certain cases, U.S. depository institution subsidiaries of U.S. intermediate holding companies that are advanced approaches banking organizations also have been granted requests to be exempted from the requirement to calculate risk-weighted assets using the U.S. advanced approaches rule.

[21] *See* 12 CFR 50.1 (OCC); 12 CFR 249.1 (Board); and 12 CFR 329.1 (FDIC). The full requirements of the LCR rule include the calculation of the LCR on each business day and the inclusion of a maturity mismatch add-on in the total net cash outflow amount.

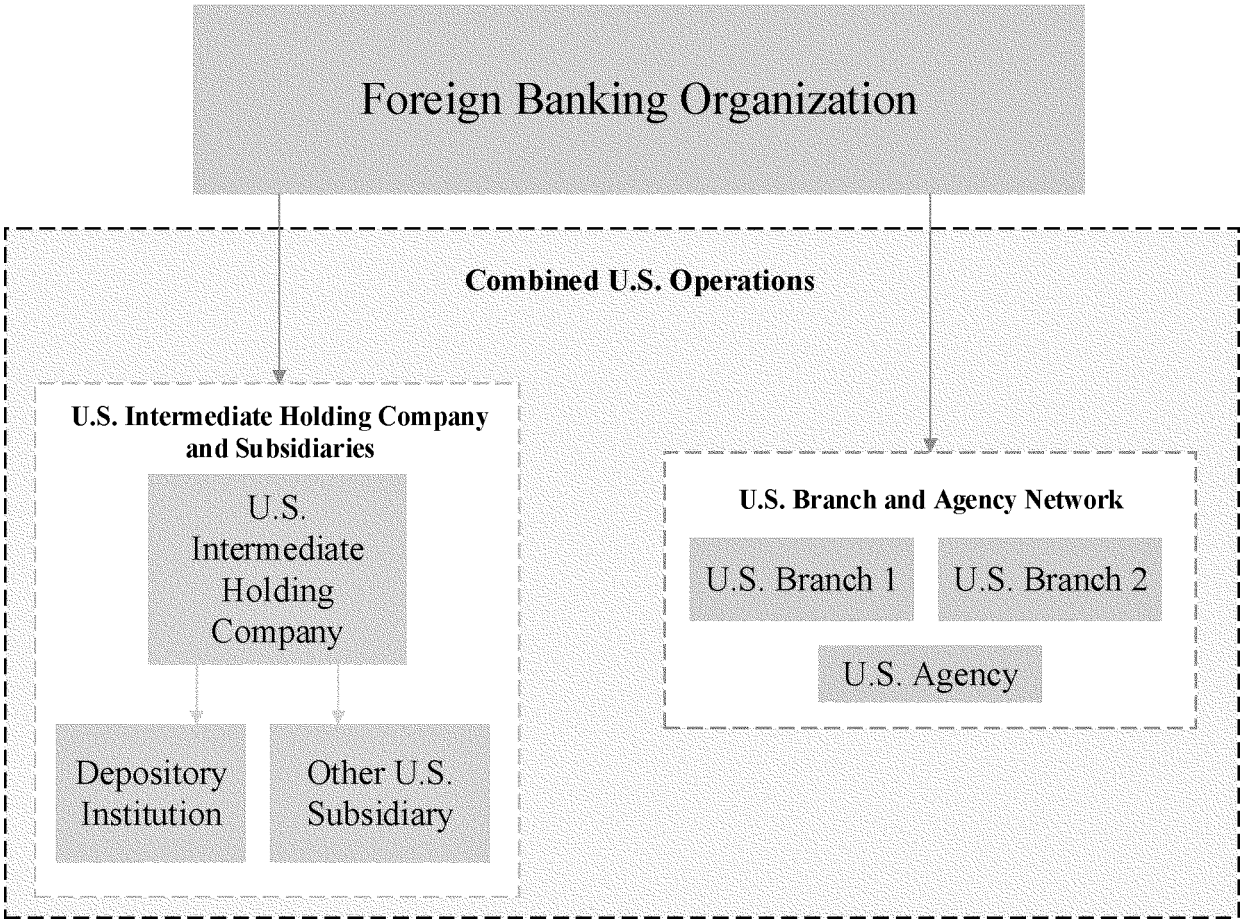
to the same depository institution holding companies that are subject to the modified LCR requirement.

The scoping criteria of the regulations described above rely on a definition of advanced approaches banking organization that the agencies introduced in 2007 in connection with the adoption of the advanced approaches risk-based capital rule. The thresholds established by this definition were designed to include the largest and most internationally active banking organizations. In implementing the liquidity rules, the agencies relied on these same thresholds, recognizing that banking organizations that meet the advanced approaches thresholds have balance sheet compositions, off-balance sheet activities, and funding profiles that lead to larger and more complex liquidity risk profiles.

C. Structure and Activities of Foreign Banking Organizations

Figure 1 provides a simplified illustration of a how a foreign banking organization may structure its U.S. operations, and depicts the portion of those operations that would comprise its combined U.S. operations for purposes of the proposal.

Figure 1: Illustrative Structure of a Foreign Banking Organization's U.S. Operations



The presence of foreign banking organizations in the United States brings competitive and countercyclical benefits to U.S. markets, as these firms serve as an important source of credit to U.S. households and businesses and contribute materially to the strength and liquidity of U.S. financial markets. Post-crisis financial regulations have resulted in substantial gains in resiliency for individual firms and the financial system as a whole. Foreign banking organizations' U.S. operations have become less fragmented, and these firms maintain greater capital and liquidity in the United States.[22]

The U.S. operations of foreign banking organizations vary in their complexity and systemic risk profile. For example, the U.S. operations of some foreign banking organizations are heavily reliant on U.S. dollar-denominated short-term wholesale funding. As demonstrated in the financial crisis, reliance on short-term wholesale funding relative to more stable funding sources (such as capital, long-term debt, and insured deposits) presents significant risks to U.S. financial stability and the safety and soundness of an individual banking organization. Among all foreign banking organizations with combined U.S. assets of $100 billion or more, weighted short-term wholesale funding[23] is equivalent to approximately 30 percent of their U.S. assets in the aggregate, ranging from 10 percent to as much as 60

[22] Sources: Consolidated Financial Statements for Holding Companies (FR Y–9C) and Complex Institution Liquidity Monitoring Report (FR 2052a).

[23] Weighted short-term wholesale funding provides a measure of a firm's reliance on certain less stable forms of funding. *See* section III.B.2.d of this Supplementary Information section.

percent at individual firms.[24] Because the U.S. branches of these foreign banking organizations have limited access to more stable funding through retail deposits, these branches in particular rely more extensively on short-term wholesale funding.

In addition, some foreign banking organizations engage in complex activities through broker-dealers in the United States, which are highly interconnected to U.S. and foreign financial intermediaries. Among foreign banking organizations with combined U.S. assets of $100 billion or more, U.S. broker-dealer subsidiaries comprise approximately 25 percent of these banking organizations' U.S. assets in aggregate, with a range of zero to 50 percent at individual firms.[25] Overall, total nonbank assets, including broker-dealer subsidiaries, in aggregate comprise approximately 25 percent of the combined U.S. assets of foreign banking organizations with combined U.S. assets of $100 billion or more, with a range of zero to 70 percent at individual firms.[26]

The U.S. operations of some foreign banking organizations also exhibit greater complexity and face risks due to significant levels of cross-jurisdictional activity and off-balance sheet exposure. Among foreign banking organizations with combined U.S. assets of $100 billion or more, cross-jurisdictional activity (excluding cross-jurisdictional liabilities to non-U.S. affiliates)[27] is equivalent to approximately 30 percent of the combined U.S. assets of these firms in the aggregate, ranging from 13 percent to as much as 81 percent at individual firms, whereas off-balance sheet exposure is equivalent to approximately 30 percent of the combined U.S. assets of these firms in the aggregate, ranging from 10 percent to as much as 51 percent at individual firms.[28] As discussed below, both cross-jurisdictional activity and off-balance sheet exposure provide a measure of a banking organization's interconnectedness, as well as other risks.

The agencies are proposing to modify the regulatory framework applicable to foreign banking organizations in a manner commensurate with the risks such organizations pose to U.S. financial stability, based on the factors set forth in this proposal. The proposal is designed to better address the risks presented by the U.S. operations of foreign banking organizations to U.S. financial stability. The proposed framework would be consistent with the framework the agencies proposed for large U.S. banking organizations, using consistent indicators of risk.

III. Overview of the Proposal

The proposal builds on the agencies' existing practice of tailoring capital, liquidity, and other requirements based on the size, complexity, and overall risk profile of banking organizations. Specifically, the proposal would establish categories of capital and liquidity standards to align requirements with a banking organization's risk profile and apply consistent standards to foreign banking organizations with similar risk profiles in the United States. The proposal generally aligns with the framework set forth in the domestic interagency proposal, with modifications to address the fact that foreign banking organizations may operate in the United States directly through U.S. branches and agencies or through subsidiaries.

For capital, the proposal would determine the application of requirements for U.S. intermediate holding companies with total consolidated assets of $100 billion or more and their depository institution subsidiaries. For liquidity, the proposal would apply LCR and NSFR requirements to certain foreign banking organizations with combined U.S. assets of $100 billion or more with respect to any U.S. intermediate holding company and to certain large depository institution subsidiaries thereof.[29] The Board is also not currently proposing but is requesting comment on whether it should impose a standardized liquidity requirement on foreign banking organizations with respect to their U.S. branch and agency networks, as well as possible approaches for doing so.

The proposal also includes a modification to the proposed standardized liquidity requirements that would apply under the domestic interagency proposal to U.S. depository institution holding companies that meet certain criteria. Specifically, the Board is proposing to apply LCR and NSFR requirements to U.S. depository institution holding companies that meet the requirements for Category IV standards under the domestic interagency proposal and have $50 billion or more in weighted short-term wholesale funding. This modification would reflect the liquidity risks of U.S. depository institution holding companies that meet these criteria and align with the liquidity requirements the Board is currently proposing for foreign banking organizations that meet the same risk-based criteria. No U.S. depository institution holding company that currently meets the criteria for Category IV standards, however, meets the proposed $50 billion weighted short-term wholesale funding threshold.

A. Categories of Standards

The proposal would establish risk-based categories for determining the application of regulatory capital and standardized liquidity requirements to the U.S. operations of foreign banking organizations. Specifically, the proposal would establish three categories of standards for foreign banking organizations with large U.S. operations—Categories II, III, and IV.[30] Capital standards would apply based on the risk profile of a foreign banking organization's U.S. intermediate holding company and liquidity standards would apply based on the risk profile of a foreign banking organization's combined U.S. operations,[31] in each case measured based on size, cross-jurisdictional activity, weighted short-term wholesale funding, off-balance sheet exposure, and nonbank assets.[32]

For capital, a U.S. intermediate holding company with $100 billion or more in total consolidated assets and each of its depository institution subsidiaries would be subject to Category II, Category III, or Category IV capital standards. The proposal would determine the applicable category of

[24] Source: FR 2052a, as of June 30, 2018.

[25] Sources: Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP), FR Y–7Q, and the Securities Exchange Commission's Financial and Operational Combined Uniform Single Report, as of September 30, 2018.

[26] *Id.*

[27] *See* section III.B.2.a of this **SUPPLEMENTARY INFORMATION** section. In addition, while the proposal would allow recognition of financial collateral in calculating intercompany claims, recognition of financial collateral is not reflected in this analysis.

[28] This analysis was based on data compiled from the FR Y–7Q, as well as information collected from certain foreign banking organizations supervised by the Board as of September 30, 2018.

[29] As discussed in section V of this Supplementary Information section, the proposal would require a foreign banking organization to calculate and maintain an LCR and NSFR for any U.S. intermediate holding company.

[30] The domestic interagency proposal also included a fourth category of standards, Category I, that would apply to U.S. GSIBs. As discussed below, the proposal would not include this category for foreign banking organizations.

[31] Accordingly, the category of capital standards that applies to a U.S. intermediate holding company of a foreign banking organization may be different from the category of liquidity standards that applies to the foreign banking organization.

[32] As an alternative, the Board is also requesting comment on a score-based approach, which would differentiate requirements for firms using an aggregated ''score'' across multiple measures of risk. *See* section III.B.3 of this **SUPPLEMENTARY INFORMATION** section.

capital standards based on the size, cross-jurisdictional activity, weighted short-term wholesale funding, off-balance sheet exposure, and nonbank assets of the U.S. intermediate holding company. The agencies are not proposing to apply regulatory capital standards to U.S. branches and agencies of a foreign banking organization because these branches and agencies do not maintain regulatory capital separate from their foreign parents.

For purposes of liquidity, a foreign banking organization would determine the applicable category of standards based on the risk profile of its combined U.S. operations. Therefore, a foreign banking organization with $100 billion or more in combined U.S. assets would be subject to Category II, Category III, or Category IV liquidity standards, based on the size, cross-jurisdictional activity, weighted short-term wholesale funding, off-balance sheet exposure, and nonbank assets of the foreign banking organization's combined U.S. operations, including, if applicable, any U.S. intermediate holding company and any U.S. branches and agencies. The proposal would apply LCR and NSFR requirements to a foreign banking organization with respect to a U.S. intermediate holding company, and the same category of liquidity standards would apply to any depository institution subsidiary that has $10 billion or more in assets and is a subsidiary of a U.S. intermediate holding company (covered depository institution subsidiary). In addition, the Board is not currently proposing but is requesting comment on whether it should impose standardized liquidity requirements on a foreign banking organization with respect to its U.S. branch and agency network, as well as possible approaches for doing so. During stress conditions, liquidity needs can arise suddenly and tend to manifest in all parts of an organization. For instance, funding vulnerabilities at the U.S. branches and agencies of a foreign banking organization can cause heightened liquidity risk exposure not only at the branches and agencies themselves, but also at the foreign banking organization's U.S. subsidiary operations, and vice versa. For these reasons, funding vulnerabilities at the U.S. branches and agencies of a foreign banking organization may also have an impact on broader U.S. financial stability. Accordingly, the proposal would apply liquidity standards based on the combined U.S. operations of a foreign banking organization.

The proposed categories of capital standards that would apply to a U.S. intermediate holding company with total consolidated assets of $100 billion or more and its depository institution subsidiaries, and the proposed categories of liquidity standards that would apply to a foreign banking organization with combined U.S. assets of $100 billion or more and to its covered depository institution subsidiaries, are described below.

Capital Standards

- Category II capital standards would apply to a U.S. intermediate holding company (and any depository institution subsidiary thereof) that has $700 billion or more in total consolidated assets or $75 billion or more in cross-jurisdictional activity. For purposes of determining categories of capital (and liquidity) standards, cross-jurisdictional activity would be measured excluding cross-jurisdictional liabilities to non-U.S. affiliates and cross-jurisdictional claims on non-U.S. affiliates to the extent that these claims are secured by eligible financial collateral.[33] In addition to the generally applicable capital requirements, these standards would include the supplementary leverage ratio; countercyclical capital buffer, if applicable; and the requirement to recognize most elements of AOCI in regulatory capital.[34]
- Category III capital standards would apply to a U.S. intermediate holding company (and any depository institution subsidiary thereof) that is not subject to Category II standards and that has $250 billion or more in total consolidated assets or $75 billion or more in any of the following indicators: Nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure.[35] In addition to the generally applicable capital requirements, these standards would include the supplementary leverage ratio and, if applicable, the countercyclical capital buffer.
- Category IV capital standards would apply to a U.S. intermediate holding company (and any depository institution subsidiary thereof) that has at least $100 billion in total consolidated assets and does not meet any of the thresholds specified for Category II or III capital standards. Category IV capital standards include the generally applicable capital requirements.[36]

Liquidity Standards

- Category II liquidity standards would apply to a foreign banking organization (and any covered depository institution subsidiary thereof) with $700 billion or more in combined U.S. assets, or $75 billion or more in cross-jurisdictional activity. For purposes of determining categories of liquidity (and capital) standards, cross-jurisdictional activity would be measured excluding cross-jurisdictional liabilities to non-U.S. affiliates and cross-jurisdictional claims on non-U.S. affiliates to the extent that these claims are secured by eligible financial collateral.[37] These standards would include full LCR and NSFR requirements for a foreign banking organization with respect to any U.S. intermediate holding company. In addition, the full LCR and NSFR requirements would apply to any covered depository institution subsidiary of a foreign banking organization subject to Category II liquidity standards.
- Category III liquidity standards would apply to a foreign banking organization (and any covered depository institution subsidiary thereof) that is not subject to Category II liquidity standards and that has $250 billion or more in combined U.S. assets or $75 billion or more in any of the following indicators: Nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposures. To the extent the combined U.S. operations of the foreign banking organization have $75 billion or more in weighted short-term wholesale funding, the foreign banking organization would be subject to the same standardized liquidity requirements as would apply under Category II liquidity standards, specifically, full LCR and NSFR

[33] *See* section III.B.2 of the **SUPPLEMENTARY INFORMATION** for discussion of the proposed cross-jurisdictional activity indicator.

[34] In the domestic interagency proposal, the agencies proposed to require U.S. banking organizations that are subject to Category II capital standards to calculate risk-based capital ratios using both the advanced approaches and the standardized approach. *See* domestic interagency proposal, 83 FR at 66034. Consistent with current requirements, a U.S. intermediate holding company (and depository institution subsidiaries thereof) would not be required to calculate risk-based capital requirements using the advanced approaches under the capital rule, and would instead use the generally applicable capital requirements for calculating risk-weighted assets. *See* section IV.A of this **SUPPLEMENTARY INFORMATION** section.

[35] For purposes of determining categories of capital and liquidity standards, weighted short-term wholesale funding would be measured including transactions with non-U.S. affiliates. *See* section III.B.2 of the **SUPPLEMENTARY INFORMATION**.

[36] U.S. intermediate holding companies with total consolidated assets of less than $100 billion and their depository institutions subsidiaries would also remain subject to the generally applicable capital requirements.

[37] *See* section III.B.2 of the **SUPPLEMENTARY INFORMATION** for discussion of the proposed cross-jurisdictional activity indicator.

requirements with respect to any U.S. intermediate holding company. To the extent the combined U.S. operations of the foreign banking organization have less than $75 billion in weighted short-term wholesale funding, the foreign banking organization would be subject to reduced LCR and NSFR requirements with respect to any U.S. intermediate holding company.[38] Full or reduced LCR and NSFR requirements would also apply to any covered depository institution subsidiary of a foreign banking organization subject to Category III liquidity standards, at the same calibration (*i.e.,* full or reduced) that would apply to the foreign banking organization for a U.S. intermediate holding company.

• Category IV liquidity standards would apply to a foreign banking organization that has combined U.S. assets of $100 billion or more and is not subject to Category II or III liquidity standards. Category IV liquidity standards would include reduced LCR and NSFR requirements only if the combined U.S. operations of a foreign banking organization have $50 billion or more in weighted short-term wholesale funding.[39] These reduced requirements would apply to the foreign banking organization, which would calculate and maintain an LCR and NSFR for any U.S. intermediate holding company. No LCR or NSFR requirement would apply to depository institution subsidiaries of foreign banking organizations subject to Category IV liquidity standards. A foreign banking organization that is not subject to Category II or III liquidity standards but has combined U.S. assets of $100 billion or more and weighted short-term wholesale funding within its U.S. operations of less than $50 billion would not be subject to standardized liquidity requirements under this proposal (but would remain subject under the Board-only foreign banking organization enhanced prudential standards proposal to enhanced liquidity requirements in the Board's enhanced prudential standards rule).

Similar to the domestic interagency proposal, the proposed approach with respect to foreign banking organizations would allow these firms to identify and predict what requirements would apply based on the current characteristics of a foreign banking organization's U.S. operations, and what requirements would apply if the characteristics of the foreign banking organization's operations were to change. By taking into consideration the materiality of each proposed risk-based indicator, the proposal would provide a basis for assessing the financial stability and safety and soundness risks of a foreign banking organization's U.S. operations.

In general, the proposed categories of capital and liquidity standards align with the categories of standards that would apply under the domestic interagency proposal to U.S. banking organizations. The domestic interagency proposal includes an additional category of standards—Category I—that would apply to U.S. global systemically important bank holding companies (U.S. GSIBs), identified using the methodology under the Board's GSIB surcharge rule.[40] Because the U.S. GSIB surcharge rule would not identify a foreign banking organization or U.S. intermediate holding company as a U.S. GSIB, Category I liquidity and capital standards would not apply to any foreign banking organization or U.S. intermediate holding company under this proposal.

Question 1: What would be the advantages and disadvantages of applying capital and liquidity standards that are more stringent than those in Category II under the proposed framework for foreign banking organizations, comparable to those of Category I under the domestic interagency proposal, to a U.S. intermediate holding company or combined U.S. operations of the foreign banking organization with comparable systemic risk profile to a U.S. GSIB? What other or different capital or liquidity standards would be appropriate to apply to such a U.S. intermediate holding company or foreign banking organization with respect to its U.S. operations, relative to the standards that would already apply under the proposal?

B. Scoping Criteria

1. Size

The proposal would tailor the application of capital and liquidity requirements based on the asset size of either a U.S. intermediate holding company or the combined U.S. operations of a foreign banking organization, as applicable. Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[41] as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[42] requires the Board to apply enhanced prudential standards to foreign banking organizations based on their total consolidated asset size.[43] Section 165 also directs the Board, in its application of enhanced prudential standards to foreign banking organizations, to give due regard to the principles of national treatment and equality of competitive opportunity and to take into account the extent to which a foreign banking organization is subject, on a consolidated basis, to home-country standards that are comparable to those applied to financial companies in the United States.[44] The agencies believe a size threshold based on a foreign banking organization's U.S. presence is appropriate for differentiating among foreign banking organizations in view of the statutory purpose, which is to prevent or mitigate risks to U.S. financial stability.[45] The agencies have also previously used size as a simple measure of a U.S. banking organization's potential systemic impact as well as safety and soundness risks.[46] The asset size thresholds set forth in this proposal are generally consistent with those that would apply to large U.S. banking organizations under the domestic interagency proposal for Categories II through IV.

In developing the asset size thresholds for the domestic interagency proposal, the Board reviewed current supervisory reports and considered the requirements of section 165 of the Dodd-Frank Act, as amended by EGRRCPA, together with historical examples of large domestic banking

[38] The agencies requested comment in the domestic interagency proposal regarding the appropriate calibration of the minimum LCR and proposed NSFR requirements within a range of 70 to 85 percent of the full liquidity requirements. This proposal would apply a calibration to foreign banking organizations that is consistent with the calibration that would apply to U.S. banking organizations, and similarly requests comment regarding the appropriate calibration.

[39] As discussed in section VI of this **SUPPLEMENTARY INFORMATION** section, the Board is also proposing to apply reduced LCR and NSFR requirements to a U.S. depository institution holding company that would be subject to Category IV standards under the domestic interagency proposal and has $100 billion or more in total consolidated assets and $50 billion or more in weighted short-term wholesale funding.

[40] *See* 12 CFR part 217, subpart H; *see also* Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharge for Global Systemically Important Bank Holding Companies, 80 FR 49082 (August 14, 2015).

[41] Public Law 111–203, 124 Stat. 1376 (2010), sec. 165, codified at 12 U.S.C. 5365.

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

[43] *See generally* 12 U.S.C. 5635 and EGRRCPA sec. 401.

[44] 12 U.S.C. 5365(b)(2).

[45] 12 U.S.C. 5365(a)(1).

[46] For example, the supplementary leverage ratio and countercyclical capital buffer generally apply to U.S. intermediate holding companies with total consolidated assets of $250 billion or more or total consolidated on-balance sheet foreign exposure of $10 billion or more. *See* 12 CFR 217.10(a), 217.11(b), and 217.100(b); 252.153(e)(2)(i).

organizations that experienced significant distress or failure during the financial crisis. Analysis conducted by the Board found that the crisis experience of domestic banking organizations with total consolidated assets on the order of $100 billion, $250 billion, and $700 billion presented materially different risks to U.S. financial stability and the U.S. economy more broadly, and thus would support the differentiation of enhanced prudential standards for banking organizations included within those size groupings.[47] In addition, such significant size thresholds reflected observed differences in structural and operational complexity, and in the range and scale of financial services a banking organization provides.

To maintain comparability in the application of capital and liquidity standards to both domestic and foreign banking organizations, the agencies are proposing to use similar asset thresholds (in addition to the other risk-based indicators discussed below) to those used in the domestic interagency proposal to tailor the application of capital and liquidity standards under this proposal. Although the agencies recognize that the U.S. operations of foreign banking organizations are structured differently than domestic banking organizations, the risks to financial stability and safety and soundness that stem from size are present regardless of structure.

Like total asset size for U.S. banking organizations, the size of the U.S. operations of a foreign banking organization provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services in the event that those operations are subject to an idiosyncratic stress or are affected by a systemic stress event. During the financial crisis, some large foreign banking organizations rapidly deleveraged their U.S. operations to address capital deficiencies, leaving commercial borrowers without a primary source of funding and contributing to large-scale asset fire sales. For foreign banking organizations with the largest U.S. operations, stress among those operations could be disruptive to U.S. markets and present significant risks to U.S. financial stability.

For liquidity requirements, the proposal would measure size based on the combined U.S. assets of a foreign banking organization. For capital requirements, the proposal would measure size based on the total consolidated assets of a U.S. intermediate holding company.[48] The proposal would use an asset size threshold of $700 billion or more for Category II standards; $250 billion or more but less than $700 billion for Category III standards; and $100 billion or more but less than $250 billion for Category IV standards.

Question 2: What are the advantages and disadvantages of using asset size thresholds to tailor capital and liquidity requirements? In what ways, if any, does the inclusion of asset size thresholds in capital and liquidity standards drive changes in foreign banking organizations' business models and risk profiles in ways that differ from the effects of thresholds based on other risk-based indicators? As an alternative to size thresholds, what other factors should the agencies consider to differentiate among the risk profiles of foreign banking organizations and serve as tools to tailor capital and liquidity requirements, and why?

2. Other Risk-Based Indicators

Consistent with the domestic interagency proposal, this proposal also would consider the level of cross-jurisdictional activity, nonbank assets, off-balance sheet exposure, and weighted short-term wholesale funding of the combined U.S. operations of a foreign banking organization and of any U.S. intermediate holding company to determine the applicable category of standards for liquidity and capital, respectively.[49] Each indicator would be measured as the average amount of the indicator for the four most recent calendar quarters, generally calculated in accordance with the instructions to the Banking Organization Systemic Risk Report (FR Y–15) or equivalent reporting form.[50] The agencies are proposing to apply a uniform threshold of $75 billion for each of these risk-based indicators. A threshold of $75 billion would represent at least 30 percent and as much as 75 percent of the size of the U.S. operations of a foreign banking organization or a U.S. intermediate holding company with combined U.S. assets or total consolidated assets, respectively, of between $100 billion and $250 billion. The agencies also proposed a $75 billion threshold for these indicators in the domestic interagency proposal. Under this proposal and the domestic interagency proposal, setting the thresholds for these risk-based indicators at $75 billion would ensure that domestic banking organizations and the U.S. operations of foreign banking organizations that account for the vast majority—over 70 percent—of the total amount of each risk-based indicator would be subject to liquidity and capital requirements. To the extent the levels and distribution of an indicator substantially change in the future, the agencies may consider modifications, if appropriate.

a. Cross-Jurisdictional Activity

Foreign banking organizations with U.S. operations that engage in significant cross-jurisdictional activity present complexities that support the application of more stringent standards. For example, significant cross-border activity of the U.S. operations of a foreign banking organization may require more sophisticated risk management to appropriately address the heightened interconnectivity and complexity of those operations and the diversity of risks across all jurisdictions in which the foreign banking organization provides financial services. In addition, cross-jurisdictional activity may present increased challenges in resolution because there could be legal or regulatory restrictions that prevent the transfer of financial resources across borders where multiple jurisdictions and regulatory authorities are involved. The use of a threshold based on cross-jurisdictional activity to differentiate the capital and liquidity requirements applicable to foreign banking organizations is also intended to maintain consistency with the thresholds proposed for large U.S. banking organizations under the domestic interagency proposal. The agencies' capital and liquidity regulations currently use total on-

[47] *See* domestic interagency proposal, 83 FR at 66028–66030.

[48] Combined U.S. assets are reported on the Annual Report of Foreign Banking Organizations (FR Y–7) or FR Y–7Q. Total consolidated assets of a U.S. intermediate holding company are reported on the Consolidated Statements for Holding Companies, under Form FR Y–9C. If a foreign banking organization that is required to report the FR Y–7 or Y–7Q has not filed an FR Y–7 or Y–7Q for each of the four most recent consecutive quarters, it would be required to use the most recent quarter or consecutive quarters as reported on FR Y–7 or FR Y–7Q. Similarly, if the U.S. intermediate holding company has not filed an FR Y–9C for each of the four most recent consecutive quarters, it would be required to use the most recent quarter or consecutive quarters as reported on FR Y–9C (or as determined under applicable accounting standards, if no FR Y–9C has been filed).

[49] For the discussion in the domestic interagency proposal on the other risk-based indicators, *see* 83 FR at 66030–66031.

[50] The Board is separately proposing to amend the FR Y–15 to collect risk-indicator data for the combined U.S. operations of foreign banking organizations, including any U.S. intermediate holding company. The *FR Y–15 Banking Organization Systemic Risk Report* is proposed to be renamed *FR Y–15 Systemic Risk Report.*

balance sheet foreign exposure, as reported on the Country Exposure Report (FFIEC 009), to determine the application of certain requirements for depository institution holding companies and certain of their depository institution subsidiaries, such as the supplementary leverage ratio and countercyclical capital buffer.[51]

For purposes of determining the application of capital and liquidity requirements under the proposal, a foreign banking organization would measure cross-jurisdictional activity as the sum of the cross-jurisdictional assets and liabilities of its combined U.S. operations or its U.S. intermediate holding company, as applicable, excluding intercompany liabilities and collateralized intercompany claims. Measuring cross-jurisdictional activity taking into account both assets and liabilities—instead of just assets—would provide a broader gauge of the scale of cross-border operations and associated risks, as it includes both borrowing and lending activities outside of the United States.[52] The proposal would adjust the measurement of cross-jurisdictional activity to exclude intercompany liabilities and to recognize collateral in calculating intercompany claims in order to reflect the structural differences between foreign banking organizations' operations in the United States and domestic holding companies.

Specifically, the proposed cross-jurisdictional activity indicator would exclude liabilities of the combined U.S. operations or U.S. intermediate holding company that reflect transactions with non-U.S. affiliates. Intercompany liabilities generally represent funding from the foreign banking organization to its U.S. operations and, in the case of certain long-term debt instruments, may be required by regulation.[53] The proposed exclusion recognizes the benefit of the foreign banking organization providing support to its U.S. operations. Short-term funding from affiliates, which may pose heightened liquidity risks to the U.S. operations, would be captured in the proposal's measure of weighted short-term wholesale funding.

Foreign banking organizations' U.S. operations often intermediate transactions between U.S. clients and foreign markets, including by facilitating access for foreign clients to U.S. markets, and clearing and settling U.S. dollar-denominated transactions. In addition, they engage in transactions to manage enterprise-wide risks. In these roles, they engage in substantial and regular transactions with non-U.S. affiliates. In recognition that the U.S. operations have increased cross-jurisdictional activity as a result of these activities, the proposal would include in cross-jurisdictional claims only the net exposure (*i.e.,* net of collateral value subject to haircuts) of all secured transactions with non-U.S. affiliates to the extent that these claims are collateralized by financial collateral.[54]

The proposed recognition of financial collateral would apply to all types of claims, including repurchase agreements and securities lending agreements. Specifically, claims on non-U.S. affiliates would be reduced by the value of any financial collateral in a manner consistent with the agencies' capital rule,[55] which permits, for example, banking organizations to recognize financial collateral when measuring the exposure amount of repurchase agreements and securities borrowing and securities lending transactions (together, repo-style transactions).[56] The capital rule recognizes as financial collateral certain types of high-quality collateral, including cash on deposit and securities issued by the U.S. government, as well as certain types of equity securities and debt. With the exception of cash on deposit, the banking organization also is required to have a perfected, first-priority interest in the collateral or, outside of the United States, the legal equivalent thereof.[57] Permitting the reduction of certain claims on non-U.S. affiliates if the collateral meets the definition of financial collateral would ensure that the collateral is liquid, while the use of supervisory haircuts would also limit risk associated with price volatility. In addition, relying on the capital rule's definition of financial collateral would provide clarity regarding the types of collateral eligible to reduce the amount of cross-jurisdictional claims under this approach.

As an example of how the proposed financial collateral recognition would operate, if the U.S. operations of a foreign banking organization placed cash with the parent foreign banking organization through a reverse repurchase agreement, and the parent foreign banking organization provided securities that qualified as financial collateral, the exposure of the U.S. operations would be reduced by the value of the securities in a manner consistent with the capital rule's collateral haircut approach. If the value of the claim exceeds the value of the financial collateral after taking into account supervisory haircuts, then the uncollateralized portion of the claim would be included in the foreign banking organization's measure of cross-jurisdictional activity. Conversely, if the value of the collateral after taking into account supervisory haircuts exceeds the value of the claim, the exposure to the non-U.S. affiliate would be excluded from the measure of cross-jurisdictional activity.

In addition to the proposal to exclude intercompany liabilities and certain collateralized intercompany claims from the measure of cross-jurisdictional activity, the agencies are requesting comment on alternatives to adjusting the measure for cross-jurisdictional activity to recognize that the U.S. intermediate holding company or combined U.S. operations engage in

[51] *See* 12 CFR 217.10 (requiring advanced approaches Board-regulated institutions to maintain a supplementary leverage ratio); 217.11(b) (requiring advanced approaches Board-regulated institutions to maintain a countercyclical capital buffer); 217.100(b)(1) (describing the size and on-balance sheet foreign exposure thresholds for determining an advanced approaches Board-regulated institution).

[52] The Basel Committee on Banking Supervision (BCBS) recently amended its measurement of cross-border activity to more consistently reflect derivatives, and the Board anticipates it will separately propose changes to the FR Y–15 in a manner consistent with this change. Any related changes to the proposed cross-jurisdictional activity indicator would be updated through those separately proposed changes to the FR Y–15.

[53] *See* 12 CFR 252.162 and 12 CFR 252.165.

[54] *See* the definition of ''financial collateral'' at 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[55] *See* 12 CFR 3.37 (OCC); 12 CFR 217.37 (Board); 12 CFR 324.37 (FDIC).

[56] *See* the definition of ''repo-style transaction'' at 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[57] *See* 12 CFR 217.2. The proposal would differ from the FFIEC 009, on which U.S. intermediate holding companies report cross-border claims, in two respects. The FFIEC 009 uses different rules to recognize collateral, using the term ''eligible collateral,'' which includes cash as well as investment grade debt or marketable equity securities. In addition, the FFIEC 009 requires reporting of repurchase agreements, securities lending agreements and other similar financing agreements at the value of the outstanding claim, regardless of the amount of collateral provided. *See* Instructions for the Preparation of the Country Exposure Report (FFIEC 009) at 12–13 (effective September 2016). The proposal would use the concept of financial collateral from the agencies' capital rule and would recognize collateral for any claim, including claims to which the collateral haircut approach applies under the agencies' capital rule.

In addition, the FFIEC 009 measures cross-jurisdictional activity on an ultimate-risk basis, whereby claims are allocated based on the country of residence of the ultimate obligor, which, in certain cases, can mean the country or residence of the collateral provided. Securities lending agreements and repurchase agreements, however, are allocated based on the residence of the counterparty, without taking into consideration the location of the collateral. The proposal would require allocation of exposures on an ultimate-risk basis (subject to the netting described above).

substantial and regular transactions with non-U.S. affiliates.

Under the first alternative, the agencies would exclude all transactions with non-U.S. affiliates from the computation of the cross-jurisdictional activity of a U.S. intermediate holding company or the combined U.S. operations of a foreign banking organization. This alternative would focus only on third-party assets and liabilities and may be a less burdensome way to account for the structural differences between foreign banking organizations' operations in the United States and large domestic holding companies.

Under the second alternative, the agencies would adjust the $75 billion threshold for the cross-jurisdictional activity indicator. For example, the agencies could apply a threshold of $100 billion for cross-jurisdictional activity such that the U.S. intermediate holding company or combined U.S. operations of a foreign banking organization would be subject to Category II capital or liquidity standards if it exceeded this threshold. This alternative would recognize the flows between a foreign banking organization's U.S. operations and its foreign affiliates without making any additional adjustments to address intercompany liabilities or collateralized intercompany claims. This alternative would not require a foreign banking organization to monitor collateral transfers or calculate supervisory haircuts in measuring its cross-jurisdictional activity.

Question 3: What are the advantages and disadvantages of recognizing the value of collateral for certain transactions with non-U.S. affiliates in the computation of the cross-jurisdictional activity of a U.S. intermediate holding company or the combined U.S. operations of a foreign banking organization? How would this recognition align with the objectives of the proposed indicator as a measure of operational complexity, scope, and risks associated with operations and activities in foreign jurisdictions and with principles of national treatment and equality of competitive opportunity?

Question 4: What would be the advantages and disadvantages of excluding from the measure of cross-jurisdictional activity liabilities to non-U.S. affiliates? How would this exclusion align with the objectives of the proposed indicator as a measure of operational complexity, scope, and risks associated with operations and activities in foreign jurisdictions and with principles of national treatment and equality of competitive opportunity?

Question 5: What are the advantages and disadvantages of recognizing collateral for all repo-style transactions and other collateralized positions? To what extent should the type of transaction determine whether collateral is recognized?

Question 6: What are the advantages and disadvantages of relying on the definition of financial collateral in the agencies' capital rule and applying supervisory haircuts in calculating the amount of cross-jurisdictional claims? What are the burdens associated with this approach and how do these burdens compare with the benefits? Are there other criteria that the agencies should consider in addition to this approach (e.g., the amount of time that would be needed to monetize the collateral) and why?

Question 7: What would be the advantages and disadvantages of other ways to define eligible collateral, such relying on the definition of HQLA in the LCR rule? Under this alternative approach, collateral would be recognized in the calculation of the exposure if the collateral is HQLA. Would relying on the definition of HQLA help ensure the collateral is liquid and provide greater clarity on the types of collateral that could be recognized? What are the burdens associated with this approach and how do these burdens compare with the benefits?

Question 8: As discussed above, measuring cross-jurisdictional activity on an ultimate risk basis takes into consideration both the type of collateral, and the location of the collateral or issuer. On the FFIEC 009, if collateral is in the form of investment grade debt or marketable securities, risk is allocated based on the residence of the issuer of the security, while cash collateral is allocated based on the residence of the legal entity where the cash is held. What would be the advantages and disadvantages of allocating cross-jurisdictional claims based on the location of the entity holding the collateral for securities and cash?

Question 9: On the FFIEC 009, repurchase agreements, securities lending agreements, and other similar financial transactions cannot be re-allocated or ''transferred'' to a different jurisdiction based on the location of the collateral or issuer. What would be the advantages and disadvantages of allowing repurchase agreements, securities financing transactions, and other similar agreements to be excluded from the measure of cross-jurisdictional activity if the collateral was issued by a U.S. entity or, for cash collateral, located in the United States? How would such treatment align with the objectives of the proposed indicator as a measure of operational complexity, scope, and risks associated with operations and activities in foreign jurisdictions and with principles of national treatment and equality of competitive opportunity?

Question 10: What are the advantages and disadvantages of measuring cross-jurisdictional activity on an immediate-counterparty basis (i.e., on the basis of the country of residence of the borrower) rather than on an ultimate-risk basis? What, if any, clarifications could be made to the measurement of cross-jurisdictional activity on an ultimate-risk basis to ensure consistency across banking organizations and more accurate assessment of risk?

Question 11: What is the most appropriate way in which the proposed cross-jurisdictional activity indicator could account for the risk of transactions with a delayed settlement date, and why? What are the advantages and disadvantages of the use of settlement date accounting versus trade date accounting for purposes of the cross-jurisdictional activity indicator?

Question 12: What are the advantages or disadvantages of the alternative approaches to measuring non-U.S. affiliate transactions for purposes of the cross-jurisdictional activity indicator? How do these alternatives compare to the proposal?

Question 13: What other positions, if any, should be excluded from or included in the cross-jurisdictional activity indicator for purposes of determining capital and liquidity standards, and why? How would excluding from the cross-jurisdictional activity measure a broader or narrower set of intercompany assets and liabilities align with the objectives of the proposed indicator as a measure of operational complexity, scope, and risks associated with operations and activities in foreign jurisdictions and with principles of national treatment and equality of competitive opportunity?

Question 14: What would be the advantages and disadvantages of including in or excluding from the proposed cross-jurisdictional activity indicator positions of the U.S. branches and agencies of a foreign banking organization with the parent foreign banking organization or other non-U.S. affiliates? For example, what would be the advantages or disadvantages of including or excluding reported gross due from and gross due to the parent

foreign banking organization or other non-U.S. affiliates?

Question 15: What modifications to the proposed cross-jurisdictional activity measure should the agencies consider to better align it with the proposed treatment for U.S. banking organizations under the domestic interagency proposal and promote consistency in the measurement of assets and liabilities across the agencies' regulatory capital and liquidity framework and applicable accounting standards, and why? How would any such modification more appropriately account for the risks of cross-jurisdictional activity for foreign banking organizations and mitigate risks to U.S. financial stability?

Question 16: To what extent would using a particular measure of cross-jurisdictional activity create incentives for foreign banking organizations to restructure relationships between U.S. subsidiaries, U.S. branches and agencies, and non-U.S. affiliates?

Question 17: What alternative indicators should the agencies consider to the proposed cross-jurisdictional activity indicator as a measure of cross-border activity of a foreign banking organization? How would any alternative indicator align with the proposed cross-jurisdictional activity measure for U.S. banking organizations under the domestic interagency proposal?

Question 18: What are the advantages and disadvantages of the proposal or the alternatives in combination with other potential changes to the measurement and reporting of cross-jurisdictional activity discussed above (e.g., ultimate-risk basis)? How would changes to the measurement and reporting of cross-jurisdictional activity in combination with the proposal or alternatives align with the objectives of the proposed indicator as a measure of operational complexity, scope, and risks associated with operations and activities in foreign jurisdictions and with principles of national treatment and equality of competitive opportunity?

Question 19: Data reported on the FR Y–15 is used to measure the systemic risk of large banking organizations, including to identify and calibrate surcharges applied to U.S. GSIBs. The Board may amend the FR Y–15 in this context, and would seek comment on the effect of any changes on the U.S. GSIB surcharge framework as well as on the advantages and disadvantages of incorporating these changes into the calculation of risk indicators. The Board also may separately amend the FR Y–15 in the context of the calculation of risk indicators. What are the advantages and disadvantages of the risk-based indicator definitions tracking the inputs to the U.S. GSIB surcharge framework?

b. Nonbank Assets

The amount of a banking organization's investment in nonbank subsidiaries provides a measure of the organization's business and operational complexity. Specifically, banking organizations with significant investments in nonbank subsidiaries are more likely to have complex corporate structures and funding relationships, and substantial inter-affiliate transactions that can add operational challenges. A banking organization's complexity is positively correlated with the impact of the organization's failure or distress.[58] U.S. intermediate holding companies can maintain significant investments in nonbank subsidiaries, and therefore may present attendant risks.

Nonbank activities may involve a broader range of risks than those associated with banking activities, and can increase interconnectedness with other financial firms, requiring sophisticated risk management and governance, including capital planning, stress testing, and liquidity risk management. If not adequately managed, the risks associated with nonbank activities could present significant safety and soundness concerns and increase financial stability risks. The distress or failure of a nonbank subsidiary could be destabilizing to the U.S. operations of a foreign banking organization and the foreign banking organization itself, and cause counterparties and creditors to lose confidence in the organization's U.S. or global operations. Nonbank assets also reflect the degree to which a foreign banking organization and its U.S. operations may be engaged in activities through legal entities that are not subject to separate capital or liquidity requirements or to the direct regulation and supervision applicable to a regulated banking entity.

Under the proposal, nonbank assets would be measured as the average amount of assets in consolidated nonbank subsidiaries[59] and any direct investments in unconsolidated nonbank subsidiaries.[60] The proposed nonbank assets indicator would align with the nonbank assets indicator in the domestic interagency proposal, as well as with the Board's capital plan rule.[61]

c. Off-Balance Sheet Exposure

Off-balance sheet exposure complements the measure of size by taking into consideration financial and banking activities not reflected on the balance sheet of a foreign banking organization's U.S. operations. Like size, off-balance sheet exposure provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services. In addition, off-balance sheet exposure can lead to significant future draws on liquidity, particularly in times of stress. In the financial crisis, for example, vulnerabilities among the U.S. operations of foreign banking organizations were exacerbated by draws on commitments. These types of exposures can be a source of safety and soundness risk, as organizations with significant off-balance sheet exposure may have to fund these positions in the market in a time of stress. The nature of these risks for foreign banking organizations of significant size and complexity can also lead to financial stability risk, as they can manifest rapidly and with less transparency to other market participants. In addition, because draws on off-balance sheet exposures such as committed credit and liquidity facilities tend to increase in times of stress, they can exacerbate the effects of stress conditions.[62]

[58] *See* Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (August 14, 2015). *See also* ''Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement'' (paragraph 25), available at *http://www.bis.org/publ/bcbs255.htm.*

[59] The proposed measure of nonbank assets would exclude assets in a national bank, state member bank, and state nonmember bank, as well as assets in other depository institutions, including a federal savings association, federal savings bank, or state savings association. The nonbank assets measure also would exclude the assets in each Edge or Agreement Corporation that is held through a banking subsidiary.

[60] The proposed measure of nonbank assets would include the assets in each Edge or Agreement Corporation not held through a banking subsidiary, and would exclude assets in a federal savings association, federal savings bank, or state savings association.

[61] *See* 12 CFR 225.8. The capital plan rule defines ''average total nonbank assets'' with respect to a U.S. intermediate holding company subject to the capital plan rule as the average of the total nonbank assets of the U.S. intermediate holding company, calculated in accordance with the instructions to the FR Y–9LP, for the four most recent consecutive quarters or, if the U.S. intermediate holding company has not filed the FR Y–9LP for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters, as applicable. 12 CFR 225.8(d)(2).

[62] *See* William F. Bassett, Simon Gilchrist, Gretchen C. Weinbach, Egon Zakrajšek, ''Improving Our Ability to Monitor Bank Lending,'' in Risk Topography: Systemic Risk and Macro Modeling 149–161 (Markus Brunnermeier and Arvind Krishnamurthy, eds. 2014), available at: *http://www.nber.org/chapters/c12554.*

Off-balance sheet exposure may also amplify contagion effects. Some off-balance sheet exposures, such as derivatives, are concentrated among the largest financial firms.[63] The distress or failure of one party to a financial contract, such as a derivative or securities financing transaction, can trigger disruptive terminations of these contracts that destabilize the defaulting party's otherwise solvent affiliates.[64] Such a default also can lead to disruptions in markets for financial contracts, including by resulting in rapid market-wide unwinding of trading positions.[65] In this way, the effects of one party's failure or distress can be amplified by its off-balance sheet connections with other financial market participants.

Under the proposal, off-balance sheet exposure would be measured as the difference between total exposure and on-balance sheet assets. Total exposure includes on-balance sheet assets plus certain off-balance sheet exposures, including derivative exposures, repo-style transactions, and other off-balance sheet exposures (such as commitments).

d. Weighted Short-Term Wholesale Funding

The proposed weighted short-term wholesale funding indicator would measure the level of reliance on short-term wholesale funding sources.[66] This indicator provides a measure of liquidity risk, as reliance on short-term, generally uninsured funding from more sophisticated counterparties can make those operations vulnerable to large-scale funding runs. In particular, foreign banking organizations that fund long-term assets with short-term liabilities from financial intermediaries such as investment funds may need to rapidly sell less liquid assets to meet withdrawals and maintain their operations in a time of stress, which they may be able to do only at ''fire sale'' prices. Such asset fire sales can cause rapid deterioration in a foreign banking organization's financial condition and negatively affect broader financial stability by driving down asset prices across the market. As a result, weighted short-term wholesale funding reflects both safety and soundness and financial stability risks. Short-term wholesale funding also provides a measure of interconnectedness among market participants, including other financial sector entities, which can provide a mechanism for transmission of distress. Weighted short-term wholesale funding would include exposures between the U.S. operations of a foreign banking organization and its non-U.S. affiliates, as reliance on short-term wholesale funding from foreign affiliates can contribute to the funding vulnerability of a foreign banking organization's U.S. operations in times of stress.

Question 20: What are the advantages and disadvantages of the proposed risk-based indicators? What different indicators should the agencies consider, and why?

Question 21: At what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

Question 22: The agencies are considering whether Category II standards should apply based on a banking organization's weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure, using a higher threshold than the $75 billion that would apply for Category III standards, in addition to the thresholds discussed above based on asset size and cross-jurisdictional activity. For example, a foreign banking organization's combined U.S. operations and its depository institution subsidiaries could be subject to Category II standards if one or more of these indicators equaled or exceeded a level such as $100 billion or $200 billion. A threshold of $200 billion would represent at least 30 percent and as much as 80 percent of the combined U.S. assets of a foreign banking organization with between $250 billion and $700 billion in combined U.S. assets. If the agencies were to adopt additional indicators for purposes of identifying foreign banking organizations with U.S. operations that should be subject to Category II standards, at what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

3. Alternative Scoping Criteria

An alternative approach for tailoring the application of enhanced prudential standards to a foreign banking organization would be to use a single, comprehensive score to assess the risk profile and systemic footprint of a foreign banking organization's combined U.S. operations or U.S. intermediate holding company. The Board uses such an identification methodology (scoring methodology) to identify a U.S. GSIB and apply risk-based capital surcharges to these firms. As an alternative in the domestic interagency proposal, the agencies described a scoring methodology that could be used to tailor prudential standards for domestic banking organizations.

The scoring methodology in the Board's regulations is used to calculate a U.S. GSIB's capital surcharge under two methods.[67] The first method is based on the sum of a bank holding company's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity (method 1). The second method is based on the sum of these same measures of risk, except that the substitutability measures are replaced with a measure of the bank holding company's reliance on short-term wholesale funding (method 2).[68] Consistent with the domestic interagency proposal and as an alternative to the threshold approach under this proposal, the agencies are seeking comment on use of the scoring methodology to tailor the application of enhanced prudential standards to the U.S. operations of foreign banking organizations.

The scoring methodology was designed to identify and assess the systemic risk of large U.S. banking

[63] *See, e.g.,* Sheri M. Markose, Systemic Risk from Global Financial Derivatives: A Network Analysis of Contagion and its Mitigation with Super-Spreader Tax, IMF Working Papers (Nov. 30, 2012), available at: *https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Systemic-Risk-from-Global-Financial-Derivatives-A-Network-Analysis-of-Contagion-and-Its-40130.*

[64] To address these risks at the largest and most systemically risky firms, the agencies have established restrictions relating to the qualified financial contracts of U.S. GSIBs, the depository institution subsidiaries of U.S. GSIBs, and the U.S. operations of systemically important foreign banking organizations. *See* 12 CFR part 252, subpart I (Board); 12 CFR part 47 (OCC); and 12 CFR part 382 (FDIC).

[65] *See, e.g.,* The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act, 5 FDIC Quarterly No. 2, 31 (2011), *https://www.fdic.gov/bank/analytical/quarterly/2011-vol5-2/article2.pdf.*

[66] Specifically, short-term wholesale funding is the amount of a firm's funding obtained from wholesale counterparties or retail brokered deposits and sweeps with a remaining maturity of one year or less. Categories of short-term wholesale funding are then weighted based on four residual maturity buckets; the asset class of collateral, if any, backing the funding; and characteristics of the counterparty. Weightings reflect risk of runs and attendant fire sales. *See* 12 CFR 217.406 and Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (August 14, 2015).

[67] Application of a U.S. GSIB's capital surcharge is determined based on an annual calculation. Similarly, the alternative scoping criteria under this proposal would be based on an annual calculation. *See* 12 CFR part 217, subpart H.

[68] For more discussion relating to the scoring methodology, please see the Board's final rule establishing the scoring methodology. *See* Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (Aug. 14, 2015).

organizations, and similarly can be used to measure the risks posed by the U.S. operations of foreign banking organizations. The component measures of the scoring methodology identify banking organizations that have heightened risk profiles, and provide a basis for assessing risk to safety and soundness and U.S. financial stability. Size, interconnectedness, cross-jurisdictional activity, substitutability, complexity, and short-term wholesale funding are indicators of risk for both foreign and domestic banking organizations. Similar to the thresholds-based approach set forth in this proposal, the indicators used in the scoring methodology closely align with the risk-based factors specified in section 165 of the Dodd-Frank Act for applying enhanced prudential standards. Because this information would be reported publicly, use of the scoring methodology would promote transparency in the application of such standards to foreign banking organizations.

The Board has previously used the scoring methodology and global methodology [69] to identify and apply enhanced prudential standards to U.S. subsidiaries and operations of foreign global systemically important banking organizations (foreign GSIBs). For example, the Board's restrictions on qualified financial contracts and total loss-absorbing capacity requirements apply to U.S. GSIBs and the U.S. operations of foreign GSIBs, with the latter identified under the Board's scoring methodology or the global methodology.[70]

Under the alternative scoring approach, the size of a foreign banking organization's combined U.S. assets, together with the method 1 or method 2 score of its U.S. operations under the scoring methodology, would be used to determine which category of liquidity standards would apply. Consistent with the proposal, most enhanced prudential standards would be based on the method 1 or method 2 score applicable to a foreign banking organization's combined U.S. operations. The application of capital standards, however, would apply based on the method 1 or method 2 score of a foreign banking organization's U.S. intermediate holding company depository institution subsidiary. U.S. intermediate holding companies already report information required to calculate method 1 and method 2 scores, and in connection with this proposal, those reporting requirements would be extended to include a foreign banking organization's combined U.S. operations.[71]

To determine which category of standards would apply under the alternative scoring methodology, the Board considered the distribution of method 1 and method 2 scores of the U.S. operations of foreign banking organizations, U.S. intermediate holding companies, domestic bank holding companies, and certain savings and loan holding companies with at least $100 billion in total consolidated assets.[72] As discussed below, the agencies are providing ranges of scores for the application of Category II and Category III standards. If the agencies adopt a final rule that uses the scoring methodology to establish tailoring thresholds, the agencies would set a single score within the listed ranges for the application of Category II and Category III standards. Like under the indicators-based approach, a subsidiary depository institution of a foreign banking organization would be subject to the same category of standards as the foreign banking organization.

Category II. In selecting the ranges of method 1 or method 2 scores that could define the application of Category II standards, the Board considered the potential of a banking organization's material distress or failure to disrupt the U.S. financial system or economy. The Board estimated method 1 and method 2 scores for domestic banking organizations with more than $250 billion in total consolidated assets, and foreign banking organizations with more than $250 billion in combined U.S. assets. To this sample, the Board added estimates of method 1 and method 2 scores for a banking organization whose distress impacted U.S. financial stability during the crisis (Wachovia), and estimated method 1 and method 2 scores assuming significant growth in operations (*e.g.,* if one or more U.S. intermediate holding companies each had $700 billion in assets). The Board also considered the outlier method 1 and method 2 scores for domestic and foreign banking organizations with more than $250 billion in total consolidated assets that are not U.S. GSIBs.[73]

Based on this analysis and to maintain comparability to the domestic interagency proposal, under the alternative scoring approach the agencies would apply Category II liquidity standards to any foreign banking organization with at least $100 billion in combined U.S. assets and whose combined U.S. operations have (a) a method 1 score that meets or exceeds a minimum score between 60 and 80, or (b) a method 2 score that meets or exceeds a minimum score between 100 to 150. These same size thresholds and score ranges would apply to U.S. intermediate holding companies for the application of capital standards.

Category III. Under the proposal, the agencies would apply Category III liquidity standards to a foreign banking organization with combined U.S. assets of $250 billion or more, or, for capital standards, a U.S. intermediate holding company with total consolidated assets of $250 billion or more that does not meet the criteria for Category II. This reflects, among other things, the crisis experience of domestic banking organizations with total consolidated assets of $250 billion or more, which presented materially different risks to U.S. financial stability relative to banking organizations with less than $250 billion in assets. Similarly, under the domestic interagency proposal, the agencies would at a minimum apply Category III standards to a banking organization with assets of $250 billion or more, reflecting the threshold above which the Board must apply enhanced prudential standards under section 165.

The domestic interagency proposal seeks comment on an alternative scoring approach under which a banking organization with total consolidated assets between $100 billion and $250 billion that has a method 1 or method 2 score within a specified range would be subject to Category III standards. Specifically, the agencies proposed selecting a minimum score for application of Category III standards between 25 and 45 under method 1, or of between 50 and 85 under method 2.

[69] Global methodology means the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the BCBS, as updated from time to time. 12 CFR 252.2.

[70] *See* 12 CFR 252.82(b) (definition of ''covered entity'' with regard to restrictions on qualified financial contracts); 12 CFR 252.160 (definition of ''covered IHC'' with regard to total loss-absorbing capacity requirements). *See also,* 12 CFR 252.153(b) (identification of foreign GSIBs in the enhanced prudential standards rule; 12 CFR 252.170(a)(2)(ii) (definition of ''major foreign banking organization'' in single counterparty credit limits rule).

[71] As discussed above, the Board is separately proposing to amend the FR Y–15 to collect risk-indicator data for the combined U.S. operations of foreign banking organizations.

[72] In conducting its analysis, the Board considered method 1 and method 2 scores as of September 30, 2018.

[73] Outliers can be determined by a number of statistical methods. For these purposes, the Board computed an outlier as the third quartile plus three times the interquartile range of method 1 and method 2 scores of these U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies, and the combined U.S. operations of foreign banking organizations.

The maximum score for application of the Category III standards would be one point lower than the minimum score selected for application of Category II standards. In selecting these ranges, the Board compared the scores of domestic banking organizations with total consolidated assets of between $100 billion and $250 billion with those of banking organizations with total consolidated assets greater than $250 billion. The Board performed a similar analysis including the scores of foreign banking organizations and found similar results. The agencies are therefore considering the same thresholds for application of Category III standards to foreign banking organizations under the alternative scoring approach. Use of these thresholds would maintain comparable treatment between domestic banking organizations and the U.S. operations of foreign banking organizations under the alternative scoring approach.

Specifically, under the alternative scoring approach, Category III standards would apply to a foreign banking organization with combined U.S. assets between $100 billion and $250 billion with a method 1 score that meets or exceeds a minimum score between 25 and 45, or a method 2 score that meets or exceeds a minimum score between 50 and 85, and in either case is below the score threshold for Category II standards. These same size thresholds and score ranges would apply to U.S. intermediate holding companies for the application of capital standards.

Category IV: Under the alternative scoring approach, Category IV liquidity standards would apply to a foreign banking organization with at least $100 billion in combined U.S. assets whose method 1 or method 2 score for its combined U.S. operations is below the minimum score threshold for Category III. Likewise, Category IV capital standards would apply to a foreign banking organization with a U.S. intermediate holding company that has at least $100 billion in total assets and does not meet any threshold specified for Category III.

Question 23: What are the advantages and disadvantages to the use of the alternative scoring approach and category thresholds described above instead of the proposed thresholds for foreign banking organizations?

Question 24: If the agencies were to use the alternative scoring approach to differentiate foreign banking organizations' U.S. operations for purposes of tailoring prudential standards, should the agencies use method 1 scores, method 2 scores, or both? What are the challenges of applying the alternative scoring approach to the combined U.S. operations or U.S. intermediate holding company of a foreign banking organization? What modifications to the alternative scoring approach, if any, should the agencies consider (e.g., should intercompany transactions be reflected in the calculation of indicators)?

Question 25: If the agencies adopted the alternative scoring approach, what would be the advantages or disadvantages of requiring scores to be calculated for the U.S. operations of a foreign banking organization at a frequency greater than annually, including, for example, requiring scores to be calculated on a quarterly basis?

Question 26: With respect to each category of standards described above, at what level should the method 1 or method 2 score thresholds be set for the combined U.S. operations or U.S. intermediate holding company of a foreign banking organization and why? Commenters are encouraged to provide data supporting their recommendations.

Question 27: What other approaches should the agencies consider in setting thresholds for tailored prudential standards for foreign banking organizations and why? How would any such approach affect the comparability of requirements across domestic banking organizations and foreign banking organizations with U.S. operations?

C. Determination of Applicable Category of Standards

Under the proposal, a U.S. intermediate holding company with $100 billion or more in total consolidated assets, and a depository institution subsidiary thereof, would be required to determine its applicable category of capital standards based on the risk-based indicators applicable to the U.S. intermediate holding company. Similarly, the proposal would require a foreign banking organization with combined U.S. assets of $100 billion or more, and covered depository institution subsidiaries thereof, to determine the applicable category of liquidity standards based on the risk-based indicators of the combined U.S. operations. In order to capture significant changes, rather than temporary fluctuations, in the risk profile of the U.S. intermediate holding company or the foreign banking organization's combined U.S. operations, a category of standards would apply based on the levels of each risk-based indicator over the preceding four calendar quarters.

For capital standards, a category of standards would apply to a U.S. intermediate holding company and any depository institution subsidiary thereof based on the average levels of each indicator over the preceding four calendar quarters for the U.S. intermediate holding company.[74] A U.S. intermediate holding company and any depository institution subsidiary would remain subject to a category of standards until it no longer meets the indicators for that category in each of the four most recent calendar quarters, or until the U.S. intermediate holding company meets the criteria for another category of standards based on an increase in the average value of one or more risk-based indicator over the preceding four calendar quarters.

For liquidity standards, the category of standards applicable to a foreign banking organization and any covered depository institution subsidiary thereof would be based on the average levels of each indicator over the preceding four calendar quarters for the combined U.S. operations.[75] A foreign banking organization and any covered depository institution subsidiary thereof would remain subject to a category of standards until the foreign banking organization's combined U.S. operations no longer meet the indicators for that category in each of the four most recent calendar quarters, or until the foreign banking organization meets the criteria for another category of standards based on an increase in the average value of one or more risk-based indicator for the preceding four calendar quarters.[76]

Changes in capital or liquidity requirements that result from a change in category of capital or liquidity standards, respectively, would take effect on the first day of the second quarter following the change in the applicable category. For example, a U.S. intermediate holding company that changes from Category IV to Category III capital standards based on an increase

[74] With respect to a U.S. intermediate holding company that has reported a risk-based indicator for less than four quarters, the proposal would refer to the average of the most recent quarter or quarters.

[75] With respect to a foreign banking organization that has reported a risk-based indicator for less than four quarters, the proposal would refer to the average of the most recent quarter or quarters.

[76] In addition, as discussed in section V.G of this **SUPPLEMENTARY INFORMATION** section, consistent with the LCR rule and NSFR proposed rule and the domestic interagency proposal, once a foreign banking organization or any covered depository institution subsidiary is subject to LCR or NSFR requirements under the proposal, it would remain subject to the rule until the applicable agency determines that application of the rule is not appropriate in light of its asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

in the average value of its risk-based indicators over the first, second, third, and fourth quarters of a calendar year would be subject to Category III capital standards beginning on the first day of the second quarter of the following year (April, in this example).

Under the proposal, a U.S. intermediate holding company or depository institution subsidiary of a foreign banking organization could be subject to different categories of standards for capital and liquidity. Consider, for example, a foreign banking organization with combined U.S. assets of $400 billion, cross-jurisdictional activity of $80 billion at its combined U.S. operations, and a U.S. intermediate holding company with consolidated total assets of $260 billion and cross-jurisdictional activity of $40 billion. In this example, the foreign banking organization would be subject to Category II liquidity standards, including with respect to its LCR and NSFR calculation for any U.S. intermediate holding company, because the combined U.S. operations have more than $75 billion in cross-jurisdictional activity. Any covered depository institution subsidiary of the foreign banking organization in this example would likewise be subject to Category II liquidity standards. However, the U.S. intermediate holding company and any depository institution subsidiary thereof would be subject to Category III capital standards based on the U.S. intermediate holding company's total consolidated assets, which are more than $250 billion but less than $700 billion, and cross-jurisdictional activity, which is less than $75 billion.

Question 28: What are the advantages and disadvantages of determining the category of standards applicable to a foreign banking organization's combined U.S. operations, its U.S. intermediate holding company, or its depository institution subsidiary on a quarterly basis? Discuss whether determination on an annual basis would be more appropriate and why.

Question 29: What are the advantages and disadvantages of the proposed transition period for a foreign banking organization to comply with a change in its applicable requirements due to changes in its U.S. risk profile? What would be the advantages or disadvantages of providing additional time to conform to new requirements?

IV. Capital Requirements

Under the proposal, capital requirements would continue to apply to U.S. intermediate holding companies and depository institution subsidiaries of foreign banking organizations. Applying generally applicable and tailored capital requirements to U.S. intermediate holding companies and depository institution subsidiaries of foreign banking organizations both strengthens the capital position of U.S. subsidiaries of foreign banking organizations and provides parity in the capital treatment for U.S. bank holding companies and the U.S. subsidiaries of foreign banking organizations. In addition, aligning the capital requirements between U.S. subsidiaries of foreign banking organizations and U.S. bank holding companies is consistent with international capital standards published by the BCBS.[77]

A. Category II Standards

In addition to the generally applicable capital requirements, the proposal would require a U.S. intermediate holding company and any depository institution subsidiary thereof subject to Category II standards to maintain a minimum supplementary leverage ratio of 3 percent of tier 1 capital to on-balance-sheet assets and certain off-balance sheet exposures. These banking organizations would also be required to recognize most elements of AOCI in regulatory capital. Reflecting AOCI in regulatory capital results in a more sensitive measure of capital, which is important for maintaining the resilience of these banking organizations. Additionally, these banking organizations would be subject to the countercyclical capital buffer, if applicable.

Consistent with current requirements, the U.S. intermediate holding company (and depository institution subsidiaries thereof) would not be required to calculate risk-based capital requirements using the advanced approaches under the capital rule, and would instead use the generally applicable capital requirements for calculating risk-weighted assets. The BCBS recently completed revisions to its capital standards, revising the methodologies for credit risk, operational risk, and market risk. The agencies are considering how to most appropriately implement these standards in the United States, including potentially replacing the advanced approaches with risk-based capital requirements based on the Basel standardized approaches for credit risk and operational risk. Any such changes to applicable risk-based capital requirements would be subject to notice and comment through a future rulemaking.

The agencies note that there are currently additional outstanding notices of proposed rulemaking that make reference to the advanced approaches thresholds to set the scope of application. First, in October 2017, the agencies proposed simplifications to the capital rule (simplifications proposal), proposing a simplified capital treatment for mortgage servicing assets, deferred tax assets arising from temporary differences that an institution could not realize through net operating loss carrybacks, investments in the capital of unconsolidated financial institutions, and minority interest.[78] For purposes of that pending notice, the requirements that would apply to ''advanced approaches banking organizations'' would be included as Category II capital standards under this proposal.

In addition, the agencies have separately proposed to adopt the standardized approach for counterparty credit risk for derivatives exposures (SA–CCR) and to require advanced approaches banking organizations to use SA–CCR for calculating their risk-based capital ratios and a modified version of SA–CCR for calculating total leverage exposure under the supplementary leverage ratio.[79] For purposes of the SA–CCR proposal, the requirements that would apply to ''advanced approaches banking organizations'' would be included as Category II capital standards under this proposal.

Question 30: What modifications, if any, should the agencies consider to the proposed Category II capital standards for foreign banking organizations, and why?

B. Category III Standards

In addition to the generally applicable capital requirements, the proposal would require a U.S. intermediate holding company subject to Category III standards to maintain a minimum supplementary leverage ratio of 3 percent given its size and risk profile. For example, a U.S. intermediate holding company subject to Category III standards could include a U.S. intermediate holding company with material off-balance sheet exposures that are not accounted for in the traditional U.S. tier 1 leverage ratio but are included in the supplementary leverage ratio. The supplementary

[77] *See, e.g.,* BCBS, ''International Convergence of Capital Measurement and Capital Standards,'' Sec. 781 (June 2006).

[78] *See* Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction; Proposed Rule, 82 FR 49984, 49985 (October 27, 2017).

[79] *See* Standardized Approach for Calculating the Exposure Amount of Derivative Contracts; Proposed Rule, 83 FR 64660 (December 17, 2018).

leverage ratio is important for these banking organizations to constrain the build-up of off-balance sheet exposures, which can contribute to instability and undermine safety and soundness of individual banking organizations. Category III standards also would include the countercyclical capital buffer, given these banking organizations' significant role in financial intermediation in the United States individually and as a group. The operations of U.S. intermediate holding companies that would be subject to Category III standards have a substantial enough footprint that the capital conservation buffer expanded to include the countercyclical capital buffer would support the prudential goals of the capital buffer requirements. Any depository institution subsidiary of a U.S. intermediate holding company that is subject to Category III capital standards would likewise be subject to Category III capital standards.

As noted above, there are currently additional outstanding notices of proposed rulemaking that make reference to the advanced approaches thresholds to set the scope of application. With respect to the simplifications proposal described in section IV.A of this **SUPPLEMENTARY INFORMATION** section, the requirements that would apply to ''non-advanced approaches banking organizations'' would be included as Category III or IV capital standards under this proposal.[80] For purposes of determining its counterparty credit risk for derivatives under the proposed SA–CCR (described above in section IV.A of this **SUPPLEMENTARY INFORMATION** section), if adopted, a U.S. intermediate holding company and its depository institution subsidiaries that are not advanced approaches banking organizations (under this proposal, that are not subject to Category II standards) could elect to use SA–CCR for calculating derivatives exposure in connection with their risk-based capital ratios and supplementary leverage ratios or to continue to use the current exposure method.

Question 31: Under the capital rule, the agencies apply certain provisions, such as the supplementary leverage ratio and countercyclical capital buffer, based on the same thresholds as advanced approaches capital requirements. The proposal would establish different applicability thresholds for the supplementary leverage ratio and countercyclical capital buffer by including these requirements as Category III standards. This approach would increase the risk-sensitivity of the framework and allow for the retention of key elements of the capital rule for U.S. intermediate holding companies and their depository institution subsidiaries subject to Category III standards. However, it would also increase the complexity of the capital rule. To what extent, if any, would this additional complexity increase compliance costs for large banking organizations (for example, by requiring banking organizations to monitor and manage the proposed risk-based indicator thresholds)? To what extent, if any, would the proposed approach add complexity for market participants when comparing the capital adequacy of U.S. intermediate holding companies and their depository institution subsidiaries in different categories? The agencies request comment on the advantages and disadvantages of establishing separate Category III capital standards for U.S. intermediate holding companies and their depository institution subsidiaries that are different from either Category II or Category IV standards, including any wider implications for financial stability.

Question 32: What are the advantages and disadvantages of applying the supplementary leverage ratio requirement to U.S. intermediate holding companies and their depository institution subsidiaries as a Category III standard? How do these advantages and disadvantages compare to any costs associated with any additional complexity to the regulatory capital framework that would result from applying this to U.S. intermediate holding companies and their depository institution subsidiaries subject to Category III standards? To what extent would application of the supplementary leverage ratio requirement to these banking organizations strengthen their safety and soundness and improve U.S. financial stability?

Question 33: What are the advantages and disadvantages of not requiring U.S. intermediate holding companies and their depository institution subsidiaries subject to Category III standards to recognize most elements of AOCI in regulatory capital? To what extent does not requiring U.S. intermediate holding companies and their depository institution subsidiaries subject to Category III standards to recognize most elements of AOCI in regulatory capital impact safety and soundness of individual U.S. intermediate holding companies or their depository institution subsidiaries, or raise broader financial stability concerns? For example, to what extent would this approach reduce the accuracy of the reported regulatory capital of these U.S. intermediate holding companies and their depository institution subsidiaries? To what extent does the recognition of most elements of AOCI in regulatory capital improve market discipline and provide for a clearer picture of the financial health of U.S. intermediate holding companies and their depository institution subsidiaries? To what extent would such recognition make comparing the financial condition of U.S. intermediate holding companies and their depository institution subsidiaries subject to Category III standards to that of U.S. intermediate holding companies and their depository institution subsidiaries subject to Category II standards more difficult?

Question 34: With respect to U.S. intermediate holding companies and their depository institution subsidiaries that currently recognize most elements of AOCI in regulatory capital, to what extent do intra-quarter variations in regulatory capital due to the inclusion of AOCI since the capital rule took effect differ from variations in reported quarter-end data over the same period? What have been the causes of variations in each?

Question 35: As discussed above, under the proposal, the agencies would not require U.S. intermediate holding companies and their depository institution subsidiaries subject to Category III standards to recognize most elements of AOCI in regulatory capital. Alternatively, the agencies could require only the U.S. intermediate holding companies to recognize most elements of AOCI in regulatory capital while exempting their depository institution subsidiary from this requirement. What are the advantages and disadvantages of this alternative approach? What would be the costs and operational challenges associated with this additional complexity, where the U.S. intermediate holding company and depository institution subsidiary implement different standards related to AOCI? In what ways would this alternative approach to AOCI reduce costs for banking organizations subject to Category III standards relative to their current AOCI requirement under the agencies' capital rule (i.e., both the top-tier U.S. intermediate holding company and depository institution subsidiary are currently required to recognize most elements of AOCI in regulatory capital)? In what ways would this alternative approach affect the transparency around, and market participants' understanding of, the financial

[80] *See* Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction; Proposed Rule, 82 FR 49984 (October 27, 2017).

condition of the depository institution subsidiary and the parent holding company?

Question 36: For purposes of comparability, in a final rulemaking should the agencies require all banking organizations subject to Category III standards to use SA–CCR for either risk-based or supplementary leverage ratio calculations and, if so, why?

Question 37: What would be the advantages and disadvantages of no longer applying the countercyclical capital buffer to U.S. intermediate holding companies and their depository institution subsidiaries that would be subject to Category III standards? In particular, how would narrowing the scope of application of the countercyclical buffer affect the financial stability and countercyclical objectives of the buffer? What other regulatory tools, if any, could be used to meet these objectives?

Question 38: The proposal would apply Category III standards to U.S. intermediate holding companies and their depository institution subsidiaries that exceed certain risk-based indicators, including having more than $75 billion in off-balance sheet exposures. In light of the inclusion of off-balance sheet exposures as a threshold for Category III standards, what are the advantages and disadvantages of including the supplementary leverage ratio as a Category III standard?

C. Category IV Standards

The proposal would require a U.S. intermediate holding company and any depository institution subsidiary thereof subject to Category IV standards to apply the generally applicable capital requirements. Category IV standards would not include the countercyclical capital buffer or the supplementary leverage ratio. In this manner, these standards would maintain the risk-sensitivity of the current capital regime and resiliency of these banking organizations' capital positions, and would recognize that these banking organizations' U.S. intermediate holding companies, while large, have lower indicators of risk relative to their larger peers, as set forth in the proposal. As a result, such U.S. intermediate holding companies (and their depository institution subsidiaries) would be subject to the same capital requirements as U.S. intermediate holding companies with under $100 billion in total consolidated assets.

Question 39: What modifications, if any, should the agencies consider to the proposed Category IV capital standards, and why?

V. Liquidity Requirements

The proposed framework would apply standardized liquidity requirements with respect to the U.S. operations of foreign banking organizations according to the proposed risk-based categories. Based on the risk profile of a foreign banking organization's combined U.S. operations, the proposal would require a foreign banking organization to calculate and maintain a minimum LCR and NSFR for any U.S. intermediate holding company. LCR and NSFR requirements would also apply to covered depository institution subsidiaries of foreign banking organizations subject to Category II or III liquidity standards, consistent with the requirements that would apply to the depository institution subsidiaries of large U.S. banking organizations under the domestic interagency proposal. In addition, as discussed in section V.E of this **SUPPLEMENTARY INFORMATION** section, the Board is requesting comment on whether it should impose standardized liquidity requirements on the U.S. branch and agency network of a foreign banking organization, as well as possible approaches for doing so, including an approach based on the LCR rule and an approach that would apply a requirement based on the aggregate U.S. branch and agency assets of a foreign banking organization.

The proposed standardized liquidity requirements are designed to serve as a complement to existing internal liquidity stress testing requirements, which require a foreign banking organization to assess the liquidity needs of its U.S. operations, including any U.S. intermediate holding company, under stress and to hold a liquidity buffer against projected stressed outflows reflecting the firm's idiosyncratic risks. Together with standardized liquidity requirements that the Board is considering proposing at a future date with respect to the U.S. branches and agencies of a foreign banking organization, the proposed LCR and NSFR requirements would strengthen the resilience of a foreign banking organization's U.S. operations to liquidity risks and reduce risks to U.S. financial stability. The requirements would help to ensure that similarly situated foreign banking organizations maintain a comparable, minimum amount of liquid assets within their U.S. operations. As for large U.S. banking organizations, minimum liquidity requirements are particularly important for the U.S. operations of foreign banking organizations with significant reliance on short-term wholesale funding, as disruptions to wholesale funding markets can limit such a firm's ability to satisfy liquidity demands and threaten the resiliency of the firm's U.S. operations, which can transmit distress to other market participants.

As discussed above, foreign banking organizations operate under a wide variety of business models and structures that reflect the legal, regulatory, and business climates in the home and host jurisdictions in which they operate. In the United States, foreign banking organizations operate through subsidiaries, including U.S. intermediate holding companies and depository institutions, and branches and agencies, and are permitted to engage in the United States in substantially the same banking and nonbanking activities as domestic banks and U.S. bank holding companies.

The U.S. operations of foreign banking organizations, particularly those with a large U.S. branch and agency network or large nonbank operations, generally rely on less stable, short-term wholesale funding to a greater extent than U.S. bank holding companies because of their structure and business model. Furthermore, certain foreign banking organizations conduct substantial capital markets activities in the United States through nonbank subsidiaries or branch operations, such as short-term securities financing and derivatives activities. These activities can give rise to greater interconnectedness with financial sector counterparties and increase the potential impact of a funding stress on the foreign banking organization's U.S. operations.

In response to liquidity risks observed during the crisis, the Board established liquidity risk management, internal liquidity stress testing, and liquidity buffer requirements for the combined U.S. operations of foreign banking organizations under its enhanced prudential standards rule.[81] These provisions require a foreign banking organization to assess its idiosyncratic risk profile, experience, and scope of operations. However, similar to other

[81] Under the enhanced prudential standards rule, certain foreign banking organizations are required to conduct monthly internal liquidity stress tests and determine minimum liquidity buffers to be held in the United States. A foreign banking organization must calculate and maintain a minimum liquidity buffer for its U.S. intermediate holding company sufficient to cover a modeled net stressed cash flow need over a 30-day stress horizon. A foreign banking organization must also model the 30-day net stressed cash flow need for its U.S. branches and agencies on an aggregate basis and is required to hold a minimum liquidity buffer for these branches and agencies sufficient to cover the first 14 days of the 30-day planning horizon. *See* 12 CFR 252.157.

internal model-based requirements that require a banking organization to make certain assumptions, firms' own models may overestimate cash flow sources or underestimate cash flow needs arising from a particular business line. Standardized liquidity requirements would serve as a complement to the foreign banking organization's own assessment of its idiosyncratic risks, in particular through their use of uniform inflow and outflow rates and other standardized assumptions that reflect broader industry and supervisory experience.

Currently, a foreign banking organization operating in the United States is not subject to the LCR rule, nor would it be subject to the NSFR proposed rule, with respect to its U.S. operations, except to the extent that a subsidiary depository institution holding company or a subsidiary depository institution of the foreign banking organization meets the relevant applicability criteria on a stand-alone basis.[82] The Board indicated in previous rulemakings its intent to apply standardized liquidity requirements with respect to the U.S. operations of a foreign banking organization in order to align all elements of its forward-looking liquidity regulatory regime for similarly situated domestic and foreign banking organizations. For example, when finalizing the enhanced prudential standards rule for foreign banking organizations in March 2014 and the LCR rule for U.S. banking organizations in September 2014, the Board stated that it anticipated implementing an LCR-based standard for the U.S. operations of foreign banking organizations through a future rulemaking.[83] Similarly, when proposing the NSFR rule in May 2016, the Board stated that it anticipated implementing an NSFR requirement through a future, separate rulemaking for the U.S. operations of foreign banking organizations.[84]

The proposal would require a foreign banking organization to maintain a minimum LCR and NSFR for its U.S. intermediate holding company, regardless of whether the U.S. intermediate holding company is also a depository institution holding company, in order to ensure that parallel requirements would apply with respect to all U.S. intermediate holding companies. The proposal would solicit public input on potential standardized liquidity requirements for foreign banking organizations with respect to their U.S. branch and agency networks for proposal at a later date.

The proposal would tailor the proposed U.S. intermediate holding company requirements based on the risk profile of a foreign banking organization's combined U.S. operations, using the risk-based indicators, thresholds, and categories set forth above. In addition, consistent with the standardized liquidity requirements that would apply to U.S. banking organizations under the domestic interagency proposal, the proposal would apply LCR and NSFR requirements to covered depository institution subsidiaries of foreign banking organizations that would be subject to Category II or III liquidity standards.

The LCR and NSFR requirements proposed for U.S. intermediate holding companies are generally consistent with international standards. For example, the proposed LCR calculation (including percentages used in the determination of inflow and outflow amounts, and requirements regarding the encumbrance and transferability of HQLA) would generally be consistent with the Basel III liquidity coverage ratio standard published by the BCBS.[85] Because the proposal would largely align with international standards, the proposed LCR requirement is not expected to require a foreign banking organization to acquire additional HQLA above the amount the firm currently holds to meet its global LCR requirements under the requirements of its home jurisdiction; however, the proposal would require that assets be held in the U.S. intermediate holding company to the extent that they are needed to meet the proposed requirement. Similarly, the proposed NSFR requirement is generally consistent with the Basel III net stable funding ratio standard published by the BCBS.[86]

A. Categories of Liquidity Requirements for a Foreign Banking Organization

The proposal would tailor standardized liquidity requirements for foreign banking organizations according to the risk-based indicators and thresholds described above, measured based on the combined U.S. operations of the foreign banking organization.[87] Specifically, the proposal would apply one of three categories of liquidity standards to a foreign banking organization: Category II, III, or IV. As discussed above in this Supplementary Information section, differentiation of requirements based on the risk profile of a foreign banking organization's combined U.S. operations recognizes that certain risks are more appropriately accounted for and regulated across the combined U.S. operations of a foreign banking organization to prevent or mitigate risks to U.S. financial stability. For foreign banking organizations subject to Category III or IV liquidity standards, the proposal would further tailor standardized liquidity requirements based on the weighted short-term wholesale funding of a firm's combined U.S. operations, which provides a measure of exposure to less stable funding that increases a firm's liquidity risks.

Covered depository institution subsidiaries of the U.S. intermediate holding company of a foreign banking organization subject to Category II or III liquidity standards would be subject to LCR and NSFR requirements based on the category of the foreign banking organization. The risk-based indicators for these categories reflect the systemic risk profile and resiliency of the U.S. operations of a foreign banking organization, of which a large depository institution subsidiary may be a significant part. The presence of each of these indicators heightens the need for sophisticated measures to monitor and manage liquidity risk, including at covered depository institution subsidiaries. Application of the LCR and NSFR requirements to covered depository institution subsidiaries of foreign banking organizations subject to Category II or III liquidity standards would also be consistent with the

[82] Although a foreign banking organization may be subject to liquidity requirements on a consolidated basis in its home jurisdiction, a requirement to comply with LCR and NSFR requirements with respect to a U.S. intermediate holding company would require these firms to align the location of liquid assets with the location in the United States of the liquidity risks of their U.S. intermediate holding companies, in order to ensure better protection against risks to safety and soundness and U.S. financial stability.

[83] 79 FR 17240, 17291 (March 27, 2014), 79 FR 61440, 61447 (October 10, 2014). The Board did not initially align the timing of a liquidity coverage ratio requirement for foreign banking organizations with those of domestic firms because the Board proposed the domestic LCR before it finalized the structural requirements for foreign banking organizations to form intermediate holding companies.

[84] *See* ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements; Proposed Rule,'' 81 FR 35128 (June 1, 2016).

[85] BCBS, ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' (January 2013) (Basel III LCR standard), available at *http://www.bis.org/publ/bcbs238.htm.*

[86] BCBS, ''Basel III: the net stable funding ratio'' (October 2014), available at *http://www.bis.org/bcbs/publ/d295.pdf.*

[87] This approach would be consistent with the Board's proposed approach to tailor liquidity requirements for foreign banking organizations under the Board's enhanced prudential standards rule in the Board-only foreign banking organization enhanced prudential standards proposal.

standardized liquidity requirements proposed for U.S. banking organizations under the domestic interagency proposal. As discussed further below, depository institution subsidiaries of foreign banking organizations subject to Category IV liquidity standards would not be subject to LCR or NSFR requirements under the proposal, also consistent with the proposed requirements for U.S. banking organizations.

1. Category II Liquidity Standards

Under the proposal, a foreign banking organization with $700 billion or more in combined U.S. assets or $75 billion or more in cross-jurisdictional activity at its combined U.S. operations would be subject to Category II liquidity standards. Foreign banking organizations subject to Category II liquidity standards have significant U.S. operations or cross-jurisdictional activity that may complicate liquidity risk management, and the failure or distress of the U.S. operations of such a firm could impose significant costs on the U.S. financial system and economy. Size and cross-jurisdictional activity can present particularly heightened challenges in the case of a liquidity stress, which can present both financial stability and safety and soundness risks. For example, a foreign banking organization with very large U.S. operations that engages in asset fire sales to meet short-term liquidity needs is likely to transmit distress in the United States on a broader scale because of the greater volume of assets it could sell in a short period of time. In addition, foreign banking organizations with U.S. operations that engage in heightened levels of cross-jurisdictional activity present operational complexities and interconnectivity concerns, and may be exposed to a greater diversity of risks as a result of the multiple jurisdictions in which they provide financial services. The risks and operational complexities associated with cross-jurisdictional activity can present significant challenges to recovery and resolution.

The proposal would require a foreign banking organization subject to Category II liquidity standards to comply with the full LCR requirement described in section V.B of this Supplementary Information section, including calculation on each business day, and the full NSFR requirement described in section V.C of this **SUPPLEMENTARY INFORMATION** section, each as applied to any U.S. intermediate holding company. Covered depository institution subsidiaries of a foreign banking organization subject to Category II liquidity standards would also be subject to the full LCR and NSFR requirements, as discussed above. The proposed liquidity standards would help to ensure resiliency of the foreign banking organization's U.S. operations to liquidity risks, and improve the ability of the foreign banking organization's management and supervisors to assess the foreign banking organization's ability to meet the projected liquidity needs of its U.S. operations, particularly during periods of liquidity stress, and take appropriate actions to address liquidity needs.

2. Category III Liquidity Standards

Category III liquidity standards would apply to a foreign banking organization that does not meet the criteria for Category II and the combined U.S. operations of which have either (i) assets of at least $250 billion, or (ii) assets of at least $100 billion and $75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure.

The proposal would determine the LCR and NSFR requirements applicable to foreign banking organizations subject to Category III liquidity standards based on the weighted short-term wholesale funding of a foreign banking organization's U.S. operations. A foreign banking organization subject to Category III standards that has $75 billion or more in weighted short-term wholesale funding at its combined U.S. operations would be subject to the same standardized liquidity requirements as would apply under Category II standards—specifically, the full LCR and NSFR requirements with respect to any U.S. intermediate holding company. An elevated level of weighted short-term wholesale funding indicates that the organization's U.S. operations have greater reliance on less stable forms of funding and a higher degree of interconnectedness with other financial firms. As a consequence, these operations may generally be more vulnerable to liquidity stress and more likely to transmit stress internally within the foreign banking organization and to other firms. Accordingly, the proposal would apply the most stringent standardized liquidity requirements to these foreign banking organizations, consistent with the proposed requirements for U.S. banking organizations with similar risk profiles under the domestic interagency proposal.

Reduced LCR and NSFR requirements would apply to a foreign banking organization subject to Category III standards that has less than $75 billion in weighted short-term wholesale funding at its combined U.S. operations. The agencies are inviting comment on a range of potential calibrations for these firms (and their covered depository institution subsidiaries), equivalent to between 70 and 85 percent of the full requirements.[88] Even where a foreign banking organization has less than $75 billion in weighted short-term wholesale funding at its combined U.S. operations, standardized liquidity requirements are appropriate for a foreign banking organization with combined U.S. assets of $250 billion or more in order to increase the resiliency of the firm's U.S. operations and reduce its probability of failure. A larger U.S. footprint increases the risk that that the failure or distress of a foreign banking organization would pose heightened risks to U.S. financial stability; accordingly, the proposal would apply standardized liquidity requirements (at a reduced level) to strengthen the resiliency of such a banking organization's U.S. operations. Standardized liquidity requirements are also appropriate for foreign banking organizations with combined U.S. assets of $100 billion or more and nonbank assets or off-balance sheet exposure of $75 billion or more, as these measures can also be indicators of liquidity risk. Significant nonbank assets of a banking organization generally tend to reflect greater engagement in complex activities, such as trading and prime brokerage activities, that present heightened liquidity risk. Similarly, banking organizations with large off-balance sheet exposures could experience large outflows, the risks of which counterparties may not have fully anticipated due to their off-balance sheet nature, putting additional pressure on the firm's liquidity position and creating a risk of transmission of instability to other market participants.

As discussed above, the agencies would also apply LCR and NSFR requirements to covered depository institution subsidiaries of foreign banking organizations subject to Category III liquidity standards, at the same level (*i.e.,* full or reduced) as would apply to the foreign banking organization.

Question 40: Between a range of 70 and 85 percent of the full requirements, what calibration should the agencies adopt for the reduced LCR and NSFR

[88] The calibration within this range for foreign banking organizations (and their covered depository institution subsidiaries) would be consistent with the calibration applied under the domestic interagency proposal to U.S. banking organizations subject to Category III standards that have less than $75 billion in weighted short-term wholesale funding.

requirements for foreign banking organizations subject to Category III standards that have less than $75 billion in weighted short-term wholesale funding, and their covered depository institution subsidiaries, and why?

3. Category IV Liquidity Standards

In the domestic interagency proposal, the agencies proposed that U.S. banking organizations with total consolidated assets of $100 billion or more that do not meet any of the thresholds for a different category would be subject to Category IV standards, which did not include an LCR or NSFR requirement. As discussed in the domestic interagency proposal, firms in the current population of U.S. banking organizations that meet the criteria for this category have more traditional balance sheet structures, are largely funded by stable deposits, and have less reliance on less stable wholesale funding, indicating less liquidity risk. Accordingly, and taking into account that the Board separately proposed to maintain internal liquidity stress testing requirements and other liquidity standards at the consolidated holding company level for these banking organizations,[89] the agencies proposed not to apply standardized liquidity requirements to these banking organizations.[90] The Board also separately proposed to apply tailored internal liquidity stress testing requirements at the consolidated holding company level to these firms.

In developing this proposal, however, the Board observed that some domestic or foreign banking organizations that meet the criteria for Category IV standards could potentially have a heightened liquidity risk profile. For example, these firms may not be funded by stable deposits and may have material reliance on less-stable short-term wholesale funding. Thus, under this proposal, the Board would apply standardized liquidity requirements to a foreign banking organization subject to Category IV standards if the reliance of the firm's U.S. operations on short-term wholesale funding is significant relative to the firm's combined U.S. assets.[91]

Specifically, the Board is proposing to apply reduced LCR and NSFR requirements to a foreign banking organization that meets the criteria for Category IV liquidity standards and has $50 billion or more in weighted short-term wholesale funding at its combined U.S. operations. Like the Category II and III liquidity standards, the proposed LCR and NSFR requirements would apply with respect to the foreign banking organization's U.S. intermediate holding company. As noted below, the proposed LCR and NSFR requirements would not apply to covered depository institution subsidiaries of a foreign banking organization subject to Category IV liquidity standards. The Board requests comment on a range of potential calibrations for the LCR and NSFR requirements that would apply to these firms, equivalent to between 70 and 85 percent of the full requirements.

Given the heightened liquidity risk profile of the U.S. operations of these foreign banking organizations, as indicated by their level of relative reliance on less stable, short-term wholesale funding, the application of standardized liquidity requirements would help to ensure that these firms are appropriately monitoring and managing their liquidity risk in the United States. For a foreign banking organization subject to Category IV standards, $50 billion or more in weighted short-term wholesale funding is significant relative to the firm's combined U.S. assets, given that firms in this category by definition have less than $250 billion in combined U.S. assets. For example, $50 billion in weighted short-term wholesale funding would be equivalent to more than 20 percent of the U.S. assets of a foreign banking organization with less than $250 billion in combined U.S. assets or 50 percent of the U.S. assets of a foreign banking organization with $100 billion in combined U.S. assets. A $50 billion weighted short-term wholesale funding threshold would in this way serve to identify banking organizations in this category that do not have traditional balance sheet structures funded by stable retail deposits or that have more reliance on less stable short-term wholesale funding. In light of this liquidity risk, the application of LCR and NSFR requirements would help to ensure that these firms are holding a minimum level of liquid assets that would be available to use in the event of a liquidity stress event and that these firms maintain more stable, resilient funding profiles.

To reduce compliance costs for these firms and reflect the smaller systemic footprint of these firms' U.S. operations relative to banking organizations that would be subject to Category II or III liquidity standards, the Board is proposing to require calculation of the LCR on the last business day of the applicable month, rather than each business day. For these same reasons, the agencies are not proposing to apply an LCR or NSFR requirement to the covered depository institution subsidiaries of such firms.

Question 41: Between a range of 70 and 85 percent of the full requirements, what calibration should the Board adopt for the reduced LCR and NSFR requirements for foreign banking organizations subject to Category IV standards that have $50 billion or more in weighted short-term wholesale funding, and why?

B. LCR Requirement With Respect to Foreign Banking Organizations

Under the proposal, the Board would require a foreign banking organization that meets the applicability criteria described above to calculate and maintain a minimum LCR for any U.S. intermediate holding company. In addition, the agencies are proposing to require covered depository institution subsidiaries of foreign banking organizations subject to Category II or III liquidity standards to calculate and maintain a minimum LCR. Proposed new subpart O of part 249 would establish the LCR (and NSFR) requirements that apply to foreign banking organizations, and proposed amendments to subpart A of the current LCR rule would apply to the covered depository institution subsidiaries of foreign banking organizations subject to Category II or III liquidity standards. The proposed requirements would apply in a manner consistent with the LCR requirements for U.S. banking organizations under the LCR rule, NSFR proposed rule, and domestic interagency proposal. As discussed above, these requirements would help to ensure the resiliency of U.S. intermediate holding companies and covered depository institution subsidiaries of foreign banking organizations to liquidity stress and funding disruptions.

The proposed LCR requirement would be nearly identical to the LCR requirement that currently applies to U.S. banking organizations. Specifically, the proposal would instruct a foreign banking organization to calculate an LCR for a U.S. intermediate holding company using the same definitions that apply to U.S. banking organizations[92]

[89] *See* Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies; Proposed Rule, 83 FR 61408 (November 29, 2018).

[90] *See* domestic interagency proposal, 83 FR at 66037–66038.

[91] As discussed in section VI of this **SUPPLEMENTARY INFORMATION** section, the Board is also proposing to modify the domestic interagency proposal to apply standardized liquidity requirements in a consistent manner to domestic bank holding companies and certain savings and loan holding companies subject to Category IV standards that have significant reliance on short-term wholesale funding.

[92] 12 CFR 249.3.

and subparts B through E of the proposal as if the U.S. intermediate holding company (and not the foreign banking organization itself) were a top-tier Board-regulated institution.[93] (For example, a foreign banking organization would treat the U.S. intermediate holding company as a ''Board-regulated institution'' wherever that term appears in the definitions in § 249.3.) This approach would promote consistent treatment with domestic banking organizations subject to the LCR rule. The LCR requirement for a foreign banking organization with respect to its U.S. intermediate holding company would differ from the LCR requirement for domestic banking organizations in certain, limited respects, discussed below.

Question 42: What conforming changes, if any, should be made to the definitions found in § 249.3 to effectuate the purpose of the proposed requirement that a foreign banking organization calculate an LCR for a U.S. intermediate holding company using § 249.3 and subparts B through E of part 249?

1. Minimum Liquidity Coverage Ratio, Calculation Date and Time, and Shortfall

The proposal would require a foreign banking organization to maintain at its consolidated U.S. intermediate holding company an amount of HQLA meeting the criteria set forth in the proposal (HQLA amount; the numerator of the ratio) that is no less than 100 percent of the U.S. intermediate holding company's total net cash outflow amount over a 30-calendar day time horizon as calculated in accordance with the proposal (the denominator of the ratio). Consistent with the domestic interagency proposal, in the case of a foreign banking organization that would be subject to a reduced LCR requirement under Category III or IV liquidity standards, the denominator of the ratio would be reduced by an applicable outflow adjustment percentage.[94] Expressed as a ratio, the proposal would require a foreign banking organization to calculate and maintain an LCR for a U.S. intermediate holding company equal to or greater than 1.0 on each calculation date.

Under the proposal, a foreign banking organization that is subject to Category II or III liquidity standards would be required to calculate the LCR for a U.S. intermediate holding company each business day. A daily calculation requirement for these firms would reflect the heightened liquidity risk profiles of their U.S. operations, which require more sophisticated monitoring and management. The Board is proposing to require a foreign banking organization that is subject to Category IV liquidity standards and that has $50 billion or more in short-term wholesale funding to calculate an LCR for any U.S. intermediate holding company on the last business day of the applicable month. A monthly calculation for these firms would reflect the lesser systemic footprint and risk profile of these firms' U.S. operations relative to banking organizations that meet the criteria for Category II or III standards, as discussed above.

To ensure consistency of the LCR calculation by firms, the proposal would require a foreign banking organization to calculate its LCR for a U.S. intermediate holding company as of the same time (the elected calculation time) on each calculation date, selected by the foreign banking organization prior to the effective date of the rule with respect to the firm and communicated in writing to the Board. Subsequent to this initial election, a foreign banking organization may change the time at which it calculates its applicable LCR with the prior written approval of the Board.[95]

A banking organization subject to the LCR rule is required to report a shortfall in its ratio on any business day to the appropriate regulatory agency, and promptly consult with the agency on providing a plan for achieving compliance.[96] Under the proposal, a foreign banking organization would be required to conduct the LCR calculations for a U.S. intermediate holding company at the calculation date. Accordingly, proposed § 249.206 provides that a foreign banking organization must notify the Board of, and address, any shortfall in the same time frame and manner as a U.S. banking organizations subject to the LCR rule.[97]

Question 43: The proposal would require a foreign banking organization to calculate an LCR for any U.S. intermediate holding company. The Board is considering applying LCR requirements directly to a U.S. intermediate holding company, rather than requiring applying an LCR requirement to a foreign banking organization with respect to its U.S. intermediate holding company. What are the advantages and disadvantages of applying the LCR requirements in the proposed manner rather than requiring, for example, a U.S. intermediate holding company to be responsible for calculating its own LCR?

2. Numerator of the LCR: HQLA, Eligible HQLA, and the HQLA Amount

Under the LCR rule, an asset must meet the requirements of section 20 to be HQLA and section 22 to be eligible for inclusion in a banking organization's HQLA amount (the numerator of the LCR).[98] The criteria in section 20 identify assets with liquidity characteristics that indicate they are likely able to be convertible into cash with little or no loss of value in a time of stress,[99] and the criteria in section 22 serve to ensure that the LCR numerator includes only HQLA that would be readily available for use by a banking organization subject to the rule to meet liquidity needs during a liquidity stress.

Among other things, section 22 of the LCR rule requires a banking organization subject to the LCR rule to demonstrate the operational capability to monetize HQLA and to implement policies that require the HQLA to be under control of the management function of the banking organization. Section 249.205 of the proposal would maintain these requirements but would require the foreign banking organization, rather than the U.S. intermediate holding company, to satisfy these requirements.[100]

[93] Under the current LCR rule, a U.S. intermediate holding company that is a bank holding company may be subject to LCR requirements. The proposal would eliminate any such independent LCR requirements for a bank holding company subsidiary of a foreign banking organization and replace them with the requirement that the foreign banking organization calculate and maintain a minimum LCR for its U.S. intermediate holding company.

[94] As discussed in section V.A of this **SUPPLEMENTARY INFORMATION** section, the agencies are requesting comment on a range of potential calibrations for the outflow adjustment percentage for these firms, between 70 and 85 percent. For firms subject to the full LCR requirement, an outflow adjustment percentage of 100 percent would apply.

[95] In the case of a foreign banking organization that calculates multiple LCRs (for example, if the foreign banking organization has more than one U.S. intermediate holding company), the proposal would require the foreign banking organization to elect the same calculation time for each of its LCRs.

[96] *See* 12 CFR 50.40 (OCC), 12 CFR 249.40 (Board), and 12 CFR 329.40 (FDIC).

[97] *See* proposed § 249.206.

[98] 12 CFR 50.20 (OCC), 12 CFR 249.20 (Board), and 12 CFR 329.20 (FDIC).

[99] *See* LCR FR rule, 79 FR at 61450–61471.

[100] As part of the NSFR proposed rule, the agencies proposed to add the new term ''encumbered'' to the LCR rule, which would replace the criteria for an unencumbered asset set forth in section 22(b) of the LCR rule. *See* 81 FR 35124. Because the agencies have not yet finalized the NSFR proposed rule, the proposal includes two versions of regulatory text for § 249.205, one that is identical to the requirements in section 22(b) (12 CFR 249.22(b)) and another that uses the term ''encumbered.'' These two versions are being proposed so that the requirements in § 249.205 match whatever requirements exist for

Continued

Accordingly, the management function of the foreign banking organization that is charged with managing liquidity risks must evidence control over the HQLA for the purposes of covering the net cash outflows of the U.S. intermediate holding company.[101] The risks of a foreign banking organization's U.S. operations are a component of the broader risks of its global activities, and HQLA held in the United States may be managed as part of the foreign banking organization's global liquidity risk management operations. To ensure that HQLA that are held in the United States to cover potential outflows of the U.S. intermediate holding company are able to be monetized without restriction in a time of stress, the Board expects the assets must be continually available for use by the management function within the foreign banking organization's U.S. operations that is charged with managing U.S. liquidity risks. For example, eligible HQLA, including HQLA that have been borrowed (including under a secured lending transaction such as a reverse repurchase agreement) from the foreign banking organization's head office must not be controlled, transferable, or able to be monetized by an overseas entity or business function in a manner that would restrict the ability of the responsible management function to monetize the HQLA in a time of stress for use by a U.S. intermediate holding company of the foreign banking organization.

In addition to the generally applicable criteria for eligible HQLA under the current LCR rule, the proposal would require that eligible HQLA for a foreign banking organization's U.S. intermediate holding company be held in accounts in the United States.[102] This requirement would be consistent with the location requirement of a foreign banking organization's highly liquid asset buffers required under the Board's enhanced prudential standards rule.[103] Consistent with the current location requirements for these liquidity buffers, and to ensure that liquid assets are available to cover the relevant net cash outflows in a period of stress, eligible HQLA for a foreign banking organization's U.S. intermediate holding company must be held at the U.S. intermediate holding company or a consolidated subsidiary thereof.

Under the proposal, a foreign banking organization would directly utilize section 20 of the current LCR rule, which enumerates the criteria that assets must meet to qualify as HQLA.[104] Structural and regulatory issues may limit the extent to which HQLA can be treated as eligible HQLA for a foreign banking organization's calculation with respect to a U.S. intermediate holding company. For example, Reserve Bank balances held by a foreign banking organization at its U.S. branches would not be able to be included as eligible HQLA in the foreign banking organization's LCR calculation for a U.S. intermediate holding company.

Consistent with the current LCR rule, eligible HQLA would not need to be reflected on the balance sheet of a U.S. entity under the proposal; for example, securities sourced through a secured lending transaction by a U.S. entity and not reflected on its balance sheet may be eligible HQLA if the assets meet all the relevant criteria in the proposal.

In addition, consistent with the current LCR rule[105] and the domestic interagency proposal, the proposal would limit the amount of HQLA held at a consolidated subsidiary of a U.S. intermediate holding company that can be included as eligible HQLA for purposes of a foreign banking organization's LCR calculation for a U.S. intermediate holding company.[106] The LCR rule requires a single HQLA amount calculation at each calculation date for a consolidated banking organization subject to the rule. To ensure the recognition only of eligible HQLA that are usable to meet consolidated total net cash outflows of the top-tier banking organization subject to the LCR rule, the LCR rule limits the ability of a top-tier banking organization subject to the rule to include in its HQLA amount eligible HQLA held at a consolidated subsidiary in excess of the net cash outflows of the subsidiary, except to the extent an additional amount of the assets (including the proceeds of monetization of the assets) would be available for transfer to the top-tier banking organization without statutory, regulatory, contractual, or supervisory restrictions.[107]

For the same reasons, the proposal would apply consistent limitations for a foreign banking organization's LCR calculation with respect to its U.S. intermediate holding company. Consistent with the requirements for U.S. banking organizations, a foreign banking organization would be required to apply only the statutory, regulatory, contractual, or supervisory restrictions that are in effect as of the calculation date.[108]

Consistent with the domestic interagency proposal, a foreign banking organization subject to the proposed reduced LCR requirement under Category III or IV standards would not be permitted to include in the HQLA amount of its U.S. intermediate holding company eligible HQLA of a consolidated subsidiary of the U.S. intermediate holding company except up to the amount of the net cash outflows of the subsidiary (as adjusted for the factor reducing the stringency of the requirement), plus any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier U.S. intermediate holding company during times of stress without statutory, regulatory, contractual, or supervisory restrictions. A similar restriction would apply under the proposed NSFR requirement.[109]

Question 44: What modifications, if any, should the Board consider with respect to the definition of HQLA as it applies to a foreign banking organization's calculation of an LCR for a U.S. intermediate holding company, and why?

Question 45: What would be the advantages or disadvantages of the proposed criteria for HQLA and eligible HQLA applicable to a foreign banking organization's LCR calculation with respect to a U.S .intermediate holding company? What additional criteria, if any, should the Board consider for eligible HQLA held by a foreign banking organization to meet stressed cash outflows in the United States?

Question 46: In what ways, if any, would the proposed eligible HQLA location criteria affect a foreign banking organization's U.S. operations? If a foreign banking organization's U.S. intermediate holding company does not have a depository institution subsidiary, how should the proposal treat Reserve Bank balances held outside of the

unencumbered assets in § 249.22(b) when the proposal is finalized.

[101] Each foreign banking organization that would be subject to the proposed rule is subject to risk management and liquidity risk management requirements for its U.S. operations under the Board's enhanced prudential standards rule. *See* 12 CFR 252.155 and .156. Generally, the Board expects that the management function that is responsible for managing liquidity risks under the proposal would be the same management function that is responsible for managing liquidity risk under the enhanced prudential standards rule.

[102] *See* proposed § 249.222(c).

[103] *See* 12 CFR 252.157(c)(4).

[104] *See* 12 CFR 249.20. The proposal would also apply the LCR rule's definition of HQLA under 12 CFR 249.3 without change.

[105] *See* 12 CFR 50.22(b)(3) and (4) (OCC), 12 CFR 249.22(b)(3) and (4) (Board), and 12 CFR 329.22(b)(3) and (4) (FDIC).

[106] *See* proposed § 249.205(d).

[107] *See* 12 CFR 249.22(b).

[108] *See* LCR FR rule, 79 FR at 61470.

[109] *See* section V.C of this **SUPPLEMENTARY INFORMATION** section.

consolidated U.S. intermediate holding company (for example, at the Federal Reserve account of a U.S. branch of the foreign banking organization) for the purposes of the foreign banking organization's LCR calculation for a U.S. intermediate holding company?

Question 47: The Board requests comment regarding this proposed approach with respect to assets held at a consolidated subsidiary of a U.S. intermediate holding company, as well as potential alternative approaches to recognizing in a foreign banking organization's LCR calculation restrictions on the transferability of liquidity from a consolidated subsidiary to the U.S. intermediate holding company. What alternative approaches should the Board consider and why?

For example, should the Board consider the approach the Board currently permits for depository institution holding companies subject to a modified LCR requirement? Under this approach, a holding company may include in its HQLA amount eligible HQLA held at a subsidiary up to 100 percent of the net cash outflows of the subsidiary, plus amounts that may be transferred without restriction to the top-tier covered company. What would be the advantages and disadvantages of the proposed approach and potential alternatives? What incentives would each have with respect to the positioning of HQLA within a banking organization? What effects would the proposed approach or alternative approaches have on the safety and soundness of a U.S. intermediate holding company and its subsidiary depository institutions?

3. Denominator of the LCR—Total Net Cash Outflow Amounts for Foreign Banking Organizations

Consistent with the domestic interagency proposal, the LCR denominator for a foreign banking organization's calculation with respect to a U.S. intermediate holding company would be the total net cash outflow amount, after the application of an outflow adjustment percentage based on the foreign banking organization's category of liquidity standards.

Under this approach, the total net cash outflow amount prior to the application of any outflow adjustment percentage would be:

(i) The sum of the outflow amounts applicable to the calculation, as determined under the proposal, less

(ii) The lesser of the sum of inflow amounts applicable to the calculation, as determined under the proposal, or 75 percent of the outflow amounts in (i), plus

(iii) The applicable maturity mismatch add-on.

After calculating the net amount of these components for a U.S. intermediate holding company, the foreign banking organization would multiply that amount by the appropriate outflow adjustment percentage described in proposed § 249.203 to determine the denominator of the U.S. intermediate holding company's LCR. The applicable outflow adjustment percentage would reflect the category of liquidity standards that applies to the foreign banking organization: [110]

	Outflow adjustment percentage
Foreign banking organization subject to Category II liquidity standards	100 percent.
Foreign banking organization subject to Category III liquidity standards, with $75 billion or more in weighted short-term wholesale funding at its combined U.S. operations.	100 percent.
Foreign banking organization subject to Category III liquidity standards, with less than $75 billion in weighted short-term wholesale funding at its combined U.S. operations.	[70 to 85] percent.
Foreign banking organization subject to Category IV liquidity standards, with $50 billion or more in weighted short-term wholesale funding at its combined U.S. operations.	[70 to 85] percent.

To calculate the total net cash outflow amount for a U.S. intermediate holding company, a foreign banking organization would directly utilize § 249.30, using the same methodology that would apply under the domestic interagency proposal. For determining outflow amounts and inflow amounts, the proposal would not change any of the percentages applied to transactions, instruments, balances, or obligations used under §§ 249.32 and 249.33. Similarly, for purposes of determining the effective maturity date, if any, of instruments, transactions, and obligations included in the LCR calculation for the U.S. intermediate holding company, the foreign banking organization would apply the same provisions as apply to Board-regulated U.S. banking organizations under § 249.31.

For the purpose of the proposed requirement, a foreign banking organization would apply §§ 249.32(m) and 249.33(i) of the LCR rule to identify excluded amounts for intragroup transactions, as if the U.S. intermediate holding company were the top-tier Board-regulated institution.[111] Accordingly, the proposal would treat transactions between the consolidated U.S. intermediate holding company and any affiliates (including any U.S. branches and agencies of the foreign banking organization and subsidiaries of the foreign banking organization outside the U.S. intermediate holding company) in the same manner as it does transactions with unaffiliated third parties.

Consistent with the requirements for U.S. banking organizations,[112] the proposal would limit the sum of the inflow amounts included in the LCR denominator to 75 percent of the gross outflow amounts calculated by the foreign banking organization with respect to a U.S. intermediate holding company. This requirement would ensure that foreign banking organizations subject to the proposed LCR requirement maintain an HQLA amount to meet total net cash outflows at the U.S. intermediate holding company and are not overly reliant on inflows that may not materialize in a time of stress.

In addition to this requirement, the Board considered whether it was appropriate to propose an additional limit that would restrict the recognition of standardized inflow amounts resulting from assets, transactions, or instruments related to affiliates of the foreign banking organization's U.S. intermediate holding company (inter-affiliate inflows). Such an additional restriction would have been consistent with the requirement set forth in the Board's enhanced prudential standards rule for the determination of minimum

[110] For a foreign banking organization subject to Category II or III standards, the same outflow adjustment percentage would apply to any LCR requirement applicable to a covered depository institution subsidiary of the foreign banking organization.

[111] 12 CFR 249.32(m) and 249.33(i).

[112] *See* 12 CFR 50.30 (OCC), 12 CFR 249.30 (Board), and 12 CFR 329.30 (FDIC).

liquid asset buffers by a foreign banking organization.[113] This limit addresses the risk that an affiliate may not be willing or able to return funds in a time of stress, given that a liquidity stress may simultaneously have an impact on both the foreign banking organization's U.S. operations and the affiliate providing the inflow. This requirement remains an important part of the internal liquidity stress test and liquidity buffer requirements set forth in the Board's enhanced prudential standards rule for foreign banking organizations. However, the proposal does not include this additional limitation on recognition of inter-affiliate inflows and instead relies on the LCR's total inflow amount cap to address this risk. While the LCR's total inflow amount cap does not fully capture the risk that non-U.S. affiliates may be unable or unwilling to return funds to U.S. entities in a stress, it aligns with the Basel III LCR standard and allows more direct comparability between LCRs calculated by foreign banking organizations under the proposal and the LCRs currently calculated by large U.S. bank holding companies.

Question 48: What would be the advantages and disadvantages of preventing or otherwise limiting a foreign banking organization from assuming reliance on inter-affiliate inflows to offset third-party net cash outflows for purposes of the proposed LCR requirements? What, if any, specific approaches should the Board consider applying to prevent such reliance, and why?

C. NSFR Requirement With Respect to Foreign Banking Organizations

Proposed § 249.204 would require a foreign banking organization that is subject to Category II or III standards, or that is subject to Category IV standards and has weighted short-term wholesale funding of $50 billion or more, to calculate and maintain a minimum NSFR for its U.S. intermediate holding company.[114] Although the Board is requesting comment regarding the application of standardized liquidity requirements with respect to the U.S. branches and agencies of a foreign banking organization, including an LCR-based approach, the Board is not proposing at this time to require a foreign banking organization to calculate and maintain a minimum NSFR for its U.S. branches and agencies. The Board continues to consider whether a stable funding requirement for the U.S. branch and agency network would be appropriate.

The proposed NSFR requirement would generally be consistent with the NSFR requirement that would apply to U.S. banking organizations under the NSFR proposed rule and the domestic interagency proposal. Proposed § 249.204 would require a foreign banking organization to calculate an NSFR for its U.S. intermediate holding company using proposed subparts K through L of part 249 as if the U.S. intermediate holding company (and not the foreign banking organization itself) were a top-tier Board-regulated institution. In determining the required stable funding amount for a U.S. intermediate holding company, the foreign banking organization would apply the required stable funding adjustment percentage under proposed § 249.204 based on its category of liquidity standards. Consistent with these subparts, the foreign banking organization's NSFR calculation would take into account the transferability of available stable funding from a consolidated subsidiary to the top-tier U.S. intermediate holding company.[115] For a foreign banking organization that is subject to a reduced NSFR requirement, the foreign banking organization may include available stable funding of the consolidated subsidiary in the U.S. intermediate holding company's ASF amount up to the reduced required stable funding amount of the subsidiary, plus amounts of assets that the subsidiary may transfer without restriction to the U.S. intermediate holding company.

The proposal's requirement that a foreign banking organization calculate and maintain an NSFR for its U.S. intermediate holding company would help to strengthen the funding profiles of these entities and reduce the impact of potential disruptions in their regular sources of funding. Without an appropriately stable funding profile for its U.S. intermediate holding company, a foreign banking organization faces the risk that a liquidity stress in the United States affecting its U.S. intermediate holding company may adversely affect the U.S. operations of the foreign banking organization and U.S. financial stability.

Under the NSFR proposed rule, a U.S. bank holding company that is a subsidiary of a foreign banking organization could be subject to the existing proposed NSFR requirements if it meets certain criteria on a stand-alone basis. In all cases, such a bank holding company would also be registered as a U.S. intermediate holding company because it was established or designated as such to meet the requirements of the Board's enhanced prudential standards rule.[116] This proposal would replace any requirements that were included in the NSFR proposed rule for a U.S. intermediate holding company with a requirement that a foreign banking organization calculate and maintain an NSFR for its U.S. intermediate holding company. Similar to the proposed change in the application of LCR requirements, the Board is proposing the change in the application of the proposed NSFR requirements for U.S. intermediate holding companies in order to tailor these requirements based on a foreign banking organization's combined U.S. operations, for the reasons discussed above.

Question 49: What are the advantages and disadvantages of applying an NSFR requirement to a foreign banking organization with respect to its U.S. intermediate holding company? In what way, if any, should the Board amend the scope of the proposed requirements?

Question 50: How should the Board address the risks associated with the stable funding profile of a foreign banking organization's U.S. branch and agency network?

Question 51: What would be the advantages and disadvantages of the proposed approach, and potential alternatives, to the transferability of liquidity within a consolidated U.S intermediate holding company? What incentives would each have with respect to stable funding within a foreign banking organization's U.S. operations? What effects would the proposed approach, or alternative approaches, have on the safety and soundness of a foreign banking organization's U.S. operations?

D. LCR and NSFR Public Disclosure for Foreign Banking Organizations and U.S. Banking Organizations

The proposal would require a foreign banking organization subject to Category II or III liquidity standards, or subject to Category IV liquidity standards with $50 billion or more in weighted short-term wholesale funding, to publicly disclose its LCR and NSFR with respect to its U.S intermediate holding company, and certain components of each ratio's calculation.[117] A foreign banking organization would disclose the ratios

[113] *See* 12 CFR 252.157(c)(2)(iv)(C) and (c)(3)(iv)(C).

[114] As discussed in section V.F of this **SUPPLEMENTARY INFORMATION** section, *infra,* the proposal would also require covered depository institution subsidiaries of foreign banking organizations subject to Category II or III standards to calculate and maintain an NSFR.

[115] *See* proposed § 249.204

[116] *See* 12 CFR 252.153.

[117] *See* proposed § 249.290.

and their components on a quarterly basis in a direct and prominent manner consistent with the requirements for large U.S. depository institution holding companies under the Board's LCR rule and Board's NSFR proposed rule.[118]

The proposal would also amend the regulation text and the format of the disclosure tables used in subpart J of the LCR rule and subpart N of the NSFR proposed rule to require a banking organization to publicly disclose information related to its net cash outflow amount and required stable funding amount, respectively, before and after the application of any applicable percentage adjustment. These amendments would apply to both foreign banking organizations and U.S. banking organizations.

The Board has long supported meaningful public disclosure by banking organizations with the objectives of improving market discipline and encouraging sound risk management practices. Market discipline can mitigate risk to financial stability by creating incentives for a banking organization to internalize the costs of its liquidity profile and encouraging safe and sound banking practices. Companies with less-resilient profiles would be incentivized to improve their liquidity positions, and companies with more resilient liquidity profiles would be encouraged to maintain their sound risk management practices.

Question 52: How should the proposed public disclosure requirements with respect to a U.S. intermediate holding company be adjusted to better assist the functioning of the standardized liquidity requirements and support market discipline? In what way, if any, should the scope of public disclose be amended?

Question 53: What are the advantages and disadvantages of requiring disclosure of the LCR and NSFR for a U.S. intermediate holding company and certain of their components, consistent with the disclosure requirements applicable to a bank holding company?

Question 54: What are the advantages or disadvantages of applying the proposed public disclosure requirements to foreign banking organizations subject to Category IV standards?

E. Request for Comment on Standardized Liquidity Requirements With Respect to U.S. Branches and Agencies of a Foreign Banking Organization

The Board is currently proposing to require certain foreign banking organizations to comply with LCR and NSFR requirements with respect to any U.S. intermediate holding company, and the agencies are proposing to apply corresponding LCR and NSFR requirements to the covered depository institution subsidiaries of foreign banking organizations subject to Category II or III standards. As an additional component of the proposed liquidity framework, the Board is requesting comment on whether it should impose standardized liquidity requirements to foreign banking organizations with respect to their U.S. branch and agency networks, as well as possible approaches for doing so. The Board would propose any such requirements in a future notice of proposed rulemaking.

While the standardized liquidity requirements under the proposal would address liquidity risks at the significant U.S. subsidiaries of a foreign banking organization, liquidity vulnerabilities could still arise at the U.S. branches and agencies of a foreign banking organization, which could generate significant risks in the United States. As discussed above, risks to U.S. financial stability and liquidity risks to a foreign banking organization's U.S. operations can arise from any part of a foreign banking organization's U.S. operations. During stress conditions, liquidity needs can arise suddenly and tend to manifest in all parts of an organization. For instance, funding vulnerabilities at the U.S. branches and agencies of a foreign banking organization can cause heightened liquidity risk exposure not only at the branches and agencies themselves, but also at the foreign banking organization's U.S. subsidiaries, and vice versa. In addition, a foreign banking organization's U.S. branches and agencies can have significant scale and risk profile in the United States, and an inability to meet liquidity needs could lead to disruptions in U.S. financial stability in a similar manner to the distress or failure of other large banking organizations or segments of a foreign banking organization.

In general, the operations of foreign banking organizations conducted through U.S. branches and agencies have distinct characteristics, funding structures, and liquidity risks. U.S. branches of foreign banking organizations tend to rely on less stable, short-term wholesale funding to a greater extent than U.S. bank holding companies because of their structure and business model. For example, U.S. branches of a foreign banking organization are generally not permitted to accept retail deposits from U.S. citizens and residents.[119] As discussed above, the reliance of a large banking organization, or of the significant U.S. operations of a foreign banking organization, on short-term wholesale funding relative to more stable funding sources presents greater liquidity risks to safety and soundness and U.S. financial stability, particularly during periods of stress. In addition, foreign banking organizations often use U.S. branches to fund the larger global operations of the firm. For example, under the ''funding branch'' model, a foreign banking organization, via its U.S. branches, borrows in the U.S. wholesale funding markets to finance long-term, U.S. dollar-denominated project and trade finance around the world. This model presented challenges during the financial crisis, when disruptions in wholesale funding markets in the United States limited the ability of U.S. branches of foreign banking organizations to secure wholesale funding to satisfy the demands of their local and global operations.[120] This interaction resulted in foreign banking organizations borrowing extensively from the Federal Reserve System in order to continue operations.

In combination with the proposed LCR requirement with respect to a U.S. intermediate holding company, the goal of a standardized liquidity requirement with respect to a foreign banking organization's U.S. branch and agency network is to strengthen the overall resilience of the firm's U.S. operations to liquidity risks and help to prevent transmission of risks between the various segments of the foreign banking organization. Without appropriate liquid asset coverage for all components of the U.S. operations of a foreign banking organization, a foreign banking organization faces the risk that a liquidity stress in a single part of the firm may adversely affect the U.S. operations and U.S. financial stability. Even where a foreign banking organization with significant U.S. operations is subject to consolidated

[118] The format and content requirements for public disclosure for the LCR are described in 12 CFR part 249, subpart J. *See also* ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,'' 81 FR 94922 (Dec. 27, 2016). The proposed format and content requirements for the disclosure of an NSFR are described in the NSFR proposed rule.

[119] *See* 12 U.S.C. 3104.

[120] *See, e.g.,* Linda Goldberg and David Skeie, ''Why Did U.S. Branches of Foreign Banks Borrow at the Discount Window during the Crisis,'' Federal Reserve Bank of New York Liberty Street Economics (April 13, 2011).

liquidity requirements in its home jurisdiction, the application of a standardized liquidity requirement with respect to its U.S. branch and agency network, in addition to its significant U.S. subsidiary operations, would require these firms to align the location of liquid assets with the location of their liquidity risks in the United States, in order to ensure better protection against risks to the U.S. operations and to U.S. financial stability.

Such requirements are designed to ensure a more level playing field for liquidity regulations across the U.S. operations of foreign banking organizations and U.S. banking organizations with similar levels of liquidity risk. As noted above, while large U.S. banking organizations are subject to both firm-specific liquidity requirements, such as internal liquidity stress testing and buffer requirements, and standardized liquidity requirements, such as the LCR rule, a foreign banking organization is not currently subject to standardized liquidity requirements with respect to its U.S. branch and agency network, despite generally significant reliance on less stable forms of funding. Application of a standardized liquidity requirement is intended to provide a more consistent framework to address such risks.

The Board is seeking comment on two potential approaches, as well as other alternatives, for standardized liquidity requirements to address the liquidity risks of the U.S. branches and agencies of a foreign banking organization with significant U.S. operations. As discussed further below, the first possible approach would be based on the LCR rule, applied to a foreign banking organization with respect to its U.S. branches and agencies in the aggregate. The second described approach would apply a requirement to a foreign banking organization tied to the asset size of the foreign banking organization's U.S. branch and agency network. The first approach would be more sensitive to liquidity risk, while the second would be simpler. The Board also requests comment on other, alternative approaches. In evaluating potential approaches to standardized liquidity requirements, the Board is mindful that U.S. branches and agencies are parts of larger global banks and play an important role in ensuring firms can meet their global U.S. dollar needs. Accordingly, the Board is seeking comment on how standardized liquidity requirements should be adjusted to reflect these factors.

1. Option 1: LCR-Based Approach for the U.S. Branch and Agency Network of a Foreign Banking Organization

As one potential approach for addressing the near-term liquidity risks of a foreign banking organization's U.S. branches and agencies, the Board requests comment on a liquid asset requirement that would be generally similar to the LCR rule. Under this option, the Board could require a foreign banking organization to calculate and maintain an LCR with respect to its U.S. branches and agencies on an aggregate basis. Requiring calculation on an aggregate basis would be consistent with the approach taken with the internal liquidity stress testing and buffer requirements that apply under the Board's enhanced prudential standards rule with respect to the U.S. branches and agencies of a foreign banking organization.[121] The liquidity requirements with respect to the U.S. branch and agency network would be based on the size and risk profile of the foreign banking organization's combined U.S. operations, consistent with the approach proposed with respect to U.S. intermediate holding companies.

Application of an LCR requirement would help to ensure a consistent minimum capability to estimate liquidity needs in stress and ensure a minimum level of liquid assets to cover such needs, which are core elements of sound liquidity risk management.[122] A standardized approach based on the risk of stressed outflows would complement a foreign banking organization's idiosyncratic risk modeling under the Board's enhanced prudential standards rule.[123]

To the extent a standardized approach were to align with the current LCR rule, such an approach could promote consistency and compliance efficiencies with LCR requirements applied with respect to a U.S. intermediate holding company of a foreign banking organization and covered depository institution subsidiaries. Such an approach would also facilitate supervisory comparisons between the liquidity risk profiles of the U.S. branch and agency networks of foreign banking organizations, the U.S. subsidiary operations of foreign banking organizations, and U.S. banking organizations. Because of the LCR rule's consistency with the Basel III LCR, an LCR-based approach would also address liquidity risk exposures of a foreign banking organization's U.S. operations in a manner generally consistent with home jurisdiction requirements for the global consolidated foreign banking organization, which could reduce operational costs and facilitate more integrated liquidity risk management. Furthermore, to the extent that the Board were to align the scope of application of any U.S. branches and agencies requirement for foreign banking organizations with the scope of application under the proposal, alignment with existing regulatory reporting by foreign banking organizations under the Board's FR 2052a Complex Institution Liquidity Monitoring Report could limit the incremental operational costs of calculating an LCR-based requirement, given that FR 2052a reporting closely aligns with the component elements of an LCR calculation.

Question 55: If the Board were to propose an LCR-based requirement for foreign banking organizations with respect to their U.S. branch and agency network, in what ways should the requirement be consistent with the LCR rule, interagency domestic proposal, or the proposed LCR requirement for the U.S. intermediate holding company of a foreign banking organization? What changes should be made to address the risks and structure of a foreign banking organization's U.S. branches and agencies?

Question 56: Which definitions in the LCR rule, if any, should the Board adjust, and in what ways, for an LCR calculation with respect to a foreign banking organization's U.S. branch and agency network?

Question 57: Any standardized liquidity requirement for U.S. branches and agencies would need to define the types and quality of assets that would be appropriate to cover the risk of potential outflows. Under an LCR-based approach, what differences, if any, should the Board apply to the definition of HQLA for U.S. branches and agencies relative to the definition under the LCR rule?

Question 58: The LCR rule includes criteria for determining eligible HQLA of a banking organization, including operational requirements and generally applicable criteria. What differences should the Board consider, if any, to ensure that eligible HQLA are available to meet the stressed cash outflows of a foreign banking organization's U.S. branch and agency network? In what ways, if any, should the operational

[121] 12 CFR 252.157(a)(1)(i)(B) and (c)(3).

[122] *See* OCC, Board, FDIC, Office of Thrift Supervision, and National Credit Union Administration, ''Interagency Policy Statement on Funding and Liquidity Risk Management,'' 75 FR 13656 (March 22, 2010) and BCBS, ''Principles of sound liquidity risk management and supervision,'' (September 2008).

[123] *See* 12 CFR 252.157.

requirements or generally applicable criteria differ in order to align with the liquidity risk management operations of foreign banking organizations?

Question 59: The generally applicable criteria in the LCR rule include certain requirements to ensure that the assets included as HQLA are free from encumbrance and may be freely monetized to meet outflows. How should an LCR approach take into account the operating structures of U.S. branches and agencies of foreign banking organizations in the United States for purposes of determining eligible HQLA? For example, a federal or state branch operating in the United States may hold amounts of HQLA to meet other regulatory requirements, such as the capital equivalency deposits (CED) requirement applicable to a federal branch.[124] *In light of the criteria for determining eligible HQLA under the LCR rule, what, if any, changes to relevant rules or policies should the agencies consider regarding the treatment of assets held for the purpose of satisfying other regulatory requirements, such as assets held to meet CED requirements or other asset maintenance requirements, and why?*

Question 60: How should an LCR-based approach take into account the transferability of assets between U.S. branches and agencies for purposes of determining the eligible HQLA of a foreign banking organization's U.S. branch and agency network? For example, a U.S. branch or agency may be subject to a regulatory restriction in place in a given state that could limit the transferability of assets from that branch or agency to another branch or agency that is part of the U.S. branch and agency network.

Question 61: In what ways, if any, should the calculation of the HQLA amount by a foreign banking organization for its U.S. branch and agency network differ from the calculation that a foreign banking organization would conduct under the proposal with respect to a U.S. intermediate holding company? For example, how should an LCR approach incorporate the haircuts and composition caps on level 2 liquid assets that are included in the current LCR rule? What adjustments, if any, would need to be made to the definitions in the LCR rule to facilitate these calculations?

Question 62: The current LCR framework uses outflow amounts and inflow amounts for a 30-day time horizon. What would be the advantages and disadvantages of using the same time horizon for the outflow amounts and inflow amounts of a foreign banking organization's U.S. branch and agency network?

Question 63: If the minimum standardized liquidity requirement for the U.S. branch and agency network of a foreign banking organization were to be calibrated based on a time horizon other than the LCR's 30-day time horizon, the approach would need to address the timing of net cash outflows. Under the LCR rule, one set of outflow amounts and inflow amounts are directly associated with a time horizon and therefore included in the net cumulative maturity outflow amount in the maturity mismatch add-on calculation. The remaining set of contractual and contingent outflow amounts and inflow amounts are not included in the net cumulative maturity outflow amount and are not directly associated with specific time horizon within the LCR's 30-day window. How should the outflow amounts and inflow amounts be calibrated for a given time horizon, and why?

Question 64: How could specific outflow amounts and inflow amounts for a foreign banking organization's U.S. branches and agencies appropriately reflect the relevant risks? What, if any, modifications would be required to the outflow amounts and inflow amounts described in §§ __. 32 and __.33 respectively of the LCR rule for a U.S. branch and agency LCR calculation? For example, the LCR rule excludes transactions between two subsidiaries of a consolidated holding company subject to the rule. For calculations involving a foreign banking organization's U.S. branch and agency network, what transactions should be excluded and why?

Question 65: Use of a standardized liquidity requirement for U.S. branches and agencies that is similar to a foreign banking organization's proposed LCR requirement for a U.S. intermediate holding company could provide greater consistency across the approaches. However, there may be outflow amounts and inflow amounts described in the proposal that need to be adapted for U.S. branches and agencies, or that may not be relevant and could be omitted. For example, the LCR rule includes a provision, the ''broker-dealer segregated account inflow amount,'' that allows a banking organization subject to the rule to determine the extent to which it may, over the course of the LCR 30-calendar day time horizon, take into account any reduction in regulatory asset maintenance requirements that would occur in a manner consistent with the LCR's outflow and inflow calculations.[125] *If the Board were to apply an LCR requirement to a foreign banking organization with respect to its U.S. branches and agencies, to what extent, if any, should such an approach be included for forms of client protection requirements or other potential reductions in regulatory requirements, such as CED requirements of a branch or other asset maintenance requirements?*

Question 66: As described in the proposal for a foreign banking organization's U.S. intermediate holding company calculation, the LCR inflow cap of 75 percent of total outflow amounts would not reflect any specific reliance of a foreign banking organization's U.S. operations on anticipated affiliate inflows. What alternative limits, if any, should be applied to the inflow amounts of a foreign banking organization's U.S. branch and agency network, and why? Given the structure of U.S. branch and agency funding, how should inflows from U.S. and foreign affiliated legal entities and offices be treated, and why? For example, what would be the advantages and disadvantages under an LCR-based approach of preventing or otherwise limiting the ability of a foreign banking organization to assume reliance on inter-affiliate inflows to offset outflows?

Question 67: When considered in combination with a foreign banking organization's LCR calculation for any U.S. intermediate holding company described in the proposal, how should a standardized approach for U.S. branches and agencies achieve comprehensive coverage of the short-term liquidity risks of a foreign banking organization's U.S. operations? In what ways, if any, should an approach to addressing the liquidity risks of a foreign banking organization's U.S. branches and agencies capture the risk of stressed cash outflows within the United States that could result from transactions, instruments and obligations booked at affiliated legal entities and offices outside of the foreign banking organization's U.S. operations?

Question 68: If the Board were to implement standardized liquidity requirements for foreign banking organizations with respect to their U.S. branch and agency networks, what would be the advantages and disadvantages of public disclosures associated with such requirements? What form should such public disclosures take and why?

[124] *See* 12 CFR 28.15.

[125] *See* 12 CFR 50.33(g) (OCC), 12 CFR 249.33(g) (Board), and 12 CFR 329.33(g) (FDIC).

2. Option 2: Simplified Liquidity Requirement Based on U.S. Branch and Agency Total Assets

An alternative approach for a minimum standardized liquidity requirement could be to require a foreign banking organization to maintain within its U.S. branch and agency network an amount of liquid assets of prescribed quality exceeding a prescribed percentage (for example 20 percent) of the total aggregate U.S. branch and agency network assets. Such a requirement could function as a floor to existing non-standardized liquidity requirements.

The minimum amount of liquid assets required under such an approach could depend on the interaction with other regulatory standards. For example, the minimum requirement could be reduced (for example, to 15 percent) to reflect assets of a foreign banking organization's U.S. branches and agencies that have appropriate liquidity characteristics and are held to meet other regulatory requirements, such as CED requirements applicable to a federal branch or other asset maintenance requirements, even if those assets might not necessarily be available to meet outflows outside of particular circumstances specified under those requirements.

The Board requests comment on all aspects of this approach, including overall calibration and potential criteria for determining which assets could be permitted to satisfy a simplified liquidity requirement. One approach could align with the criteria used under other liquidity requirements, such as the criteria for highly liquid assets used for purposes of the liquidity buffer requirements under the Board's enhanced prudential standards rule or HQLA under the LCR rule. Alternatively, a foreign banking organization could satisfy a simplified liquidity requirement with assets that meet the criteria for HQLA set forth in the LCR rule, or a simplified version of these criteria. For example, the criteria could include the HQLA criteria under section 20 of the LCR rule without regard to the additional requirements for eligible HQLA under section 22 or the standardized haircuts and liquid asset composition limits under section 21.

Question 69: Relative to an LCR-based approach, when applied to foreign banking organizations with similarly sized U.S. operations, a requirement tied only to the asset size of a foreign banking organization's U.S. branches and agencies would tend to result in lower requirements for foreign banking organizations with greater measures of liquidity risk and higher requirements for foreign banking organizations with lower measures of liquidity risk. What would be the advantages or disadvantages of such a result? What incentives could be created?

Question 70: How should a requirement based on asset size take into account off-balance sheet exposures, such as in connection with commitments and derivatives, which can represent a material source of liquidity risk to the U.S. operations of a foreign banking organization?

Question 71: What would be the advantages and disadvantages of basing a more simple branch and agency liquidity requirement on measures other than or in addition to aggregate U.S. branch and agency assets? What measures should be included and in what ways under such an approach?

Question 72: What would be the advantages and disadvantages of permitting assets held to meet another regulatory requirement to reduce the required level of liquid assets under a standardized liquidity requirement? How would such an approach align with how a foreign banking organization considers, for purposes of its internal liquidity risk management practices, assets required to be held under a particular regulation to be available to meet liquidity needs under various economic and financial market conditions?

Question 73: What criteria should be applied for liquid assets to satisfy a simplified, standardized liquidity requirement based on aggregate U.S. branch and agency assets? How should such an approach incorporate a foreign banking organization's ability to monetize these assets? What, if any, standardized haircuts to the fair market value should be applied and what aggregate composition limits, if any, should be applied, and why?

Question 74: To what extent would different approaches for a standardized liquidity requirement create incentives for a foreign banking organization to restructure the business models of U.S. branches and agencies?

Question 75: What other approaches should the Board consider for standardized liquidity requirements to address the liquidity risks of the U.S. branches and agencies of a foreign banking organization with significant U.S. operations? Please provide the rationale for any alternative approach and a detailed description of how the approach could mechanically operate in conjunction with existing statutory and regulatory requirements. What would be the advantages and disadvantages to an alternative approach for standardized liquidity requirements? Commenters are encouraged to provide data to support their responses.

F. LCR and NSFR Requirements for Certain Depository Institution Subsidiaries of a Foreign Banking Organization

The agencies are proposing to apply LCR and NSFR requirements to certain large depository institution subsidiaries of foreign banking organizations subject to Category II or III liquidity standards. Specifically, LCR and NSFR requirements would apply to any covered depository subsidiary (that is, a depository institution that has total consolidated assets of $10 billion or more and is a consolidated subsidiary of a U.S. intermediate holding company of a foreign banking organization) of a foreign banking organization that is subject to Category II or III liquidity standards.[126] The level of the LCR requirement applicable to the covered depository institution subsidiary would be the same as the level that would apply to the foreign banking organization. For example, a depository institution with $10 billion in total consolidated assets that is a subsidiary of a U.S. intermediate holding company of a foreign banking organization subject to the reduced LCR requirement under Category III liquidity standards would itself be subject to the reduced LCR requirement.

The risk-based indicators for Categories II and III reflect the systemic risk profile and safety and soundness risk profile of the U.S. operations of a foreign banking organization, of which a large depository institution subsidiary is a significant part. Each of these indicators heightens the need for sophisticated measures to monitor and manage liquidity risk, including at a covered depository institution subsidiary. Such depository institution subsidiaries are part of the U.S. operations of a foreign banking organization with a more significant liquidity risk profile and whose failure or distress could impose significant costs on the U.S. financial system and economy. The liquidity challenges of such firms therefore make it appropriate to ensure that a large depository institution subsidiary maintains sufficient liquidity to cover outflows generated from its activities rather than relying on other entities of the U.S.

[126] The proposal would measure the total consolidated assets of a subsidiary depository institution based on the average level over the previous four calendar quarters. *See* section III.C of this Supplementary Information section, regarding determination of the applicable category of standards.

operations of the foreign banking organization.

The agencies are not proposing to apply LCR or NSFR requirements to covered depository institution subsidiaries of foreign banking organizations subject to Category IV standards, based on the lesser risk profile of their U.S. operations relative to those of firms that would be subject to Category II or III standards.

G. Transition Period; Cessation of Applicability

The proposal would provide initial transition periods for foreign banking organizations and covered depository institution subsidiaries to comply with the proposed LCR requirements.[127] The compliance date for a foreign banking organization with respect to its U.S. intermediate holding company would depend on whether the U.S. intermediate holding company is subject to the LCR rule at the effective date of a final rule. Except as noted below, a covered depository institution subsidiary would be required to comply with any applicable proposed LCR requirement beginning on the same date. More specifically:

- If a U.S. intermediate holding company of a foreign banking organization is subject to the full LCR requirement as a covered company (for example, as a bank holding company) under the current LCR at the effective date of a final rule, the foreign banking organization would be required to comply with the applicable proposed LCR requirement (full or reduced) with respect to its U.S. intermediate holding company beginning on the effective date of the final rule. A covered depository institution subsidiary would be required to comply with any applicable proposed LCR requirement beginning on the same date.
- If a U.S. intermediate holding company of a foreign banking organization is subject to the modified LCR requirement (for example, as a bank holding company) under the current LCR rule at the effective date of a final rule, the foreign banking organization would be required to comply with the proposed LCR requirement with respect to its U.S. intermediate holding company beginning on the effective date. However, for one year following the effective date of the final rule, the LCR calculation with respect to the U.S. intermediate holding company would be on a monthly basis, would not include a maturity-mismatch add-on, and would use a 70 percent outflow adjustment factor. In addition, no LCR requirement would apply to a covered depository institution subsidiary of such a foreign banking organization until one year following the effective date of the final rule.[128] The foreign banking organization and any covered depository institution subsidiary would be required to comply with the maturity mismatch add-on, any applicable outflow adjustment factor, and any applicable daily calculation requirement beginning the first day of the calendar quarter that is one year following the effective date of the final rule.
- If a U.S. intermediate holding company of a foreign banking organization is not a covered company under the LCR rule at the effective date of a final rule, the foreign banking organization would be required to comply with the proposed LCR requirement with respect to the U.S. intermediate holding company beginning on the first day of the calendar quarter that is one year following the effective date. A covered depository institution subsidiary would be required to comply with any applicable proposed LCR requirement beginning on the same date.

Following the date that is one year after adoption of a final rule (or, in the case of the proposed NSFR requirement, following the effective date of that requirement), a foreign banking organization would be required to comply with the requirements based on its applicable category of standards, according to the same timing as would apply to a U.S. banking organization under the domestic interagency proposal.[129] Specifically, under the proposal, a foreign banking organization that becomes subject to the proposed LCR or NSFR requirements after the initial effective date would be required to comply with these requirements on the first day of the second quarter after the foreign banking organization became subject to these requirements, consistent with the amount of time currently provided under the LCR rule and NSFR proposed rule after the currently applicable year-end measurement date.[130]

In addition, the current LCR rule provides newly covered banking organizations with a transition period for the daily calculation requirement, recognizing that a daily calculation requirement could involve significant operational and technology demands. Specifically, under the current rule, a newly covered banking organization must calculate its LCR monthly from April 1 to December 1 of its first year of compliance. Beginning on January 1 of the following year, the banking organization must calculate its LCR daily.[131] The proposal would maintain this transition period of three calendar quarters following initial applicability of a daily LCR calculation requirement to a foreign banking organization.[132]

Under the proposal, like the current LCR rule and NSFR proposed rule, once a foreign banking organization is subject to the proposed LCR or NSFR requirements, it would remain subject to the rule until the Board determines that application of the rule would not be appropriate in light of the foreign banking organization's asset size, level of complexity, risk profile, or scope of operations. This approach would be consistent with the cessation provisions that apply to U.S. banking organizations under the current LCR rule and NSFR proposed rule, and that would continue to apply under the domestic interagency proposal.

Question 76: What would be the advantages and disadvantages of maintaining the cessation provisions of the LCR rule and NSFR proposed rule? What would be the advantages and disadvantages of aligning the cessation provisions in the LCR rule and NSFR proposed rule with the transition provisions between categories of standards? For example, the current version of the LCR rule provides that, once a banking organization becomes subject to the LCR rule, it remains subject to the LCR rule until its regulator determines in writing that application of the LCR rule is no longer appropriate. What are the advantages and disadvantages of requiring a written determination before a banking organization can move to a lower category? What would be the advantages

[127] The agencies will address the relevant effective and compliance dates of the NSFR in the final NSFR rule.

[128] This transition provision would apply to a depository institution that is not subject to the LCR rule and is a subsidiary of a covered company subject to the modified LCR requirement at the effective date of the final rule.

[129] *See* section III.C of this Supplementary Information section regarding determination of applicable category of standards.

[130] Under the LCR rule and NSFR proposed rule, a banking organization that meets the thresholds for applicability measured as of the year-end must comply with the requirement(s) beginning on April 1 of the following year, or as specified by the appropriate agency. *See* 12 CFR 50.1(b)(2) (OCC); 12 CFR 249.1(b)(2) (Board); 12 CFR 329(1)(b)(2) (FDIC); and NSFR proposed rule. *See also* LCR FR rule, 79 FR at 61447.

[131] *See id.*

[132] For clarification, the proposed 3-quarter transition period would apply only to a foreign banking organization that becomes subject to a daily LCR calculation requirement after the effective date of a final rule; the 3-quarter transition period would not be additive to any initial transition period that would apply to a foreign banking organization in connection with the effective date.

and disadvantages of automatically moving the category of a banking organization based on its size and indicators over the preceding four quarters?

VI. Re-Proposal of Standardized Liquidity Requirements for Certain U.S. Depository Institution Holding Companies Subject to Category IV Standards

The domestic interagency proposal would not have included LCR and NSFR requirements for U.S. banking organizations subject to Category IV standards, based on an assessment that these banking organizations generally have more traditional balance sheet structures, are largely funded by stable retail deposits, and have less reliance on less stable short-term wholesale funding.[133] However, as discussed above in section V.A.3 of this **SUPPLEMENTARY INFORMATION** section, the Board observed that some banking organizations that meet the criteria for Category IV standards could potentially have a heightened liquidity risk profile. Thus, this proposal includes additional tailoring of liquidity requirements for both foreign banking organizations and domestic holding companies subject to Category IV standards in order to ensure that standardized liquidity requirements apply to all banking organizations with heightened liquidity risks.[134] As a result, this proposal would modify the applicable standardized liquidity requirements for domestic holding companies described in the domestic interagency proposal. Accordingly, the Board is accepting comments and information during this reopened comment period for the domestic interagency proposal with respect to this modification.

As discussed in section V.A.3 of this **SUPPLEMENTARY INFORMATION** section, the Board is proposing to apply standardized liquidity requirements to certain foreign banking organizations subject to Category IV standards if the reliance of the foreign banking organization's U.S. operations on short-term wholesale funding is significant relative to the firm's combined U.S. assets. The proposal would also apply consistent requirements to U.S. depository institution holding companies that meet the same indicators of risk. Specifically, a U.S. depository institution holding company subject to Category IV standards would be subject to reduced LCR and NSFR requirements if the firm has $50 billion or more in weighted short-term wholesale funding. As with the proposed reduced LCR and NSFR requirements that would apply to certain banking organizations subject to Category III standards, the Board requests comment on a range of potential calibrations for the reduced requirement, between 70 and 85 percent. The proposal would require such a U.S. depository institution holding company standards to publicly disclose its LCR and NSFR and certain components of each ratio's calculation.[135]

For a U.S. banking organization subject to Category IV standards, $50 billion or more in weighted short-term wholesale funding would be significant relative to the banking organization's total assets. Such banking organizations do not have a traditional balance sheet structure, rely less on funding from stable deposits, and have material reliance on less stable wholesale funding. Accordingly, a banking organization that meets these criteria would have a higher level of liquidity risk than other banking organizations subject to Category IV standards.

However, to reflect the lesser risk profile of these banking organizations relative to U.S. banking organizations that meet the criteria for Category I, II, or III standards under the domestic interagency proposal and foreign banking organizations that meet the criteria for Category II or III standards under this proposal, the Board is proposing to require calculation of the LCR on a monthly basis, rather than each business day. In addition, the agencies are not proposing to apply an LCR or NSFR requirement to the depository institution subsidiaries of such firms.

Question 77: What are the advantages and disadvantages of applying a reduced LCR and NSFR requirement to U.S. depository institution holding companies subject to Category IV standards that have $50 billion or more in weighted short-term wholesale funding?

Question 78: Between a range of 70 and 85 percent of the full requirements, what calibration should the Board adopt for the reduced LCR and NSFR requirements for U.S. depository institution holding companies subject to Category IV standards that have $50 billion or more in weighted short-term wholesale funding, and why?

VII. Technical Amendments

In the domestic interagency proposal, the agencies stated that changes in liquidity requirements that result from a change in category would take effect on the first day of the second quarter following the change in the banking organization's category.[136] However, the domestic interagency proposal did not include proposed regulation text to give effect to this intended treatment. The agencies are making a technical amendment in the regulation text included with this proposal to provide this treatment for U.S. banking organizations. The agencies are also making a technical amendment in both the capital and liquidity regulation text to clarify that a subsidiary depository institution of a depository institution would be categorized based on the risk profile of its parent depository institution.

VIII. Impact Assessment

The Board assessed the potential impact of the proposal, taking into account current levels of capital and holdings of HQLA at affected foreign banking organizations, potential benefits in the form of reduced liquidity risk at large foreign banking organizations, and potential costs related to decreased activity in global dollar funding markets.

The Board expects the proposal to have no material impact on the capital levels of foreign banking organizations that would be subject to Category II standards. For foreign banking organizations that would be subject to Category III standards and that currently reflect AOCI in regulatory capital, the Board estimates that the proposal would slightly lower capital requirements under current conditions (depending on the data on cross-jurisdictional activity, by between $2 billion to $3 billion, or between 0.5 to 0.6 percent of total risk-weighted assets at these banking organizations), as such firms would not be required to reflect AOCI in regulatory capital.[137] This impact could vary under different economic and market conditions. For example, from 2001 to 2018, the aggregate AOCI for banking organizations that would be subject to

[133] *See* domestic interagency proposal, 83 FR 66024, 66037 (December 21, 2018).

[134] The Board is proposing consistent requirements for both U.S. and foreign banking organizations that meet these criteria. Section V.A.3 of this **SUPPLEMENTARY INFORMATION** section discusses the proposed Category IV liquidity standards for foreign banking organizations.

[135] As noted above, the format and content requirements for public disclosure for the LCR are described in 12 CFR part 249, subpart J. *See also* ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,'' 81 FR 94922 (Dec. 27, 2016). The proposed format and content requirements for the disclosure of an NSFR are described in the NSFR proposed rule.

[136] 83 FR at 66033.

[137] The Board's analysis uses aggregate AOCI data from the FR Y–9C as of September 30, 2018.

Category III standards under the proposal that included AOCI in capital ranged from an estimated decrease of approximately 90 basis points of total risk-weighted assets to an estimated increase of approximately 70 basis points of total risk-weighted assets.[138]

For purposes of assessing the potential impact of the proposed changes to the liquidity standards, the Board's assessment focused on the impact of the proposed change in the applicability and the stringency of the LCR rule, taking into account firms' internal liquidity stress test requirements.[139] As the proposal would reduce requirements for some firms and increase requirements for others, the Board quantified the net impact of the proposal on the required HQLA of affected foreign banking organizations with respect to their U.S. intermediate holding companies.[140]

Board staff estimated that, under the proposal, liquidity requirements would be expected to increase by between $1 billion to $10 billion for foreign banking organizations in aggregate, depending on the data on cross-jurisdictional activity and on whether the reduced LCR requirement were set at 70 or 85 percent.[141] The increase in requirements would represent between a 0.5 to 4 percent increase in total liquidity requirements for the U.S. intermediate holding companies of foreign banking organizations. Foreign banking organizations affected by the proposal increased their holdings of liquid assets after the financial crisis, and most or all already hold sufficient HQLA to meet the proposed requirements at their U.S. subsidiaries. Board staff estimated that the proposal would require foreign banking organizations in the aggregate to increase U.S. HQLA by between zero to $1 billion, or by up to 0.5 percent of total HQLA holdings at affected firms for the second quarter ending June 30, 2018, in order to satisfy the proposed LCR requirement.

The Board does not expect liquidity requirements to increase for any banking organization based on the modification of the domestic interagency proposal to apply standardized liquidity requirements to U.S. depository institution holding companies subject to Category IV standards that have $50 billion or more in weighted short-term wholesale funding, as no U.S. depository institution holding companies currently meet these criteria.

In addition to assessing the potential impact of the proposal on LCR minimum requirements, the Board assessed the broader costs and benefits associated with the liquidity regulation of foreign banking organizations. One potential benefit is that the proposal would strengthen the safety and soundness of foreign banking organizations with respect to their U.S. operations. The Board estimated the relationship between holdings of liquid assets and, as a measure of liquidity stress, the usage of Federal Reserve liquidity facilities during the financial crisis, and found that, controlling for other factors, foreign banking organizations with more liquid assets were less likely to access these facilities.[142] Moreover, among foreign banking organizations that accessed these facilities, those with more liquid assets used these facilities less intensively.

A potential cost of liquidity regulation for foreign banking organizations is the reduced efficiency of global dollar markets.[143] Foreign banking organizations help integrate global dollar markets by supplying dollars in these markets or engaging in derivatives transactions, and short-term funding helps facilitate these activities. Liquidity regulation may reduce incentives for some foreign banking organizations to engage in such activities, with potentially adverse effects on the functioning of global dollar markets.

As the immediate effect of the proposed change for foreign banking organizations is estimated to be between a zero to 0.5 percent increase in HQLA, the anticipated effects on these firms' safety and soundness and the functioning of global dollar markets are likely to be mild.

Question 79: The Board invites comment on all aspects of the foregoing impact assessment associated with the proposal. What, if any, additional costs and benefits should be considered? Commenters are encouraged to submit data on potential impacts on foreign banking organizations, as well as potential costs or benefits of the proposal that the agencies may not have considered.

IX. Administrative Law Matters

A. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[144] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the agencies incorporate to make the regulation easier to understand?

B. Paperwork Reduction Act Analysis

Certain provisions of the proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for the agencies' respective LCR rules are OCC (1557–

[138] The Board's analysis uses data from the FR Y–9C between 2001 and 2018.

[139] Because the NSFR and modified NSFR requirements have not yet been finalized, banking organizations are not currently subject to those minimum requirements. As a result, the Board did not assess any changes in impact as a result of amending its scope of application.

[140] Under the proposal, two U.S. intermediate holding companies that are currently not subject to the LCR rule would be subject to the LCR for the first time, and two U.S. intermediate holding companies currently subject to the LCR rule would no longer be required to comply with an LCR requirement.

[141] The Board's analysis estimates the impact of modifying the LCR requirement for holding companies that would be subject to Category III or Category IV standards using data submitted on the FR 2052a by these holding companies for the second quarter 2018 reporting period.

[142] The Federal Reserve liquidity facilities examined comprised of the discount window and the Term Auction Facility.

[143] Foreign banking organizations account for more than 80 percent of dollar-denominated cross-border lending globally and fund nearly a quarter of their global dollar balance sheet from their U.S. operations.

[144] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999).

0323), Board (7100–0367), and FDIC (3064–0197). The OMB control numbers for the agencies' respective regulatory capital rules are OCC (1557–0318), Board (7100–0313), and FDIC (3064–0153). These information collections will be extended for three years, with revision. The information collection requirements contained in this proposal have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposal under the authority delegated to the Board by OMB.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Board Desk Officer.

LCR Rule

Current Actions: The proposal would revise §§ __.1, __.3, __.30, __.50, and __.105 of each of the agencies' respective LCR rules and §§ 249.10, 249.90, 249.91, and 249.131 of the Board's LCR rule to require depository institution subsidiaries of certain U.S. intermediate holding companies of foreign banking organizations to calculate an LCR and NSFR. The proposal would also add subpart O of the Board's regulations, which would require certain foreign banking organizations to calculate an LCR and NSFR with respect to their U.S. intermediate holding companies. Currently, a foreign banking organization operating in the United States is not subject to the LCR rule, nor would it be subject to the NSFR proposed rule, with respect to its U.S. operations, except to the extent that a subsidiary depository institution holding company or a subsidiary depository institution of the foreign banking organization meets the relevant applicability criteria on a stand-alone basis. However, for most foreign banking organizations that would be subject to subpart O, their U.S. intermediate holding companies currently meet the relevant applicability criteria on a stand-alone basis under the current LCR rule. Subpart O contains additional reporting, recordkeeping and disclosure requirements for foreign banking organizations in §§ 249.204, 249.205, 249.206, 249.207, and 249.208.

Section 249.204 would require a foreign banking organization to maintain for each U.S. intermediate holding company a net stable funding ratio that is equal to or greater than 1.0 on an ongoing basis in accordance with § 249.3 and subparts K and L of this part as if each U.S. intermediate holding company (and not the foreign banking organization subject to this subpart) were a top-tier Board-regulated institution. In complying with § 249.204, a foreign banking organization will utilize proposed § __.108(b) of each of the agencies' respective LCR rules, which provides that if an institution includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, it must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from the consolidated subsidiaries.

Section 249.205 would be consistent with § __.22 of each the agencies' respective LCR rules. Section 249.205 requires that, with respect to each asset eligible for inclusion in the foreign banking organization' HQLA amount, the foreign banking organization must implement policies that require eligible HQLA to be under the control of the management function of the foreign banking organization that is charged with managing liquidity risk. In addition, consistent with § __.22, § 249.205 would require that a foreign banking organization have a documented methodology that results in a consistent treatment for determining that the eligible HQLA meet the requirements in § 249.205.

Section 249.206 would be consistent with § __.40 of each of the agencies' respective LCR rules. These provisions describe the reporting and recordkeeping requirements related to a shortfall in a foreign banking organization's liquidity coverage ratio.

Section 249.207 would be consistent with proposed § __.110 of the proposed NSFR rule. These provisions describe the reporting and recordkeeping requirements related to a shortfall in a foreign banking organization's net stable funding ratio.

Section 249.208 would require a foreign banking organization to disclose publicly all information for a U.S. intermediate holding company as if the U.S. intermediate holding company were subject to the disclosure requirements found in the LCR rule (§§ 249.90 and 249.91) and proposed NSFR rule (§§ 249.130 and 249.131).

For more detail on §§ __.22 and __.40, please see ''Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, Final Rule,'' 79 FR 61440 (October 10, 2014). For more detail on §§ __.90 and __.91, please see ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,'' 81 FR 94922 (Dec. 27, 2016). For more detail on §§ __.108, __.110, __.130, and __.131, please see ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements; Proposed Rule,'' 81 FR 35124 (June 1, 2016). The disclosure requirements are only for Board supervised entities. The Board would also delete the disclosure requirements in § 249.64.

Information Collections Proposed to be Revised:

OCC

OMB control number: 1557–0323.

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.

Frequency: Event generated, monthly, quarterly, annually.

Affected Public: National banks and federal savings associations.

Estimated average hours per response:

Sections 50.40(a), 50.110(a) (19 respondents)

Reporting (ongoing monthly)—.50

Sections 50.40(b), 50.110(b) (19 respondents)

Reporting (ongoing)—.50

Sections 50.40(b)(3)(iv), 50.110(b)(3) (19 respondents)

Reporting (quarterly)—.50

Sections 50.22(a)(2) and (5), 50.108(b) (19 respondents)
Recordkeeping (ongoing)—40
Sections 50.40(b), 50.110(b) (19 respondents)
Recordkeeping (ongoing)—200

Estimated annual burden hours: 4,722.

Board

OMB control number: 7100–0367.
Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with the Regulation WW.
Frequency: Event generated, monthly, quarterly, annually.
Affected Public: Insured state member banks, bank holding companies, and savings and loan holding companies, and foreign banking organizations.
Estimated average hours per response:
Sections 249.40(a), 249.110(a), 249.206(a), 249.207(a) (3 respondents)
Reporting (ongoing monthly)—.50
Sections 249.40(b), 249.110(b), 249.206(b), 249.207(a) (3 respondents)
Reporting (ongoing)—.50
Sections 249.40(b)(3)(iv), 249.110(b)(3), 249.206(b)(iv),249. 207(b)(3) (3 respondents)
Reporting (quarterly)—.50
Sections 249.22(a)(2) and (5), 249.108(b), 249.204, 249.205(a)(2) and (5) (23 respondents)
Recordkeeping (ongoing)—40
Sections 249.40(b), 249.110(b), 249.206(b), 249.207(b) (3 respondents)
Recordkeeping (ongoing)—200
Sections 249.90, 249.91, 249.130, 249.131, 249.208 (19 respondents)
Disclosure (quarterly)—24

Estimated annual burden hours: 3,370.

FDIC

OMB control number: 3064–0197.
Title of Information Collection: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (LCR).
Frequency: Event generated, monthly, quarterly, annually.
Affected Public: State nonmember banks and state savings associations.
Estimated average hours per response:
Sections 329.40(a), 329.110(a) (2 respondents)
Reporting (ongoing monthly)—.50
Sections 329.40(b), 329.110(b) (2 respondents)
Reporting (ongoing)—.50
Sections 329.40(b)(3)(iv), 329.110(b)(3) (2 respondents)
Reporting (quarterly)—.50
Sections 329.22(a)(2) and (5), 329.108(b) (2 respondents)
Recordkeeping (ongoing)—40
Sections 329.40(b), 329.110(b) (2 respondents)
Recordkeeping (ongoing)—200

Estimated annual burden hours: 497.

Disclosure Burden—Advanced Approaches Banking Organizations

Current Actions

The proposal would require a U.S. intermediate holding company subject to Category III standards to maintain a minimum supplementary leverage ratio of 3 percent given its size and risk profile. As a result, these intermediate holding companies would no longer be identified as ''advanced approaches banking organizations'' for purposes of the advanced approach disclosure respondent count.
Information Collections Proposed to be Revised:

OCC

Title of Information Collection: Risk-Based Capital Standards: Advanced Capital Adequacy Framework.
Frequency: Quarterly, annual.
Affected Public: Businesses or other for-profit.
Respondents: National banks, state member banks, state nonmember banks, and state and federal savings associations.
OMB control number: 1557–0318.
Estimated number of respondents: 1,365 (of which 18 are advanced approaches institutions).
Estimated average hours per response:
Minimum Capital Ratios
Recordkeeping (Ongoing)—16
Standardized Approach
Recordkeeping (Initial setup)—122
Recordkeeping (Ongoing)—20
Disclosure (Initial setup)—226.25
Disclosure (Ongoing quarterly)—131.25
Advanced Approach
Recordkeeping (Initial setup)—460
Recordkeeping (Ongoing)—540.77
Recordkeeping (Ongoing quarterly)—20
Disclosure (Initial setup)—328
Disclosure (Ongoing)—5.78
Disclosure (Ongoing quarterly)—41

Estimated annual burden hours: 1,136 hours initial setup, 64,945 hours for ongoing.

Board

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated with Regulation Q.
Frequency: Quarterly, annual.
Affected Public: Businesses or other for-profit.
Respondents: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).
Current actions: This proposal would amend the definition of advanced approaches Board-regulated institution to include, as relevant here, a depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, and a U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5. Category III Board-regulated institutions would not be considered advanced approaches Board-regulated institutions. As a result, the Board estimates that 1 institution will no longer be an advanced approaches Board-regulated institution under the proposal.
Legal authorization and confidentiality: This information collection is authorized by section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(c)), section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)), section 9(6) of the Federal Reserve Act (12 U.S.C. 324), and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The obligation to respond to this information collection is mandatory. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4)). Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)).
Agency form number: FR Q.
OMB control number: 7100–0313.
Estimated number of respondents: 1,431 (of which 16 are advanced approaches institutions).
Estimated average hours per response:
Minimum Capital Ratios
Recordkeeping (Ongoing)—16
Standardized Approach
Recordkeeping (Initial setup)—122
Recordkeeping (Ongoing)—20
Disclosure (Initial setup)—226.25
Disclosure (Ongoing quarterly)—131.25
Advanced Approach
Recordkeeping (Initial setup)—460
Recordkeeping (Ongoing)—540.77
Recordkeeping (Ongoing quarterly)—20
Disclosure (Initial setup)—280
Disclosure (Ongoing)—5.78

Disclosure (Ongoing quarterly)—35
Disclosure (Table 13 quarterly)—5
Risk-based Capital Surcharge for GSIBs
Recordkeeping (Ongoing)—0.5

Current estimated annual burden hours: 1,088 hours initial setup, 78,183 hours for ongoing.

Proposed revisions estimated annual burden: (787) hours.

Total estimated annual burden: 1,088 hours initial setup, 77,396 hours for ongoing.

FDIC

Title of Information Collection: Regulatory Capital Rule.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

OMB control number: 3064–0153.

Estimated number of respondents: 3,489 (of which 1 is an advanced approaches institution).

Estimated average hours per response:

Minimum Capital Ratios
Recordkeeping (Ongoing)—16.
Standardized Approach
Recordkeeping (Initial setup)—122
Recordkeeping (Ongoing)—20
Disclosure (Initial setup)—226.25
Disclosure (Ongoing quarterly)—131.25
Advanced Approach
Recordkeeping (Initial setup)—460
Recordkeeping (Ongoing)—540.77
Recordkeeping (Ongoing quarterly)—20
Disclosure (Initial setup)—328
Disclosure (Ongoing)—5.78
Disclosure (Ongoing quarterly)—41

Estimated annual burden hours: 1,136 hours initial setup, 126,920 hours for ongoing.

Reporting Burden—FFIEC and Board Forms

Current Actions

The proposal would also require changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557–0081 (OCC), 7100–0036 (Board), and 3064–0052 (FDIC)) and Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Nos. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)), which will be addressed in a separate **Federal Register** notice.

C. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total consolidated assets of $550 million or less and trust companies with total consolidated assets of $38.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As part of our analysis, we consider whether the proposal would have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 886 small entities.[145] Because the proposal only applies to IHCs with total consolidated assets of $100 billion or more, it would not impact any OCC-supervised small entities. Therefore, the proposal would not have a significant economic impact on a substantial number of small entities.

Board: In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Board is publishing an initial regulatory flexibility analysis of the proposal. The RFA requires each federal agency to prepare an initial regulatory flexibility analysis in connection with the promulgation of a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[146] Under regulations issued by the SBA, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organization).[147] Based on the Board's analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial of number of small banking organizations.

As discussed in the **SUPPLEMENTARY INFORMATION** section, the Board is proposing to adopt amendments to Regulations Q[148] and WW[149] that would affect the regulatory requirements that apply to foreign banking organizations with $50 billion or more in total consolidated assets and U.S. depository institution holding companies with $100 billion or more in total consolidated assets. Companies that are affected by the proposal therefore substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.

Because the proposal is not likely to apply to any company with assets of $550 million or less if adopted in final form, the proposal is not expected to affect any small entity for purposes of the RFA. The Board does not believe that the proposal duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposal, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposal would impose undue burdens on, or have unintended consequences for, small banking organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent the purpose of the proposal.

FDIC: The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[150] However, an initial regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[151] For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the proposal will not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,489 institutions, of which 2,674 are

[145] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

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

[147] See 13 CFR 121.201.

[148] 12 CFR part 217.

[149] 12 CFR part 249.

[150] 5 U.S.C. 601 *et seq.*

[151] The SBA defines a small banking organization as having $550 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, effective December 2, 2014). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

considered small entities for the purposes of RFA.[152]

The proposed rule would change capital and liquidity requirements for certain foreign banking organizations with total combined or consolidated U.S. assets greater than $100 billion or with greater than $75 billion in one or more risk-based indicators. None of the institutions with total combined or consolidated U.S. assets greater than $100 billion or with greater than $75 billion in one or more risk-based indicators are FDIC-supervised small entities by SBA standards. Since this proposal does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposal will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects on small entities that the FDIC has not identified?

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on insured depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[153] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[154]

The agencies note that comment on these matters has been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this proposal.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Federal Reserve System, National banks, Reporting and recordkeeping requirements.

12 CFR Part 50

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 217

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 249

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 329

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. In § 3.2, add the definitions of *Category II national bank or Federal savings association, Category III national bank or Federal savings association, FR Y–9LP,* and *FR Y–15* in alphabetical order to read as follows:

§ 3.2 Definitions.

* * * * *

Category II national bank or Federal savings association means:

(1) A national bank or Federal savings association that is a subsidiary of a Category II banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) A national bank or Federal savings association that:

(i)(A) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $700 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent quarters, total consolidated assets means the average of its total

[152] Call Report Data for the quarter ending December 31, 2018.

[153] 12 U.S.C. 4802(a).

[154] 12 U.S.C. 4802(b).

consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(ii) After meeting the criteria in paragraph (2)(i) of this definition, a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association has:

(A)(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form; or

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

Category III national bank or Federal savings association means:

(1) A national bank or Federal savings association that is a subsidiary of a Category III banking organization as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A national bank or Federal savings association that meets the criteria in paragraph (3)(ii)(A) or (B) of this definition; or

(3) A depository institution that:

(i) Is a national bank or Federal savings association; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) At least one of the following in paragraphs (3)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each calculated as the average of the four most recent consecutive quarters, or if the depository institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a depository institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraph (3)(ii) of this definition, a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association has:

(A)(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a national bank's or Federal savings association's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the national bank or Federal savings association, as reported on the Call Report; or

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II national bank or Federal savings association.

* * * * *

FR Y–15 means the Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

■ 3. In § 3.10, revise paragraphs (a)(6), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 3.10 Minimum capital requirements.

(a) * * *

(6) For advanced approaches national banks and Federal savings associations, and for Category III national banks and Federal savings associations, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches national bank or Federal savings association that has completed the parallel run process and received notification from the OCC pursuant to § 3.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association institution meets any of the criteria in § 3.100(b)(1). A Category III national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association is identified as a Category III national bank or Federal savings association.

* * * * *

(4) *Supplementary leverage ratio.* (i) An advanced approaches national bank's or Federal savings association's or a Category III national bank's or Federal savings association's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage

exposure, the latter which is calculated as the sum of:

* * * * *

■ 4. In § 3.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 3.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches national bank or Federal savings association, and a Category III national bank or Federal savings association, must calculate a countercyclical capital buffer amount in accordance with paragraphs (b)(1)(i) through (iv) of this section for purposes of determining its maximum payout ratio under Table 1 to this section.

* * * * *

(ii) *Amount.* An advanced approaches national bank or Federal savings association, and a Category III national bank or Federal savings association, has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the national bank's or Federal savings association's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 5. In § 3.100, revise paragraph (b)(1) to read as follows:

§ 3.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to a national bank or Federal savings association that:

(i) Is a subsidiary of a global systemically important BHC, as identified pursuant to 12 CFR 217.402;

(ii) Is a Category II national bank or Federal savings association;

(iii) Is a subsidiary of a depository institution that uses the advanced approaches pursuant to this subpart (OCC), 12 CFR part 217 (Board), or 12 CFR part 324 (FDIC), to calculate its risk-based capital requirements; or

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses the advanced approaches pursuant to subpart E of 12 CFR part 217 to calculate its risk-based capital requirements; or

(v) Elects to use this subpart to calculate its risk-based capital requirements.

* * * * *

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 6. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, and 1462 *et seq.*

■ 7. In § 50.1, revise paragraph (b) to read as follows:

§ 50.1 Purpose and applicability.

* * * * *

(b) *Applicability of minimum liquidity standards.* (1) A national bank or Federal savings association is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a GSIB depository institution, a Category II national bank or Federal savings association, or a Category III national bank or Federal savings association;

(ii) It is a national bank or Federal savings association that has total consolidated assets equal to $10 billion or more, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, and it is a consolidated subsidiary of a U.S. intermediate holding company of either a Category II foreign banking organization or a Category III foreign banking organization. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(iii) It is a national bank or Federal savings association for which the OCC has determined that application of this part is appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) A national bank or Federal savings association that initially becomes subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part under paragraph (b)(1)(i) or (ii) of this section must comply with the requirements of this part beginning on the first day of the second calendar quarter after which the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) For the first three calendar quarters after a national bank or Federal savings association begins complying with the minimum liquidity standard and other requirements of this part, a national bank or Federal savings association must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning one year after the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(i) of this section, and thereafter, the national bank or Federal savings association must calculate and maintain a liquidity coverage ratio on each calculation date.

(ii) A national bank or Federal savings association that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(iii) of this section must comply with the requirements of this part subject to a transition period specified by the OCC.

■ 8. In § 50.3:

■ a. Add the definition of *Average weighted short-term wholesale funding* in alphabetical order;

■ b. Revise the definition for *Calculation date;*

■ c. Add the definitions of *Call Report, Category II national bank or Federal savings association, Category II foreign banking organization, Category III foreign banking organization,* and *Category III national bank or Federal savings association* in alphabetical order;

■ d. Revise the definition for *Covered depository institution holding company;*

■ e. Add the definitions of *Foreign banking organization, FR Y–9LP, FR Y–15, Global systemically important BHC,* and *GSIB depository institution* in alphabetical order;

■ f. Revise the definition for *Regulated financial company;* and

■ g. Add the definitions of *State* and *U.S. intermediate holding company* in alphabetical order.

The additions and revisions read as follows:

§ 50.3 Definitions.

* * * * *

Average weighted short-term wholesale funding means the average of the banking organization's weighted short-term wholesale funding for each of the four most recent calendar quarters as reported quarterly on the FR Y–15 or, if the banking organization has not filed the FR Y–15 for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable.

* * * * *

Calculation date means, for purposes of subparts A through J of this part, any date on which a national bank or Federal savings association calculates its liquidity coverage ratio under § 50.21, and for purposes of subparts K through N of this part, any date on which a national bank or Federal savings association calculates its net stable funding ratio (NSFR) under § 50.100.

Call Report means the Consolidated Reports of Condition and Income.

Category II foreign banking organization means a foreign banking organization that is identified as a Category II banking organization pursuant to 12 CFR 252.5.

Category III foreign banking organization means a foreign banking organization that is identified as a Category III banking organization pursuant to 12 CFR 252.5.

Category II national bank or Federal savings association means:

(1)(i) A national bank or Federal savings association that:

(A) Is a consolidated subsidiary of:

(*1*) A company that is defined as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(*2*) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the national bank or Federal savings association is no longer a consolidated subsidiary an entity described in paragraph (1)(i)(A)(*1*) or (*2*) of this definition; or

(2) A depository institution that:

(i) Is a national bank or Federal savings association; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $700 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent consecutive quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association:

(A)(*1*) Has less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

Category III national bank or Federal savings association means:

(1)(i) A national bank or Federal savings association that:

(A) Is a consolidated subsidiary of:

(1) A company that is defined as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the national bank or Federal savings association is no longer a consolidated subsidiary of an entity described in paragraph (1)(i)(A)(*1*) or (*2*) of this definition; or

(2) A depository institution that:

(i) Is a national bank or Federal savings association; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of at least $100 billion but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) One or more of the following in paragraphs (2)(ii)(B)(*2*)(*i*) through (*iii*) of

this definition, each measured as the average of the four most recent quarters, or if the depository institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association:

(A)(*1*) Has less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Has less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Has less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Has less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a national bank's or Federal savings association's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the national bank or Federal savings association, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II national bank or Federal savings bank; or

(D) Is a GSIB depository institution.

* * * * *

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1842(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company;

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (3)(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System; or

(4) A U.S. intermediate holding company.

* * * * *

Foreign banking organization has the same meaning as in 12 CFR 211.21(o) (§ 211.21(o) of the Board's Regulation K), provided that if the top-tier foreign banking organization is incorporated in or organized under the laws of any State, the foreign banking organization shall not be treated as a foreign banking organization for purposes of this part.

* * * * *

FR Y–15 means the Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) website,[2] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under 12 CFR part 249;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

[2] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462);

(7) A U.S. intermediate holding company; and

(8) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (7) of this definition (*e.g.,* a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(9) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

* * * * *

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

* * * * *

U.S. intermediate holding company means a company formed by a foreign banking organization pursuant to 12 CFR 252.153.

* * * * *

■ 9. In § 50.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 50.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a national bank's or Federal savings association's total net cash outflow amount equals the national bank's or Federal savings association's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 50.32(a) through (l); minus

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 50.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; plus

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* A national bank's or Federal savings association's outflow adjustment percentage is determined pursuant to Table 1 to this section.

TABLE 1 TO § 50.30—OUTFLOW ADJUSTMENT PERCENTAGES

[Outflow adjustment percentage]

A GSIB depository institution	100 percent.
Category II national bank or Federal savings association	100 percent.
Category III national bank or Federal savings association that: (1) Is a consolidated subsidiary of a Category III banking organization with $75 billion or more in average weighted short-term wholesale funding; or (2) Has $75 billion or more in average weighted short-term wholesale funding and is not consolidated under a holding company	100 percent.
Category III national bank or Federal savings association that: (1) Is a consolidated subsidiary of a Category III banking organization with less than $75 billion in average weighted short-term wholesale funding; or (2) Has less than $75 billion in average weighted short-term wholesale funding and is not consolidated under a holding company	[70 to 85] percent.
A national bank or Federal savings association that is described in § 50.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category II foreign banking organization.	100 percent.
A national bank or Federal savings association that is described in § 50.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding.	100 percent.
A national bank or Federal savings association that is described in § 50.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding.	[70 to 85] percent.

(d) *Transition.* A national bank or Federal savings association whose outflow adjustment percentage increases from a lower to a higher outflow adjustment percentage may continue to use its previous lower outflow adjustment percentage until the first day of the second calendar quarter after the outflow adjustment percentage increases.

■ 10. In § 50.50, revise paragraph (a) to read as follows

§ 50.50 Transitions.

(a) *Depository institution subsidiary of a U.S. intermediate holding company.* A national bank or Federal savings association that becomes subject to this part under § 50.1(b)(1)(ii) does not need to comply with the minimum liquidity standard and other requirements of this part until [one year after effective date of final rule], at which time the national bank or Federal savings association must begin to calculate and maintain a liquidity coverage ratio daily in accordance with subparts A through N of this part, if the national bank or Federal savings association is a consolidated subsidiary of a U.S. intermediate holding company that, immediately prior to [effective date of final rule]:

(1) Was domiciled in the United States;

(2) Had total consolidated assets equal to $50 billion or more (based on the average of the U.S. intermediate holding company's four most recent Consolidated Financial Statements for Holding Companies reporting forms (FR Y–9Cs));

(3) Had total consolidated assets less than $250 billion as of the 2018 year-end FR Y–9C or Call Report, as applicable; and

(4) Had total consolidated on-balance sheet foreign exposure of less than $10 billion as of year-end 2018 (where total on-balance sheet foreign exposure

equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report).

* * * * *

■ 11. Section 50.105, as proposed to be added at 81 FR 35124 (June 1, 2016), is revised to read as follows:

§ 50.105 Calculation of required stable funding amount.

(a) As of the calculation date, a national bank or Federal savings association's required stable funding (RSF) amount equals the national bank or Federal savings association's required stable funding adjustment percentage as determined under paragraph (b) of this section multiplied by the sum of:

(1) The carrying values of a national bank or Federal savings association's assets (other than amounts included in the calculation of the derivatives RSF amount pursuant to § 50.107(b)) and the undrawn amounts of a national bank or Federal savings association's credit and liquidity facilities, in each case multiplied by the RSF factors applicable in § 50.106; and

(2) The national bank or Federal savings association's derivatives RSF amount calculated pursuant to § 50.107(b).

(b) A national bank or Federal savings association's required stable funding adjustment percentage is determined pursuant to Table 1 to this section.

TABLE 1 TO § 50.105—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

[Required stable funding adjustment percentage]

A GSIB depository institution	100 percent.
Category II national bank or Federal savings association	100 percent.
Category III national bank or Federal savings association that: (1) Is a consolidated subsidiary of a Category III banking organization with $75 billion or more in average weighted short-term wholesale funding; or (2) Has $75 billion or more in average weighted short-term wholesale funding and is not consolidated under a holding company	100 percent.
Category III national bank or Federal savings association that: (1) Is a consolidated subsidiary of a Category III banking organization with less than $75 billion in average weighted short-term wholesale funding; or (2) Has less than $75 billion in average weighted short-term wholesale funding and is not consolidated under a holding company	[70 to 85] percent.
A national bank or Federal savings association that is described in § 50.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category II foreign banking organization.	100 percent.
A national bank or Federal savings association that is described in § 50.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding.	100 percent.
A national bank or Federal savings association that is described in § 50.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding.	[70 to 85] percent.

(c) A national bank or Federal savings association whose required stable funding adjustment percentage increases from a lower to a higher required stable funding adjustment percentage may continue to use its previous lower required stable funding adjustment percentage until the first day of the second calendar quarter after the required stable funding adjustment percentage increases.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Supplementary Information, chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 12. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 13. Section 217.2, as proposed to be amended at 83 FR 66024 (December 21, 2018), is further amended by revising the definitions of *Advanced approaches Board-regulated institution, Category II Board-regulated institution, Category III Board-regulated institution, FR Y–15,* and *FR Y–9LP* and adding the definition of *U.S. intermediate holding company* in alphabetical order to read as follows:

§ 217.2 Definitions.

* * * * *

Advanced-approaches Board-regulated institution means a Board-regulated institution that is described in § 217.100(b)(1).

* * * * *

Category II Board-regulated institution means:

(1) A depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5;

(3) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition; or

(4) A state member bank that:

(i)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on the average

of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the state member bank has not filed the Call Report for each of the four most recent quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(ii) After meeting the criteria in paragraph (4)(i) of this section, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A) Has:

(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

Category III Board-regulated institution means:

(1) A depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5;

(3) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition;

(4) A depository institution that:

(i)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) At least one of the following in paragraphs (4)(i)(B)(*2*)(*i*) through (*iii*) of this definition, each calculated as the average of the four most recent calendar quarters:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more; or

(ii) [Reserved]

(5)(i) A subsidiary of a depository institution identified in paragraph (4)(i) of this definition.

(ii) After meeting the criteria in paragraph (4)(i) of this definition, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A) Has:

(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II Board-regulated institution.

* * * * *

FR Y–15 means the Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

U.S. intermediate holding company means the company that is required to be established or designated pursuant to 12 CFR 252.153.

* * * * *

■ 14. In § 217.10, revise paragraphs (a)(5), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(a) * * *

(5) For advanced approaches Board-regulated institutions or, for Category III Board-regulated institutions, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches and Category III capital ratio calculations.* An advanced approaches Board-regulated institution that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution meets any of the criteria in § 217.100(b)(1). A Category III Board-regulated institution must determine its supplementary leverage

ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution is identified as a Category III Board-regulated institution.

* * * * *

(4) *Supplementary leverage ratio.* (i) An advanced approaches Board-regulated institution's or a Category III Board-regulated institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter which is calculated as the sum of:

* * * * *

■ 15. In § 217.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

* * * * *

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution must calculate a countercyclical capital buffer amount in accordance with this paragraph (b) for purposes of determining its maximum payout ratio under Table 1 to this section.

* * * * *

(ii) *Amount.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the Board-regulated institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 16. In § 217.100, revise paragraph (b)(1) to read as follows:

§ 217.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to:

(i) A top-tier bank holding company or savings and loan holding company domiciled in the United States that:

(A) Is not a consolidated subsidiary of another bank holding company or savings and loan holding company that uses this subpart to calculate its risk-based capital requirements; and

(B) That:

(*1*) Is identified as a global systemically important BHC pursuant to § 217.402;

(*2*) Is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10; or

(*3*) Has a subsidiary depository institution that is required, or has elected, to use 12 CFR part 3, subpart E (OCC), this subpart (Board), or 12 CFR part 324, subpart E (FDIC), to calculate its risk-based capital requirements;

(ii) A state member bank that:

(A) Is a subsidiary of a global systemically important BHC;

(B) Is a Category II Board-regulated institution;

(C) Is a subsidiary of a depository institution that uses 12 CFR part 3, subpart E (OCC), this subpart E (Board), or 12 CFR part 324, subpart E (FDIC), to calculate its risk-based capital requirements; or

(D) Is a subsidiary of a bank holding company or savings and loan holding company that uses this subpart to calculate its risk-based capital requirements; or

(iii) Any Board-regulated institution that elects to use this subpart to calculate its risk-based capital requirements.

* * * * *

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 17. Revise the authority citation for part 249 to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368; 12 U.S.C. 3101 *et seq.*

■ 18. Revise § 249.1 to read as follows:

§ 249.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain Board-regulated institutions on a consolidated basis, as set forth in this part.

(b) *Applicability.* (1) A Board-regulated institution is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part if:

(i) It is a:

(A) Global systemically important BHC;

(B) GSIB depository institution;

(C) Category II Board-regulated institution;

(D) Category III Board-regulated institution; or

(E) Category IV Board-regulated institution with $50 billion or more in average weighted short-term wholesale funding;

(ii) It is a depository institution, other than a Federal branch or insured branch (as defined in 12 U.S.C. 1813(s)(2) and (3)), that has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more and is a consolidated subsidiary of a U.S. intermediate holding company of either a Category II foreign banking organization or a Category III foreign banking organization. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable;

(iii) It is a covered nonbank company; or

(iv) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) A Board-regulated institution that initially becomes subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part under paragraph (b)(1)(i), (ii), or (iii) of this section must comply with the requirements of this part beginning on the first day of the second calendar quarter after which the Board-regulated institution becomes subject to this part, except that a Board-regulated institution that is not a Category IV Board-regulated institution must:

(A) For the first three calendar quarters after the Board-regulated institution begins complying with the minimum liquidity standard and other requirements of this part, calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning one year after the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part and continuing thereafter, calculate and maintain a liquidity coverage ratio on each calculation date.

(ii) A Board-regulated institution that becomes subject to the minimum liquidity standard, minimum funding standard, and other requirements of this part under paragraph (b)(1)(iv) of this section, must comply with the requirements of this part subject to a transition period specified by the Board.

(3) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a

subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(4) A Board-regulated institution subject to a minimum liquidity standard, minimum stable funding standard, and other requirements of this part shall remain subject until the Board determines in writing that application of this part to the Board-regulated institution is not appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(5) In making a determination under paragraph (b)(1)(iv) or (b)(4) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

(c) *Covered nonbank companies.* The Board will establish a minimum liquidity standard, minimum stable funding standard, and other requirements for a designated company under this part by rule or order. In establishing such standard, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act and may tailor the application of the requirements of this part to the designated company based on the nature, scope, size, scale, concentration, interconnectedness, mix of the activities of the designated company, or any other risk-related factor that the Board determines is appropriate.

■ 19. Amend § 249.3 by:

■ a. Adding the definition for ''Average weighted short-term wholesale funding'' in alphabetical order;

■ b. Revising the definitions for ''Calculation date'';

■ c. Adding the definitions for ''Call Report'', ''Category II Board-regulated institution'', ''Category III Board-regulated institution'', ''Category IV Board-regulated institution'', ''Category II foreign banking organization'', ''Category III foreign banking organization'', and ''Category IV foreign banking organization'' in alphabetical order;

■ d. Revising the definition for ''Covered depository institution holding company'';

■ e. Adding the definitions for ''Foreign banking organization'', ''FR Y–9LP'', ''FR Y–15'', ''Global systemically important BHC'', and ''GSIB depository institution'' in alphabetical order;

■ f. Revising the definition for ''Regulated financial company''; and

■ g. Adding the definitions for ''State'' and ''U.S. intermediate holding company'' in alphabetical order.

The additions and revisions read as follows:

§ 249.3 Definitions.

* * * * *

Average weighted short-term wholesale funding means the average of the weighted short-term wholesale funding for each of the four most recent calendar quarters as reported quarterly on the FR Y–15 or, if the Board-regulated institution or foreign banking organization has not filed the FR Y–15 for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable.

* * * * *

Calculation date means, for purposes of subparts A through J of this part, any date on which a Board-regulated institution calculates its liquidity coverage ratio under § 249.21, and for purposes of subparts K through N of this part, any date on which a Board-regulated institution calculates its net stable funding ratio (NSFR) under § 249.100.

Call Report means the Consolidated Reports of Condition and Income.

Category II Board-regulated institution means:

(1) A covered depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10;

(2)(i) A state member bank that:

(A) Is a consolidated subsidiary of:

(*1*) A company described in paragraph (1) of this definition; or

(*2*) A depository institution that meets the criteria in paragraph (3)(ii)(A) or (B) of this definition; and

(B) That has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (2), a state member bank continues to be a Category II Board-regulated institution until the state member bank has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the state member bank is no longer a consolidated subsidiary of a company described in paragraph (2)(i)(A)(*1*) or (*2*) of this definition; or

(3) A depository institution that:

(i) Is a state member bank; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraphs (3)(i) and (ii) of this definition, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A)(*1*) Has less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

Category III Board-regulated institution means:

(1) A covered depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2)(i) A state member bank that is:

(A) A consolidated subsidiary of:

(*1*) A company described in paragraph (1) of this definition; or

(*2*) A depository institution that meets the criteria in paragraph (3)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (2), a state member bank continues to be a Category III Board-regulated institution until the state member bank has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the state member bank is no longer a consolidated subsidiary of a company an entity described in paragraph (2)(i)(A)(*1*) or (*2*) of this definition; or

(3) A depository institution that:

(i) Is a state member bank; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent quarters as reported quarterly on the most recent Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent calendar quarters as reported quarterly on the most recent Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) One or more of the following in paragraphs (3)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each measured as the average of the four most recent calendar quarters, or if the depository institution has not filed the FR Y–9LP or equivalent reporting form, Call Report, or FR Y–15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraphs (3)(i) and (ii) of this definition, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A)(*1*) Has less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Has less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Has less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Has less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II Board-regulated institution; or

(D) Is a GSIB depository institution.

Category IV Board-regulated institution means a covered depository institution holding company that is identified as a Category IV banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable.

Category II foreign banking organization means a foreign banking organization that is identified as a Category II banking organization pursuant to 12 CFR 252.5.

Category III foreign banking organization means a foreign banking organization that is identified as a Category III banking organization pursuant to 12 CFR 252.5.

Category IV foreign banking organization means a foreign banking organization that is identified as a Category IV banking organization pursuant to 12 CFR 252.5.

* * * * *

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company;

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (3)(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System; or

(4) A U.S. intermediate holding company.

* * * * *

Foreign banking organization has the same meaning as in 12 CFR 211.21(o) (§ 211.21(o) of the Board's Regulation K), provided that if the top-tier foreign banking organization is incorporated in or organized under the laws of any State, the foreign banking organization shall not be treated as a foreign banking organization for purposes of this part.

* * * * *

FR Y–15 means the Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) website,[2] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under this part;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462);

(7) A U.S. intermediate holding company; and

(8) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (7) of this definition (*e.g.,* a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(9) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

* * * * *

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

* * * * *

U.S. intermediate holding company means a company formed by a foreign banking organization pursuant to 12 CFR 252.153.

* * * * *

■ 20. In § 249.10, revise paragraph (a) to read as follows:

§ 249.10 Liquidity coverage ratio.

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, a Board-regulated institution must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day (or, in the case of a Category IV Board-regulated institution, on the last business day of the applicable month) in accordance with this part. A Board-regulated institution must calculate its liquidity coverage ratio as of the same time on each calculation date (the elected calculation time). The Board-regulated institution must select this time by written notice to the Board prior to [effective date of the final rule]. The Board-regulated institution may not thereafter change its elected calculation time without prior written approval from the Board.

* * * * *

■ 21. In § 249.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 249.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a Board-regulated institution's total net cash outflow amount equals the Board-regulated institution's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 249.32(a) through (l); *minus*

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 249.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; *plus*

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* A Board-regulated institution's outflow adjustment percentage is determined pursuant to Table 1 to this section.

[2] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

TABLE 1 TO § 249.30—OUTFLOW ADJUSTMENT PERCENTAGES

[Outflow adjustment percentage]

Global systemically important BHC or GSIB depository institution	100 percent.
Category II Board-regulated institution	100 percent.
Category III Board-regulated institution with $75 billion or more in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution.	100 percent.
Category III Board-regulated institution with less than $75 billion in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution.	[70 to 85] percent.
Category IV Board-regulated institution with $50 billion or more in average weighted short-term wholesale funding	[70 to 85] percent.
A state member bank described in § 249.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category II foreign banking organization.	100 percent.
A state member bank described in § 249.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding.	100 percent.
A state member bank described in § 249.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding.	[70 to 85] percent.

(d) *Transition.* A Board-regulated institution whose outflow adjustment percentage increases from a lower to a higher outflow adjustment percentage may continue to use its previous lower outflow adjustment percentage until the first day of the second calendar quarter after the outflow adjustment percentage increases.

■ 22. Revise § 249.50 to read as follows:

§ 249.50 Transitions.

(a) *Depository institution subsidiary of a U.S. intermediate holding company.* A Board-regulated institution does not need to comply with the minimum liquidity standard and other requirements of this part until [one year after the effective date of the final rule], at which time the Board-regulated institution must begin to calculate and maintain a liquidity coverage ratio daily in accordance with this part, if the Board-regulated institution:

(1) Becomes subject to this part under § 249.1(b)(1)(ii); and

(2) Is a consolidated subsidiary of a U.S. intermediate holding company that, immediately prior to [effective date of final rule]:

(i) Was domiciled in the United States;

(ii) Had total consolidated assets equal to $50 billion or more (based on the average of the U.S. intermediate holding company's four most recent Consolidated Financial Statements for Holding Companies reporting forms (FR Y–9Cs));

(iii) Had total consolidated assets less than $250 billion as of the 2018 year-end FR Y–9C or Call Report, as applicable; and

(iv) Had total consolidated on-balance sheet foreign exposure less than $10 billion as of year-end 2018 (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report).

(b) *Foreign banking organizations.* A foreign banking organization that becomes subject to subpart O of this part on [effective date of final rule] does not need to comply with the minimum liquidity standard of § 249.203 or with the public disclosure requirements of § 249.208 until [one year after the effective date of the final rule], at which time the foreign banking organization must comply with the minimum liquidity standard of § 249.203 daily (or, in the case of a Category IV foreign banking organization, on the last business day of the applicable calendar month) in accordance with this part, and with the public disclosure requirements of § 249.208, except:

(1) Beginning on [effective date of final rule] and thereafter, a foreign banking organization must comply with the minimum liquidity standard of § 249.203 and with the public disclosure requirements of § 249.208 beginning on [effective date of final rule] if the U.S. intermediate holding company:

(i) Had total consolidated assets equal to $250 billion or more, as of the 2018 year-end FR Y–9C or Call Report, as applicable; or

(ii) Had total consolidated on-balance sheet foreign exposure equal to $10 billion or more as of year-end 2018 (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report).

(2) From [effective date of final rule] to [one year after the effective date of the final rule], a foreign banking organization whose U.S. intermediate holding company, immediately prior to [effective date of final rule], was domiciled in the United States, had total consolidated assets equal to $50 billion or more (based on the average of the U.S. intermediate holding company's four most recent FR Y–9Cs), and did not meet the criteria set forth in paragraph (b)(1)(i) or (ii) of this section, must comply with the minimum liquidity standard of § 249.203 and with the public disclosure requirements of § 249.208, except:

(i) The foreign banking organization may calculate the requirement of § 249.203 on the last business day of the applicable calendar month; and

(ii) As of the calculation date, the foreign banking organization may calculate the total net cash outflow amount for the U.S. intermediate holding company to be 70 percent of:

(A) The sum of the outflow amounts for the U.S. intermediate holding company (calculated under § 249.32(a) through (l) as if the U.S. intermediate holding company and not the foreign banking organization were the top-tier Board-regulated institution); *less:*

(B) The lesser of:

(*1*) The sum of the inflow amounts (calculated under § 249.33(b) through (g) as if the U.S. intermediate holding company and not the foreign banking

organization were the top-tier Board-regulated institution); and

(*2*) 75 percent of the amount in paragraph (b)(2)(ii)(A) of this section as calculated for that calendar day.

■ 23. In § 249.90, revise paragraphs (a) and (b) to read as follows:

§ 249.90 Timing, method and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company or covered nonbank company that is subject to § 249.1 must disclose publicly all the information required under this subpart.

(b) *Timing of disclosure.* (1) A covered depository institution holding company or covered nonbank company subject to this subpart must provide timely public disclosures each calendar quarter of all the information required under this subpart.

(2) A covered depository institution holding company or covered nonbank company that is subject to this subpart must provide the disclosures required by this subpart beginning with the first calendar quarter that includes the date that is 18 months after the covered depository institution holding company first became subject to this subpart.

* * * * *

■ 24. In § 249.91:

■ a. Revise Table 1 to § 249.91(a);

■ b. In paragraph (b)(1)(i)(B):

■ i. Remove ''(c)(1), (c)(5), (c)(9), (c)(14), (c)(19), (c)(23), and (c)(28)'' and add in its place ''(c)(1), (5), (9), (14), (19), (23), and (28)'' and

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

■ c. Remove paragraph (b)(1)(ii) and redesignate paragraph (b)(1)(iii) as paragraph (b)(1)(ii);

■ d. Revise paragraphs (c)(32) and (33): and

■ e. Add paragraphs (c)(34) and (35).

The revisions and additions read as follows:

§ 249.91 Disclosure requirements.

(a) * * *

TABLE 1 TO § 249.91(a)—DISCLOSURE TEMPLATE

XX/XX/XXXX to YY/YY/YYYY (In millions of U.S. dollars)	Average unweighted amount	Average weighted amount
High-Quality Liquid Assets		
1. Total eligible high-quality liquid assets (HQLA), of which:		
2. Eligible level 1 liquid assets.		
3. Eligible level 2A liquid assets.		
4. Eligible level 2B liquid assets.		
Cash Outflow Amounts		
5. Deposit outflow from retail customers and counterparties, of which:		
6. Stable retail deposit outflow.		
7. Other retail funding.		
8. Brokered deposit outflow.		
9. Unsecured wholesale funding outflow, of which:		
10. Operational deposit outflow.		
11. Non-operational funding outflow.		
12. Unsecured debt outflow.		
13. Secured wholesale funding and asset exchange outflow.		
14. Additional outflow requirements, of which:		
15. Outflow related to derivative exposures and other collateral requirements.		
16. Outflow related to credit and liquidity facilities including unconsolidated structured transactions and mortgage commitments.		
17. Other contractual funding obligation outflow.		
18. Other contingent funding obligations outflow.		
19. Total Cash Outflow.		
Cash Inflow Amounts		
20. Secured lending and asset exchange cash inflow.		
21. Retail cash inflow.		
22. Unsecured wholesale cash inflow.		
23. Other cash inflows, of which:		
24. Net derivative cash inflow.		
25. Securities cash inflow.		
26. Broker-dealer segregated account inflow.		
27. Other cash inflow.		
28. Total Cash Inflow.		
		Average Amount [1]
29. HQLA Amount		
30. Total Net Cash Outflow Amount Excluding the Maturity Mismatch Add-On		
31. Maturity Mismatch Add-On		
32. Total Unadusted Net Cash Outflow Amount		
33. Outflow Adjustment Percentage		
34. Total Adjusted Net Cash Outflow Amount		
35. Liquidity Coverage Ratio (%)		

[1] The amounts reported in this column may not equal the calculation of those amounts using component amounts reported in rows 1–28 due to technical factors such as the application of the level 2 liquid asset caps and the total inflow cap.

* * * * *

(c) * * *

(32) The average amount of the total net cash outflow amount as calculated under § 249.30 prior to the application of the applicable outflow adjustment percentage described in Table 1 to § 249.30 (row 32);

(33) The applicable outflow adjustment percentage described in Table 1 to § 249.30 (row 33);

(34) The average amount of the total net cash outflow as calculated under § 249.30 (row 34); and

(35) The average of the liquidity coverage ratios as calculated under § 249.10(b) (row 35).

* * * * *

■ 25. Section 249.105, as proposed to be added at 81 FR 35124 (June 1, 2016), is revised to read as follows:

§ 249.105 Calculation of required stable funding amount.

(a) *Required stable funding amount.* A Board-regulated institution's required stable funding (RSF) amount equals the Board-regulated institution's required stable funding adjustment percentage as determined under paragraph (b) of this section multiplied by the sum of:

(1) The carrying values of a Board-regulated institution's assets (other than amounts included in the calculation of the derivatives RSF amount pursuant to § 249.107(b)) and the undrawn amounts of a Board-regulated institution's credit and liquidity facilities, in each case multiplied by the RSF factors applicable in § 249.106; and

(2) The Board-regulated institution's derivatives RSF amount calculated pursuant to § 249.107(b).

(b) *Required stable funding adjustment percentage.* A Board-regulated institution's required stable funding adjustment percentage is determined pursuant to Table 1 to this section.

TABLE 1 TO § 249.105—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

[Required stable funding adjustment percentage]

Global systemically important BHC or GSIB depository institution	100 percent.
Category II Board-regulated institution	100 percent.
Category III Board-regulated institution with $75 billion or more in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution.	100 percent.
Category III Board-regulated institution with less than $75 billion in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution.	[70 to 85] percent.
Category IV Board-regulated institution with $50 billion or more in average weighted short-term wholesale funding	[70 to 85] percent.
A state member bank described in § 249.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category II foreign banking organization.	100 percent.
A state member bank described in § 249.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding.	100 percent.
A state member bank described in § 249.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding.	[70 to 85] percent.

(c) *Transition.* A Board-regulated institution whose required stable funding adjustment percentage increases from a lower to a higher required stable funding adjustment percentage may continue to use its previous lower required stable funding adjustment percentage until the first day of the second calendar quarter after the required stable funding adjustment percentage increases.

■ 26. Section 249.131, as proposed to be added at 81 FR 35124 (June 1, 2016), is further amended by revising Table 1 to § 249.131(a) and paragraph (c)(2)(xxii), adding paragraphs (c)(2)(xxiii) and (xxiv), and revising paragraph (c)(3) to read as follows:

§ 249.131 Disclosure requirements.

(a) * * *

BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P;

Table 1 to § 249.131(a)-Disclosure Template

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
ASF ITEM							
1	Capital and securities:						
2	NSFR regulatory capital elements						
3	Other capital elements and securities						
4	Retail funding:						
5	Stable deposits						
6	Less stable deposits						
7	Retail brokered deposits						
8	Other retail funding						
9	Wholesale funding:						
10	Operational deposits						
11	Other wholesale funding						
	Other liabilities:						
12	NSFR derivatives liability amount						
13	Total derivatives liability amount						
14	All other liabilities not included in the above categories						
15	**TOTAL ASF**						
RSF ITEM							
16	Total high-quality liquid assets (HQLA)						
17	Level 1 liquid assets						
18	Level 2A liquid assets						
19	Level 2B liquid assets						
20	Zero percent RSF assets that are not level 1 liquid assets						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
23	Loans to financial sector entities secured by level 1 liquid assets						
24	Loans to financial sector entities secured by assets other than level 1 liquid assets and unsecured loans to financial sector entities						
25	Loans to wholesale customers or counterparties that are not financial sector entities and loans to retail customers or counterparties						
26	Of which: With a risk weight no greater than 20 percent under [AGENCY CAPITAL REGULATION]						
27	Retail mortgages						
28	Of which: With a risk weight of no greater than 50 percent under [AGENCY CAPITAL REGULATION]						
29	Securities that do not qualify as HQLA						
	Other assets:						
30	Commodities						
31	Assets provided as initial margin for derivative transactions and contributions to CCPs' mutualized loss-sharing arrangements						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Unweighted Amount					Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
32	NSFR derivatives asset amount						
33	Total derivatives asset amount						
34	RSF for potential derivatives portfolio valuation changes						
35	All other assets not included in the above categories, including nonperforming assets						
36	Undrawn commitments						
37	**TOTAL UNADJUSTED RSF**						
38	**RSF Adjustment Percentage**						
39	**TOTAL ADJUSTED RSF**						
40	**NET STABLE FUNDING RATIO**						

BILLING CODE 6210–01–C; 4810–33–C; 6714–01–C

* * * * *

(c) * * *

(2) * * *

(xxii) The RSF amount described in § 249.105 prior to the application of the RSF adjustment percentage provided for in Table 1 to § 249.105 (row 37);

(xxiii) The applicable RSF adjustment factor as described in Table 1 to § 249.105 (row 38); and

(xxiv) The RSF amount described in § 249.105 (row 39); and

(3) The net stable funding ratio under § 249.100(b) (row 40).

* * * * *

■ 27. Add subpart O to read as follows:

Subpart O—Minimum Liquidity Standard and Minimum Stable Funding Standard for Certain Foreign Banking Organizations

Sec.

249.201 Purpose and applicability.
249.202 Reservation of authority.
249.203 Liquidity coverage ratio for certain foreign banking organizations.
249.204 Net stable funding ratio.
249.205 Requirements for eligible high-quality liquid assets.
249.206 Liquidity coverage shortfall: Supervisory framework.
249.207 NSFR shortfall: Supervisory framework.
249.208 Disclosure requirements.

§ 249.201 Purpose and applicability.

(a) *Purpose.* This subpart establishes a minimum liquidity standard and minimum stable funding standard for certain foreign banking organizations, as set forth in this part.

(b) *Applicability.* (1) A foreign banking organization is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this subpart if:

(i) It is a:

(A) Category II foreign banking organization;

(B) Category III foreign banking organization; or

(C) Category IV foreign banking organization with $50 billion or more in average weighted short-term wholesale funding;

(ii) The Board determines that application of this subpart is appropriate in light of the foreign banking organization's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) Subject to the transition periods set forth in subpart F of this part:

(i) A foreign banking organization that becomes subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this subpart under paragraph (b)(1)(i) of this section must comply with such requirements beginning on the first day of the second calendar quarter after which the foreign banking organization becomes subject to such requirements, except that a foreign banking organization that is not a category IV foreign banking organization must:

(A) For the first three calendar quarters after the foreign banking organization begins complying with the minimum liquidity standard and other requirements of this subpart, calculate and maintain the liquidity coverage ratio required by § 249.203 monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning one year after the foreign banking organization becomes subject to the minimum liquidity standard and other requirements of this subpart and continuing thereafter, calculate and maintain the liquidity coverage ratios required by § 249.203 on each calculation date.

(ii) A foreign banking organization that becomes subject to the minimum liquidity standard and other requirements of this subpart under paragraph (b)(1)(ii) of this section, must comply with the requirements of this subpart subject to a transition period specified by the Board.

(3) This subpart does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(4) A foreign banking organization subject to a minimum liquidity standard under this subpart shall remain subject until the Board determines in writing that application of this subpart to the foreign banking organization is not appropriate in light of the foreign banking organization's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(5) In making a determination under paragraph (b)(1)(ii) or (b)(4) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

§ 249.202 Reservation of authority.

(a) The Board may require a foreign banking organization to hold an amount of high-quality liquid assets (HQLA) greater than otherwise required under this subpart, or to take any other measure to improve the liquidity risk profile of a U.S. intermediate holding company, if the Board determines that the liquidity requirements of the foreign banking organization as calculated under this subpart are not commensurate with the liquidity risks presented by the foreign banking organization or its U.S. intermediate holding company. In making determinations under this section, the Board will apply notice and response procedures as set forth in 12 CFR 263.202.

(b) The Board may require a foreign banking organization to maintain an amount of available stable funding (ASF) greater than otherwise required under this subpart, or to take any other measure to improve the stable funding of its U.S. intermediate holding company, if the Board determines that the foreign banking organization's stable funding requirements as calculated under this subpart are not commensurate with the funding risks of the foreign banking organization or its U.S. intermediate holding company. In making determinations under this section, the Board will apply notice and response procedures as set forth in 12 CFR 263.202.

(c) Nothing in this subpart limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, or violations of law.

§ 249.203 Liquidity coverage ratio for certain foreign banking organizations.

(a) *Minimum liquidity coverage ratio requirements for foreign banking organizations.* Subject to the transition periods in subpart F of this part, a foreign banking organization must calculate and maintain a liquidity coverage ratio equal to or greater than 1.0 on each business day (or, in the case of a Category IV foreign banking organization, on the last business day of the applicable calendar month) for each U.S. intermediate holding company of the foreign banking organization in accordance with § 249.3 and subparts B through E of this part as if the U.S. intermediate holding company (and not the foreign banking organization subject to this subpart) were a top-tier Board-regulated institution, except that:

(1) A high-quality liquid asset used to meet the liquidity coverage ratio required by this paragraph (a) must satisfy the requirements in § 249.205 and not § 249.22 to be eligible HQLA; and

(2) The outflow adjustment percentage used to meet the liquidity coverage ratio required by this paragraph (a) must be determined in accordance with paragraph (c) of this section and not § 249.30(c).

(b) *Elected calculation time.* A foreign banking organization subject to this subpart must calculate any liquidity coverage ratio required by paragraph (a) of this section as of the same time on each business day, or, in the case of a Category IV foreign banking organization, as of the same time on each calculation day (the elected calculation time). The foreign banking organization must select this time by written notice to the Board prior to [effective date of the final rule]. The foreign banking organization may not thereafter change its elected calculation time without prior written approval from the Board.

(c) *Outflow adjustment percentage.* A foreign banking organization's outflow adjustment percentage is determined pursuant to Table 1 to this section.

TABLE 1 TO § 249.203—OUTFLOW ADJUSTMENT PERCENTAGES

	Outflow adjustment percentage
Category II foreign banking organization	100 percent.
Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding	100 percent.
Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding	[70 to 85] percent.
Category IV foreign banking organization with $50 billion or more in average weighted short-term wholesale funding	[70 to 85] percent.

§ 249.204 Net stable funding ratio.

(a) *Minimum net stable funding ratio requirement.* A foreign banking organization must maintain for each U.S. intermediate holding company a net stable funding ratio that is equal to or greater than 1.0 on an ongoing basis in accordance with § 249.3 and subparts K and L of this part as if each U.S. intermediate holding company (and not the foreign banking organization subject to this subpart) were a top-tier Board-regulated institution, except that the foreign banking organization must determine its required stable funding adjustment percentage in accordance with paragraph (b) of this section, and not § 249.105(b).

(b) *Required stable funding adjustment percentage.* A foreign banking organization's required stable funding adjustment percentage is determined pursuant to Table 1 to this section.

TABLE 1 TO § 249.204—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

	Required stable funding adjustment percentage
Category II foreign banking organization	100 percent.
Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding	100 percent.
Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding	[70 to 85] percent.
Category IV foreign banking organization with $50 billion or more in average weighted short-term wholesale funding	[70 to 85] percent.

§ 249.205 Requirements for eligible high-quality liquid assets.

(a) *Operational requirements for eligible HQLA.* With respect to each asset that is eligible for inclusion in the HQLA amount calculated for the liquidity coverage ratio requirement in § 249.203, all of the operational requirements in this paragraph (a) must be met:

(1) The foreign banking organization must demonstrate the operational capability to monetize the HQLA by:

(i) Implementing and maintaining appropriate procedures and systems to monetize any HQLA at any time in accordance with relevant standard settlement periods and procedures; and

(ii) Periodically monetizing a sample of HQLA that reasonably reflects the composition of the eligible HQLA used to meet the liquidity coverage ratio requirement in § 249.203, including with respect to asset type, maturity, and counterparty characteristics;

(2) The foreign banking organization must implement policies that require eligible HQLA to be under the control of the management function in the foreign banking organization that is charged with managing liquidity risk, and this management function must evidence its control over the HQLA by either:

(i) Segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity; or

(ii) Demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk management strategy of the foreign banking organization;

(3) The fair value of the eligible HQLA must be reduced by the outflow amount that would result from the termination of any specific transaction hedging eligible HQLA;

(4) The foreign banking organization must implement and maintain policies and procedures that determine the composition of the eligible HQLA on each calculation date, by:

(i) Identifying its eligible HQLA by legal entity, geographical location, currency, account, or other relevant identifying factors as of the calculation date;

(ii) Determining that eligible HQLA meet the criteria set forth in this section; and

(iii) Ensuring the appropriate diversification of the eligible HQLA by asset type, counterparty, issuer, currency, borrowing capacity, or other factors associated with the liquidity risk of the assets; and

(5) The foreign banking organization must have a documented methodology that results in a consistent treatment for determining that the eligible HQLA meets the requirements set forth in this section.

(b) *Generally applicable criteria for eligible HQLA.* The eligible HQLA used to meet the liquidity coverage ratio requirement in § 249.203 must meet all of the criteria in this paragraph (b):

Alternative 1—Paragraph (b)(1)

(1) The assets are unencumbered in accordance with the criteria in this paragraph (b)(1):

(i) The assets are free of legal, regulatory, contractual, or other restrictions on the ability of the foreign banking organization to monetize the assets; and

(ii) The assets are not pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, but the assets may be considered unencumbered if the assets are pledged to a central bank or a U.S. government-sponsored enterprise where:

(A) Potential credit secured by the assets is not currently extended to the foreign banking organization or its consolidated subsidiaries; and

(B) The pledged assets are not required to support access to the payment services of a central bank;

Alternative 2—Paragraph (b)(1)

(1) The assets are not unencumbered.

(2) The asset is not:

(i) A client pool security held in a segregated account; or

(ii) An asset received from a secured funding transaction involving client pool securities that were held in a segregated account;

(3) For eligible HQLA held in a legal entity that is a U.S. consolidated subsidiary of a U.S. intermediate holding company:

(i) If the U.S. consolidated subsidiary is subject to a minimum liquidity standard under this part, 12 CFR part 50, or 12 CFR part 329, the foreign banking organization may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of net cash outflows of the U.S. consolidated subsidiary calculated by the U.S. consolidated subsidiary for its own minimum liquidity standard under this part, 12 CFR part 50, or 12 CFR part 329; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the U.S. intermediate holding company during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and 12 CFR part 223 (Regulation W);

(ii) If the U.S. consolidated subsidiary is not subject to a minimum liquidity standard under this part, 12 CFR part 50, or 12 CFR part 329, the Board-regulated institution may include the eligible HQLA of the U.S. consolidated subsidiary in its HQLA amount up to:

(A) The amount of the net cash outflows of the U.S. consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the foreign banking organization for its minimum liquidity standard under this part; *plus*

(B) Any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the U.S. intermediate holding company during times of stress without statutory, regulatory, contractual, or supervisory restrictions, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and 12 CFR part 223 (Regulation W); and

(4) For HQLA held by a consolidated subsidiary of the U.S. intermediate holding company that is organized under the laws of a foreign jurisdiction,

the foreign banking organization may include the eligible HQLA of the consolidated subsidiary organized under the laws of a foreign jurisdiction in its HQLA amount up to:

(i) The amount of net cash outflows of the consolidated subsidiary as of the 30th calendar day after the calculation date, as calculated by the foreign banking organization for its minimum liquidity standard under this part; *plus*

(ii) Any additional amount of assets that are available for transfer to the U.S. intermediate holding company during times of stress without statutory, regulatory, contractual, or supervisory restrictions;

(5) Eligible HQLA must not include any assets or HQLA resulting from transactions involving an asset that the U.S. intermediate holding company received with rehypothecation rights, if the counterparty that provided the asset or the beneficial owner of the asset has a contractual right to withdraw the assets without an obligation to pay more than de minimis remuneration at any time during the 30 calendar days following the calculation date; and

(6) The foreign banking organization has not designated the assets to cover operational costs of its U.S. intermediate holding company.

(c) *Location of eligible HQLA for the foreign banking organization.* A foreign banking organization must maintain the eligible HQLA used to meet the minimum requirements under § 249.203 in accounts in the United States.

§ 249.206 Liquidity coverage shortfall: Supervisory framework.

(a) *Notification requirements.* A foreign banking organization must notify the Board on any business day when its liquidity coverage ratio is calculated to be less than the minimum requirement in § 249.203.

(b) *Liquidity plan.* (1) For the period during which a foreign banking organization must calculate a liquidity coverage ratio on the last business day of each applicable calendar month under subpart F or O of this part, if the foreign banking organization's liquidity coverage ratio is below the minimum requirements in § 249.203 for any calculation date that is the last business day of the applicable calendar month, or if the Board has determined that the foreign banking organization is otherwise materially noncompliant with the requirements of this part, the foreign banking organization must promptly consult with the Board to determine whether the foreign banking organization must provide to the Board a plan for achieving compliance with the minimum liquidity requirement in § 249.203 and all other requirements of this subpart.

(2) For the period during which a foreign banking organization must calculate a liquidity coverage ratio each business day under subpart F or O of this part, if a foreign banking organization's liquidity coverage ratio is below the minimum requirement in § 249.203 for three consecutive business days, or if the Board has determined that the foreign banking organization is otherwise materially noncompliant with the requirements of this subpart, the foreign banking organization must promptly provide to the Board a plan for achieving compliance with the minimum liquidity requirement in § 249.203 and all other requirements of this subpart.

(3) The plan must include, as applicable:

(i) An assessment of the liquidity position of the U.S. intermediate holding company;

(ii) The actions the foreign banking organization has taken and will take to achieve full compliance with this subpart, including:

(A) A plan for adjusting the risk profile, risk management, and funding sources of the U.S. intermediate holding company in order to achieve full compliance with this subpart; and

(B) A plan for remediating any operational or management issues that contributed to noncompliance with this subpart;

(iii) An estimated time frame for achieving full compliance with this subpart; and

(iv) A commitment to report to the Board no less than weekly on progress to achieve compliance in accordance with the plan until full compliance with this subpart is achieved.

(c) *Supervisory and enforcement actions.* The Board may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum liquidity standard and other requirements of this subpart.

§ 249.207 NSFR shortfall: Supervisory framework.

(a) *Notification requirements.* A foreign banking organization must notify the Board no later than 10 business days, or such other period as the Board may otherwise require by written notice, following the date that any event has occurred that would cause or has caused the foreign banking organization's net stable funding ratio to be less than 1.0 as required under § 249.204.

(b) *Liquidity plan.* (1) A foreign banking organization must within 10 business days, or such other period as the Board may otherwise require by written notice, provide to the Board a plan for achieving a net stable funding ratio equal to or greater than 1.0 as required under § 249.204 if:

(i) The foreign banking organization has or should have provided notice, pursuant to paragraph (a) of this section, that the foreign banking organization's net stable funding ratio is, or will become, less than 1.0 as required under § 249.204;

(ii) The foreign banking organization's reports or disclosures to the Board indicate that the foreign banking organization's net stable funding ratio is less than 1.0 as required under § 249.204; or

(iii) The Board notifies the foreign banking organization in writing that a plan is required and provides a reason for requiring such a plan.

(2) The plan must include, as applicable:

(i) An assessment of the U.S. intermediate holding company's liquidity profile;

(ii) The actions the foreign banking organization has taken and will take to achieve a net stable funding ratio equal to or greater than 1.0 as required under § 249.204, including:

(A) A plan for adjusting the liquidity profile of the U.S. intermediate holding company;

(B) A plan for remediating any operational or management issues that contributed to noncompliance with § 249.204; and

(iii) An estimated time frame for achieving full compliance with § 249.204.

(3) The foreign banking organization must report to the Board at least monthly, or such other frequency as required by the Board, on progress to achieve full compliance with § 249.204.

(c) *Supervisory and enforcement actions.* The Board may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum net stable funding ratio and other requirements of § 249.204 (*see also* § 249.202(c)).

§ 249.208 Disclosure requirements.

(a) *Disclosure of minimum liquidity standard.* A foreign banking organization that is subject to this subpart must disclose publicly all the information for a U.S. intermediate holding company that the U.S. intermediate holding company would be required to disclose, and in the same manner that would be required of the U.S. intermediate holding company, if the U.S. intermediate holding company

were a covered depository institution holding company subject to subpart J of this part.

(b) *Disclosure of minimum stable funding standard.* A foreign banking organization that is subject to this subpart must disclose publicly all the information for a U.S. intermediate holding company that the U.S. intermediate holding company would be required to disclose, and in the same manner that would be required of the U.S. intermediate holding company, if it were a covered depository institution holding company subject to subpart N of this part.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Supplementary Information, chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 28. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 29. In § 324.2, add the definitions of *Category II FDIC-supervised institution, Category III FDIC-supervised institution, FR Y–9LP,* and *FR Y–15* in alphabetical order to read as follows:

§ 324.2 Definitions.

* * * * *

Category II FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a subsidiary of a Category II banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) An FDIC-supervised institution that:

(i)(A) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(ii) After meeting the criteria in paragraph (2)(i) of this definition, an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution:

(A) Has:

(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

Category III FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a subsidiary of a Category III banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) An FDIC-supervised institution that is a subsidiary of a depository institution that meets the criteria in paragraph (3)(ii)(A) or (B) of this definition; or

(3) An depository institution that:

(i) Is an FDIC-supervised institution; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) At least one of the following in paragraphs (3)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each calculated as the average of the four most recent calendar quarters, or if the depository institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a depository institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraph (3)(ii) of this definition, an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution:

(A) Has:

(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is an FDIC-supervised institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II FDIC-supervised institution.

* * * * *

FR Y–15 means the Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

■ 30. In § 324.10, revise paragraphs (a)(5), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 324.10 Minimum capital requirements.

(a) * * *

(5) For advanced approaches FDIC-supervised institutions or, for Category III FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches FDIC-supervised institution that has completed the parallel run process and received notification from the FDIC pursuant to § 324.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches FDIC-supervised institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution meets any of the criteria in § 324.100(b)(1). A Category III FDIC-supervised institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution is identified as a Category III FDIC-supervised institution.

* * * * *

(4) *Supplementary leverage ratio.* (i) An advanced approaches FDIC-supervised institution's or a Category III FDIC-supervised institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter of which is calculated as the sum of:

* * * * *

■ 31. In § 324.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) as follows:

§ 324.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches FDIC-supervised institution or a Category III FDIC-supervised institution must calculate a countercyclical capital buffer amount in accordance with paragraphs (b)(1)(i) through (iv) of this section for purposes of determining its maximum payout ratio under Table 1 to this section.

* * * * *

(ii) *Amount.* An advanced approaches FDIC-supervised institution or a Category III FDIC-supervised institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the FDIC-supervised institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 32. In § 324.100, revise paragraph (b)(1) to read as follows:

§ 324.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to an FDIC-supervised institution that:

(i) Is a subsidiary of a global systemically important BHC pursuant to 12 CFR 217.402;

(ii) Is a Category II FDIC-supervised institution;

(iii) Is a subsidiary of a depository institution that uses 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or this subpart (FDIC) to calculate its risk-based capital requirements;

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; or

(v) Elects to use this subpart to calculate its risk-based capital requirements.

* * * * *

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 33. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 34. Revise § 329.1 to read as follows:

§ 329.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain FDIC-supervised institutions on a consolidated basis, as set forth in this part.

(b) *Applicability.* (1) An FDIC-supervised institution is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part if:

(i) It is a GSIB FDIC-supervised institution, a Category II FDIC-supervised institution, or a Category III FDIC-supervised institution;

(ii) It is an FDIC-supervised institution that has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more and is a consolidated subsidiary of a U.S. intermediate holding company of either a Category II foreign banking organization or a Category III foreign banking organization. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(iii) It is an FDIC-supervised institution that the FDIC has determined that application of this part is appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) An FDIC-supervised institution that initially becomes subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part under paragraph (b)(1)(i) or (ii) of this section must comply with the requirements of

this part beginning on the first day of the second calendar quarter after which the FDIC-supervised institution becomes subject to this part, except an FDIC-supervised institution must:

(A) For the first three calendar quarters after the FDIC-supervised institution begins complying with the minimum liquidity standard and other requirements of this part, calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning one year after the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part and continuing thereafter, calculate and maintain a liquidity coverage ratio on each calculation date.

(ii) An FDIC-supervised institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(iii) of this section, must comply with the requirements of this part subject to a transition period specified by the FDIC.

■ 35. Amend § 329.3 by

■ a. Adding the definition for ''Average weighted short-term wholesale funding'' in alphabetical order;

■ b. Revising the definition for ''Calculation date'';

■ c. Adding definitions for ''Call report'', ''Category II FDIC-supervised institution'', ''Category III FDIC-supervised institution'', ''Category II foreign banking organization'', and ''Category III foreign banking organization'' in alphabetical order;

■ d. Revising the definition for ''Covered depository institution holding company'';

■ e. Adding definitions for ''Foreign banking organization'', ''FR Y–9LP'', ''FR Y–15'', ''Global systemically important BHC'', and ''GSIB depository institution'' in alphabetical order;

■ f. Revising the definition for ''Regulated financial company''; and

■ g. Adding definitions for ''State'' and ''U.S. intermediate holding company'' in alphabetical order.

The additions and revisions read as follows:

§ 329.3 Definitions.

* * * * *

Average weighted short-term wholesale funding means the average of the banking organization's weighted short-term wholesale funding for each of the four most recent calendar quarters as reported quarterly on the FR Y–15 or, if the banking organization has not filed the FR Y–15 for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable.

* * * * *

Calculation date means, for purposes of subparts A through J of this part, any date on which an FDIC-supervised institution calculates its liquidity coverage ratio under § 329.21, and for purposes of subparts K through N of this part, any date on which an FDIC-supervised institution calculates its net stable funding ratio (NSFR) under § 329.100.

Call Report means the Consolidated Reports of Condition and Income.

Category II FDIC-supervised institution means:

(1)(i) An FDIC-supervised institution that:

(A) Is a consolidated subsidiary of:

(*1*) A company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(*2*) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the FDIC-supervised institution is no longer a consolidated subsidiary of an entity described in paragraph (1)(i)(A)(*1*) or (*2*) of this definition; or

(2) A depository institution that:

(i) Is an FDIC-supervised institution; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $700 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution:

(A)(*1*) Has less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB FDIC-supervised institution.

Category III FDIC-supervised institution means:

(1)(i) An FDIC-supervised institution that:

(A) Is a consolidated subsidiary of:

(*1*) A company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(*2*) A depository institution that meets the criteria in paragraph (2)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most

recent calendar quarters as reported on the Call Report, equal to $10 billion or more.

(ii) If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the FDIC-supervised institution is no longer a consolidated subsidiary of an entity described in paragraph (1)(i)(A)(*1*) or (*2*) of this definition; or

(2) A depository institution that:

(i) Is an FDIC-supervised institution; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent quarters as reported quarterly on the most recent Call Report, equal to $250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent calendar quarters as reported quarterly on the most recent Call Report, of at least $100 billion but less than $250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) One or more of the following in paragraphs (2)(ii)(B)(*2*)(*i*) through (*iii*) of this definition, each measured as the average of the four most recent quarters, or if the depository institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(iii) After meeting the criteria in paragraphs (2)(i) and (ii) of this definition, an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution:

(A)(*1*) Has less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Has less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Has less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Has less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is an FDIC-supervised institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II FDIC-supervised institution; or

(D) Is a GSIB FDIC-supervised institution.

Category II foreign banking organization means a foreign banking organization that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 238.10.

Category III foreign banking organization means a foreign banking organization that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 238.10.

* * * * *

Covered depository institution holding company means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1842(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company;

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (3)(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System; or

(4) A U.S. intermediate holding company.

* * * * *

Foreign banking organization has the same meaning as in 12 CFR 211.21(o) (§ 211.21(o) of the Board's Regulation K), provided that if the top-tier foreign banking organization is incorporated in or organized under the laws of any State, the foreign banking organization shall not be treated as a foreign banking organization for purposes of this part.

* * * * *

FR Y–15 means the Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a

consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

Regulated financial company means:

(1) A depository institution holding company or designated company;

(2) A company included in the organization chart of a depository institution holding company on the Form FR Y–6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) website,[2] provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under 12 CFR part 249;

(3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;

(4) An insurance company;

(5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);

(6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462);

(7) A U.S. intermediate holding company; and

(8) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (7) of this definition (*e.g.,* a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(9) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

* * * * *

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

* * * * *

U.S. intermediate holding company means a company formed by a foreign banking organization pursuant to 12 CFR 252.153.

* * * * *

■ 36. In § 329.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

§ 329.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, an FDIC-supervised institution's total net cash outflow amount equals the FDIC-supervised institution's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 329.32(a) through (l); *minus*

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 329.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; *plus*

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* An FDIC-supervised institution's outflow adjustment percentage is determined pursuant to Table 1 to this section.

TABLE 1 TO § 329.30—OUTFLOW ADJUSTMENT PERCENTAGES

[Outflow adjustment percentage]

GSIB FDIC-supervised institution	100 percent.
Category II FDIC-supervised institution	100 percent.
Category III FDIC-supervised institution that:	100 percent.
(1) Is a consolidated subsidiary of a Category III banking organization with $75 billion or more in average weighted short-term wholesale funding; or.	
(2) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary under a holding company.	
Category III FDIC-supervised institution that:	[70 to 85] percent.
(1) Is a consolidated subsidiary of a Category III banking organization with less than $75 billion in average weighted short-term wholesale funding; or.	
(2) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary under a holding company.	
An FDIC-supervised institution described in § 329.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category II foreign banking organization.	100 percent.

[2] *http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx.*

TABLE 1 TO § 329.30—OUTFLOW ADJUSTMENT PERCENTAGES—Continued

[Outflow adjustment percentage]

An FDIC-supervised institution described in § 329.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding.	100 percent.
An FDIC-supervised institution described in § 329.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding.	[70 to 85] percent.

(d) *Transition.* An FDIC-supervised institution whose outflow adjustment percentage increases from a lower to a higher outflow adjustment percentage may continue to use its previous lower outflow adjustment percentage until the first day of the second calendar quarter after the outflow adjustment percentage increases.

■ 37. In § 329.50, revise paragraph (a) to read as follows:

§ 329.50 Transitions.

(a) *Depository institution subsidiary of a U.S. intermediate holding company.* An FDIC-supervised institution that becomes subject to this part under § 329.1(b)(1)(ii) does not need to comply with the minimum liquidity standard and other requirements of this part until [one year after the effective date of the final rule], at which time the FDIC-supervised institution must begin to calculate and maintain a liquidity coverage ratio daily in accordance with subparts A through N of this part, if the FDIC-supervised institution is a consolidated subsidiary of a U.S. intermediate holding company that, immediately prior to [effective date of final rule]:

(1) Was domiciled in the United States;

(2) Had total consolidated assets equal to $50 billion or more (based on the average of the U.S. intermediate holding company's four most recent Consolidated Financial Statements for Holding Companies reporting forms (FR Y–9Cs));

(3) Had total consolidated assets less than $250 billion as of the 2018 year-end FR Y–9C or Call Report, as applicable; and

(4) Had total consolidated on-balance sheet foreign exposure of less than $10 billion as of year-end 2018 (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report).

* * * * *

■ 38. Section 329.105, as proposed to be added at 81 FR 35124 (June 1, 2016), is revised to read as follows:

§ 329.105 Calculation of required stable funding amount.

(a) *Required stable funding amount.* An FDIC-supervised institution's required stable funding (RSF) amount equals the FDIC-supervised institution's required stable funding adjustment percentage as determined under paragraph (b) of this section multiplied by the sum of:

(1) The carrying values of an FDIC-supervised institution's assets (other than amounts included in the calculation of the derivatives RSF amount pursuant to § 329.107(b)) and the undrawn amounts of an FDIC-supervised institution's credit and liquidity facilities, in each case multiplied by the RSF factors applicable in § 329.106; and

(2) The FDIC-supervised institution's derivatives RSF amount calculated pursuant to § 329.107(b).

(b) *Required stable funding adjustment percentage.* An FDIC-supervised institution's required stable funding adjustment percentage is determined pursuant to Table 1 to this section.

TABLE 1 TO § 329.105—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

[Required stable funding adjustment percentage]

GSIB FDIC-supervised institution	100 percent.
Category II FDIC-supervised institution	100 percent.
Category III FDIC-supervised institution that: (3) Is a consolidated subsidiary of a Category III banking organization with $75 billion or more in average weighted short-term wholesale funding; or. (4) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary under a holding company.	100 percent.
Category III FDIC-supervised institution that: (3) Is a consolidated subsidiary of a Category III banking organization with less than $75 billion in average weighted short-term wholesale funding; or. (4) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary under a holding company.	[70 to 85] percent.
An FDIC-supervised institution described in § 329.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category II foreign banking organization.	100 percent.
An FDIC-supervised institution described in § 329.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with $75 billion or more in average weighted short-term wholesale funding.	100 percent.
An FDIC-supervised institution described in § 329.1(b)(1)(ii) that is the consolidated subsidiary of a U.S. intermediate holding company of a Category III foreign banking organization with less than $75 billion in average weighted short-term wholesale funding.	[70 to 85] percent.

(c) *Transition.* An FDIC-supervised institution whose required stable funding adjustment percentage increases from a lower to a higher required stable funding adjustment percentage may continue to use its previous lower required stable funding adjustment percentage until the first day of the second calendar quarter after the required stable funding adjustment percentage increases.

Dated: April 9, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 16, 2019.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–09245 Filed 5–21–19; 8:45 am]

BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P

FEDERAL REGISTER

Vol. 84 Friday,

No. 101 May 24, 2019

Part IV

The President

Proclamation 9895—National Maritime Day, 2019

Federal Register
Vol. 84, No. 101
Friday, May 24, 2019

Presidential Documents

Title 3—

The President

Proclamation 9895 of May 20, 2019

National Maritime Day, 2019

By the President of the United States of America

A Proclamation

On National Maritime Day, we honor the men and women who, throughout our history, have served with professionalism, dedication, and patriotism in the United States Merchant Marine. We recognize these seafaring merchant mariners for helping to fuel our economy, maintain our sea power, and support our national security.

Merchant mariners extend goodwill into all parts of the world, serving as a peaceful United States presence on international waterways. Today, American mariners facilitate the import and export of billions of dollars of goods, including fuel, agricultural products, and raw materials through the Marine Transportation System. They are also among the first to respond to help their fellow citizens in the wake of national disasters.

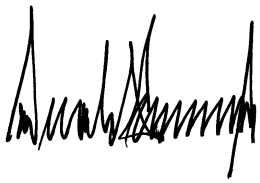
During times of war, merchant mariners courageously sail into combat zones to provide sealift for the Department of Defense, carrying weapons and supplies to America's fighting forces. In every conflict, United States citizen mariners have answered the call to duty and risked their lives. Some have sadly made the ultimate sacrifice for their country.

Because the United States Merchant Marine plays a central role in bringing American goods to market and in bolstering our military readiness abroad, we must encourage more people to pursue career opportunities on America's waterways and the oceans of the world. For this reason, I recently signed an Executive Order to help veterans of the Armed Forces transition seamlessly into civilian careers in the United States Merchant Marine by allowing them to apply relevant military training and experience toward becoming credentialed merchant mariners. This will help support a robust, well-equipped, and safe merchant fleet crewed by well-trained mariners.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day'' to commemorate the first transoceanic voyage by a steamship in 1819 by the S.S. Savannah. By this resolution, the Congress has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim May 22, 2019, as National Maritime Day. I call upon the people of the United States to mark this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth 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. 2019–11110
Filed 5–23–19; 11:15 am]
Billing code 3295–F9–P

Reader Aids

Federal Register

Vol. 84, No. 101

Friday, May 24, 2019

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, 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
21233–21686 14
21687–22048 15
22049–22326 16
22327–22692 17
22693–22942 20
22943–23438 21
23439–23702 22
23703–23990 23
23991–24362 24

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
3187 22943

3 CFR

Executive Orders:
11888 (Amended by Proc. 9887) 23425
13515 (Superseded by EO 13872).....22321
13811 (Superseded by EO 13872).....22321
13870 20523
13871 20761
13872 22321
13873 22689
Proclamations:
9704 (Amended by Proc. 9893) 23983
9705 (Amended by Procs. 9886, 9894).....23421, 23987
9753 (Superseded by Proc. 9892) 23701
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
9881 21685
9882 22039
9883 22041
9884 22043
9885 22045
9886 23421
9887 23425
9888 23433
9889 23695
9890 23697
9891 23699
9892 23701
9893 23983
9894 23987
9895 24361
Administrative Orders:
Memorandums:
Memorandum of Apr. 22, 2019 19853
Memorandum of Apr. 30, 2019 22329
Notices:
Notice of May 8, 2019 20537
Notice of May 8, 2019 20539
Notice of May 13, 2019 22047
Notice of May 20, 2019 23437
Presidential Determinations:
No. 2019-12 of April 29, 2019 22327

5 CFR

532 22963
1303 22947

6 CFR

5 20240

7 CFR

610 19699
622 19699
625 19699
652 19699
948 22957
985 19703
1220 20765
1260 20765
1455 19699
Proposed Rules:
51 19743
930 20043

8 CFR

103 23930
214 .....20005, 23930

10 CFR

52 23439
72 21687
170 22331
171 22331
Proposed Rules:
50 21727
52 .....21727, 23500
72 21728
429 22395
430 .....18414, 20048
431 .....18414, 20048, 20704, 22395

11 CFR

100 18697
101 18697
102 18697
104 18697
105 18697

108 18697
110 18697
114 18697

12 CFR

101 23991
204 20541
208 21691
211 21691
Ch. VI 21693
Proposed Rules:
3 24296
43 23644
50 24296
217 ....21988, 24296
225 ....21634, 21988
231 18741
238 ....21634, 21988
243 21600
249 24296
252 21988
324 24296
329 24296
381 21600
Ch. X 21732
1003 ....20049, 20972
1005 21729
1006 23274

13 CFR

Proposed Rules:
124 21256
127 21256

14 CFR

25 ....18701, 20021, 23456
39 ....18704, 18707, 19709, 20242, 20246, 20248, 20252, 20542, 20772, 22693, 22695, 22697, 23458, 23461, 23703, 24007
71 ....20256, 20257, 20258, 20774, 22362, 22363, 22364, 22365, 22366, 22699, 22701, 22959
95 24010
97 ....18971, 18973, 23710, 23712
Proposed Rules:
25 ....18997, 20053, 21733
39 ....19745, 19879, 19881, 19885, 19888, 19891, 20054, 20057, 20300, 20303, 20822, 20823, 21268, 21270, 21273, 21276, 21279, 22075, 22738, 22740, 22743, 22986, 23740, 23742, 24049
71 ....20306, 22078, 22745, 22746, 22747

15 CFR

738 24018
740 24018
744 ....21233, 22961, 23468, 24021
762 23468
774 23886
Proposed Rules:
960 21282

16 CFR

18 20776
433 18711
460 20777
640 23471
680 23471
698 23471
1450 24021
Proposed Rules:
Ch. I 18746
314 24049

17 CFR

Proposed Rules:
1 22226
23 21044
39 22226
43 21044
45 21044
49 21044
140 22226
201 24206
240 24206

18 CFR

35 23902
Proposed Rules:
38 24050

20 CFR

655 20005

21 CFR

216 24027
886 22702
1308 20023
Proposed Rule:
73 20060
101 22749
102 22749
1308 18423

22 CFR

40 19712
41 22968

24 CFR

Proposed Rules:
5 20589
204 19748

26 CFR

1 ....20790, 23716
300 20801
Proposed Rules:
1 ....18652, 18999, 21198, 22751, 22987

29 CFR

1602 ....18383, 18974
1904 21416
1910 21416
1915 21416
1926 21416
4022 21698
4041A 18715
4245 18715
4281 18715
Proposed Rules:
548 21300
778 21300
791 21301
1910 22756

30 CFR

250 21908
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, 21699, 22969, 23486, 24028
117 ....22702, 23488
165 ....18387, 18389, 18975, 20028, 20029, 20034, 20035, 20544, 20546, 20547, 21701, 21703, 21704, 22367, 22369, 22704, 22706, 22708, 22971, 22972, 23490, 23492, 23494, 23496, 23719, 23720, 23721, 24029, 24030
326 18979
Proposed Rules:
100 ....20060, 20307, 20602, 22079
165 ....18452, 19003, 20307, 20318, 20825, 21302, 22403, 22405, 22988, 23748, 24059, 24061
175 20827

36 CFR

Proposed Rules:
7 21738

37 CFR

201 20273
Proposed Rules:
201 22762
202 22762

38 CFR

0 22709
17 ....21668, 24032
21 22370
Proposed Rules:
17 22990
62 22407

39 CFR

111 ....18731, 21238, 22710
233 20804
3020 18982
3050 20806
Proposed Rules:
3020 21304
3050 22994
3060 23503

40 CFR

49 21240
52 ....18392, 18736, 18738, 18989, 18991, 19680, 19681, 20274, 20808, 21253, 22049, 22374, 22376, 22711, 22972, 22982, 22984, 23723, 23725, 24034, 24037
63 23727
81 ....21253, 24037
158 18993
180 ....18398, 20037, 21706, 24041, 24042
271 ....20549, 22378
282 22727
300 ....20550, 21708
1552 21714
Proposed Rules:
1 20062
26 24063
49 24064
52 ....19005, 19007, 19750, 19893, 20070, 20071, 20318, 20604, 20838, 22082, 22084, 22087, 22091, 22093, 22768, 22771, 22774, 22786, 22787, 22995, 22996, 23504, 23750
63 ....18926, 20208, 22642
80 21305
81 ....19007, 19893, 22093, 22101
131 18454
174 20320
180 ....20320, 20843
282 22805
300 ....20073, 24069

41 CFR

Proposed Rules:
51 23005
52 23005
53 23005
54 23005
55 23005
56 23005
57 23005
58 23005
App. C Ch. 301 19895
304–2 19895
304–3 19895
304–5 19895
304–6 19895

42 CFR

403 20732
405 19855
422 23832
423 ....19855, 23832
447 19718
484 20810
1001 20810
Proposed Rules:
410 18748
412 19158
413 19158
414 18748
424 18748
488 18748
493 18748
495 19158

43 CFR

3160 22379

44 CFR

64 ....18403, 22049

45 CFR

88 23170
1181 22943
1182 22943
1184 22943
Proposed Rules:
155 19000

46 CFR

401 20551
404 20551

Proposed Rules:

25 20827
355 18468
356 18469

47 CFR

2 20810
25 ....20810, 22733
27 23498
30 ....18405, 20810
52 19874
54 19874
64 19874
73 21718
76 18406

Proposed Rules:

1 ....18757, 20077, 23508
2 ....20088, 23508
27 23508
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
501 22381
515 22381
538 22381
552 22381

Proposed Rules:

2 20607

49 CFR

10 23728
209 23730
213 23730
214 23730
215 23730
217 23730
218 23730
219 23730
220 23730
221 23730
222 23730
223 23730
224 23730
225 23730
227 23730
228 23730
229 23730
230 23730
231 23730
232 23730
233 23730
234 23730
235 23730
236 23730
237 23730
238 23730
239 23730
240 23730
241 23730
242 23730
243 23730
270 23730
272 23730
1002 20292
1312 20292

Proposed Rules:

225 22410
240 20472
571 21309
576 21741

50 CFR

17 ....19877, 23644
229 22051
300 18409
622 ....19728, 22073, 22383, 22389
635 ....20296, 22734, 23519
648 ....20820, 21723, 22392
660 ....19729, 20578, 23737

Proposed Rules:

17 ....19013, 21312
218 21126
635 23014
648 ....18471, 20609, 22104, 22426

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 May 14, 2019

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.