AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 84 Wednesday,
No. 210 October 30, 2019

Pages 58005–58302

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. 210

Wednesday, October 30, 2019

Agriculture Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58126

Antitrust Division
NOTICES
Changes under the National Cooperative Research and Production Act:
Cooperative Research Group on Cooperative Research Group on Corrosion under Insulation, 58175–58176
Information Warfare Research Project Consortium, 58174
Institute of Electrical and Electronics Engineers, 58172–58173
Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics, 58173
PXI Systems Alliance, Inc., 58173
TeleManagement Forum, 58174–58175

Bureau of Consumer Financial Protection
RULES
Appraisals for Higher-Priced Mortgage Loans Exemption Threshold, 58013–58017
Consumer Leasing (Regulation M), 58017–58020
Truth in Lending (Regulation Z), 58020–58026

Centers for Disease Control and Prevention
NOTICES
Delegation of Authority, 58157

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58158

Coast Guard
RULES
Regulated Navigation Areas:
Saint Simons Sound, GA, 58051–58053
PROPOSED RULES
Great Lakes Pilotage Rates:
2020 Annual Review and Revisions to Methodology, 58099–58125

Commerce Department
See Economic Analysis Bureau
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 58142

Comptroller of the Currency
RULES
Appraisals for Higher-Priced Mortgage Loans Exemption Threshold, 58013–58017

Copyright Office, Library of Congress
NOTICES
Meetings:
Unclaimed Royalties Study; Public Symposium, 58176–58177

Copyright Royalty Board
PROPOSED RULES
Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate Those Performances (Web V), 58095–58098

Drug Enforcement Administration
RULES
Schedules of Controlled Substances:
Extension of Temporary Placement of FUB-AMB in Schedule I of the Controlled Substances Act, 58045–58047
PROPOSED RULES
Schedules of Controlled Substances:
Placement of FUB-AMB in Schedule I, 58090–58095

Economic Analysis Bureau
NOTICES
Developing State-Level Statistics for the Outdoor Recreation Satellite Account, 58126–58127

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Program for International Student Assessment 2021 Main Study Recruitment and Field Test, 58143–58144
Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report, 58142–58143

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
RULES
Office of Hearings and Appeals Procedural Regulations, 58005–58013
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Northern New Mexico, 58144–58145
Environmental Management Site-Specific Advisory Board, Paducah, 58145
Environmental Management Site-Specific Advisory Board, Savannah River Site, 58144
President's Council of Advisors on Science and Technology, 58145–58146

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Biomass Research and Development Technical Advisory Committee, 58146

Environmental Protection Agency
PROPOSED RULES
National Emission Standards for Hazardous Air Pollutants:
Rubber Tire Manufacturing Residual Risk and Technology Review, 58268–58301
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission Standards, 58156–58157
EPA Application Materials for the Water Infrastructure Finance and Innovation Act, 58153–58154
Motor Vehicle and Engine Compliance Program Fees, 58154–58155
National Emission Standards for Hazardous Air Pollutants for the Manufacture of Amino/Phenolic Resins, 58152–58153
Recordkeeping and Reporting Related to E15, 58152
Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act, 58155–58156
Pesticide Registration Review:
Anthraquinone, 58150–58152

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 58060–58062, 58073–58075
Bombardier, Inc., Airplanes, 58062–58066
Dassault Aviation Airplanes, 58070–58073
De Havilland Aircraft of Canada Limited (Type Certificate previously held by Bombardier, Inc.) Airplanes, 58066–58070

Federal Energy Regulatory Commission
NOTICES
Application:
Energy Stream, LLC, 58147–58148
Lock+TM Hydro Friends Fund XXXI, LLC, 58147
Combined Filings, 58148–58150
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Reading Wind Energy, LLC, 58149
Petition for Declaratory Order:
Branch Street Solar Partners, LLC; SSA Solar of NM 4, LLC, 58147

Federal Maritime Commission
NOTICES
Agreements Filed, 58157

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58200–58201
Petition for Waiver of Compliance, 58200

Federal Reserve System
RULES
Appraisals for Higher-Priced Mortgage Loans Exemption Threshold, 58013–58017
Consumer Leasing (Regulation M), 58017–58020
Truth in Lending (Regulation Z), 58020–58026
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 58157

Federal Trade Commission
RULES
Energy Labeling Rule, 58026–58045

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Draft Recovery Plan for the Streaked Horned Lark, 58170–58171
Environmental Impact Statements; Availability, etc.:
Applications for Incidental Take Permits; Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, OR, 58169–58170

Food and Drug Administration
NOTICES
Guidance:
Providing Regulatory Submissions in Electronic Format: Investigational New Drug Application Safety Reports, 58158–58160

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Comprehensive Test Ban Treaty, 58172
Consolidated Consumers' Report, 58171–58172

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58160

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Transfer of Physical Assets, 58168–58169
Electronic Line of Credit Control System System Access Authorization Form Collection, 58166–58167
Public Housing Agency 5-Year and Annual Plan, 58167–58168
Requisition for Disbursements of Sections 202 and 811 Capital Advance/Loan Funds, 58166

Industry and Security Bureau
NOTICES
Denial of Export Privileges:
Alexis Vlachos, 58127–58128
Meetings:
Transportation and Related Equipment Technical Advisory Committee, 58128

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Aluminum Wire and Cable from the People's Republic of China, 58137–58139
Certain Steel Nails from the Socialist Republic of Vietnam, 58133–58134
Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 58128–58129
Diamond Sawblades and Parts Thereof from the People's Republic of China, 58130–58131
Steel Concrete Reinforcing Bar from Mexico, 58132–58133
Sugar from Mexico, 58129–58130, 58136–58137
Determination of Sales at Less Than Fair Value:
Aluminum Wire and Cable from the People's Republic of China, 58134–58136

Justice Department
See Antitrust Division
See Drug Enforcement Administration

Library of Congress
See Copyright Office, Library of Congress
See Copyright Royalty Board

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council; Science Committee, 58177–58178
NASA Advisory Council; Aeronautics Committee, 58178

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Collection of Grants and Contracts Data the Historically Black Colleges and Universities and Small Businesses Nay be Interested in Pursuing, 58162–58163
Meetings:
Center for Scientific Review, 58161–58164
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 58163
National Eye Institute, 58163
National Institute of Allergy and Infectious, 58165–58166
National Institute of Allergy and Infectious Diseases, 58160–58161, 58165
National Institute of Environmental Health Sciences, 58164–58165

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, 58053–58059
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 58140–58141
Requests for Nominations:
Atlantic Highly Migratory Species; Advisory Panel, 58139–58140

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 58178

Nuclear Regulatory Commission
NOTICES
Order:
In the Matter of Team Industrial Services, Inc., 58178–58181

Patent and Trademark Office
NOTICES
Intellectual Property Protection for Artificial Intelligence Innovation, 58141–58142

Pension Benefit Guaranty Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Payment of Premiums, 58181–58182

Postal Service
NOTICES
Meetings; Sunshine Act, 58182–58183

Securities and Exchange Commission
PROPOSED RULES
Amendments to Procedures with Respect to Applications under the Investment Company Act, 58075–58090
Publication or Submission of Quotations without Specified Information, 58206–58266
NOTICES
Meetings; Sunshine Act, 58188
Self-Regulatory Organizations; Proposed Rule Changes:
Fixed Income Clearing Corp., 58194–58198
National Securities Clearing Corp., 58183–58187
New York Stock Exchange, LLC, 58189
NYSE American, LLC, 58188
NYSE Arca, Inc., 58189
NYSE National, Inc., 58187–58188
The Depository Trust Co., 58189–58194

Small Business Administration
NOTICES
Major Disaster:
Florida; Public Assistance Only, 58198–58199

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Immigrant Health Insurance Coverage, 58199–58200

Surface Mining Reclamation and Enforcement Office
RULES
Montana Regulatory Program, 58047–58051

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
NOTICES
Rights and Protections Available under the Federal Antidiscrimination and Whistleblower Protection Laws, 58201–58202

Treasury Department
See Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Nonresident Alien Intake and Interview Sheet, 58203

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 58206–58266

Part III
Environmental Protection Agency, 58268–58301

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.

10 CFR
1003 58005

12 CFR
34 58013
213 58017
226 (2 documents) 58013, 58020
1013 58017
1026 (2 documents) 58013, 58020

14 CFR
Proposed Rules:
39 (5 documents) 58060, 58062, 58066, 58070, 58073

16 CFR
305 58026

17 CFR
Proposed Rules:
202 58075
230 58206
240 58206
270 58075

21 CFR
1308 58045
Proposed Rules:
1308 58090

30 CFR
926 58047

33 CFR
165 58051

37 CFR
Proposed Rules:
380 58095

40 CFR
Proposed Rules:
63 58268

46 CFR
Proposed Rules:
401 58099
403 58099
404 58099

50 CFR
648 58053

Rules and Regulations

Federal Register
Vol. 84, No. 210
Wednesday, October 30, 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 ENERGY

10 CFR Part 1003

[DOE–OHA–2019–0024]

RIN 1903–AA10

Revisions to the Office of Hearings and Appeals Procedural Regulations

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals Procedural Regulations set forth the default procedures for appearance and practice before the Office of Hearings and Appeals (OHA), the quasi-judicial branch of the Department of Energy (DOE). The procedures set forth in this regulation apply to all proceedings before the OHA where a comprehensive procedural scheme is not found in another DOE regulation. Through this rulemaking, the OHA simplified and modernized its procedures.

DATES: This final rule is effective as of November 29, 2019.

FOR FURTHER INFORMATION CONTACT: Kristin L. Martin, Attorney-Advisor, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0107, (202) 287–1550, email: *kristin.martin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulatory History

Part 1003 was promulgated in 1995 to replace 10 CFR part 205, a procedural regulation designed to apply to matters involving the former oil price and allocation control regulations effective during the 1970s. As the oil price and allocation control program wound down, the OHA's jurisdiction expanded to include other programs. Part 1003 was intended to apply to most proceedings before the OHA that did not involve the former federal petroleum price and allocation control regulations. Namely, part 1003 contained a number of subparts that set forth procedures specific to the following types of proceedings: Requests for exceptions or exemptions from DOE rules, appeals of DOE orders, applications for stays, applications for modification or revision of DOE orders, requests for OHA conferences and hearings, and requests for special redress relief or other extraordinary assistance.

Since 1995, the OHA's jurisdictional portfolio has changed significantly, shifting away from petroleum product refund proceedings to include primarily personnel security hearings, Freedom of Information Act appeals, and proceedings under the DOE's Contractor Employee Whistleblower Protection Program. Most of the proceedings that the OHA oversees currently are governed by their own procedural regulations and are not subject to the procedures found in part 1003. As the nature of the OHA's work has evolved and technology has improved, the procedures set forth in part 1003 have become more cumbersome and less effective. Part 1003 proceedings involve fewer parties, few to no hearings, and fewer stakeholders than other types of OHA proceedings. In addition, Part 1003 mandates outdated methods of communication that are far less efficient than modern methods. Accordingly, the OHA has decided to make revisions to part 1003 as described in Section II.

II. Summary of Revisions

The OHA is making a number of updates to part 1003. Specifically, the OHA is eliminating the subparts specific to individual types of proceedings and consolidating those procedures in a single part with general applicability. The new consolidated procedures will govern all proceedings before the OHA where a comprehensive procedural scheme is not found in another DOE regulation, including appeals of DOE orders, requests for exceptions or exemptions from DOE rules, and requests for modification or rescission of DOE orders. This is intended to simplify and streamline the procedures for appearing before the OHA, and to reduce cost and administrative burdens for parties.

A. Methods of Communication and Disclosure

In executing its duties under the revised part 1003, the OHA intends to make use of the *regulations.gov* federal portal. Currently, except in unusual circumstances, all documents submitted in exception relief proceedings are posted to an e-docket on that website and are available for public comment through the website as well. The OHA is expanding this practice to all proceedings conducted under part 1003. In addition, the OHA is eliminating requirements that communications and disclosures under part 1003 be transmitted by any one particular method, allowing for greater flexibility as technology changes. For instance, the revisions do not mandate a particular method by which service must be carried out, and the OHA may allow service by a method other than those specified in the regulation.

B. § 1003.1 Purpose and Scope

1. Applicability to Other Regulations. Part 1003's procedures are not applicable to proceedings that are subject to specific and comprehensive procedural schemes found in other parts of DOE's regulations. Examples of regulations with comprehensive adjudicative procedures include 10 CFR parts 708, 710, 712, and 1004.

2. *Elimination of Subparts.* The OHA is consolidating subparts B through G of the current part 1003 into a single part.

Multiple parts of DOE's regulations make reference to subparts B through G as they appear in the previous iteration of part 1003. With the consolidation of the subparts, rather than attempt to identify and amend each and every reference throughout all of DOE's regulations, the OHA is adding § 1003.1(b), which clarifies that all such references shall be considered to refer to part 1003 generally, rather than to a specific subpart. For example, DOE's Energy Conservation Program for Consumer Products, at 10 CFR part 430, states, ''To exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR part 1003, subpart C.'' 10 CFR 430.27(m). In the revised part 1003, subpart C no longer exists, but in accordance with § 1003.1(b), the general procedures contained in part 1003 will still apply to the appeals process required by § 430.27(m).

C. § 1003.2 Definitions

1. The OHA is adding a definition of ''Alternative Dispute Resolution'' (ADR). The OHA is also adding a provision to the regulation encouraging ADR.

2. As part of its effort to consolidate the multiple iterations of procedures contained in the current part 1003 into a single procedure, the OHA is using the term ''petition'' to refer to all initial filings in all proceedings governed by part 1003. Similarly, any person who files an initial submission with the OHA is called a ''petitioner'' for purposes of the regulation. However, in practice, the person could still be referred to as an appellant, applicant, or other appropriate designation.

3. The OHA is defining ''verified email address,'' a new term created to assist with electronic notice and filing.

4. The OHA is defining the terms ''action,'' ''Decision and Order,'' ''final disposition of DOE,'' ''party,'' and ''participant.''

D. § 1003.6 Service

The OHA is allowing for methods of service other than the U.S. Mail. Specifically, the OHA now allows service via email. The OHA is also allowing for service via unspecified alternative methods, allowing for flexibility as communications technology evolves. For example, a petitioner can request that the OHA allow him to send a link to the e-docket on the *regulations.gov* federal portal in lieu of sending copies of documents.

E. § 1003.9 Method of Submission of Petitions, Documents, and Other Materials

The OHA is mandating that all documents filed with the OHA be filed electronically, except when permission is granted to file in another manner. Not everyone can file electronically, and some materials are better mailed or faxed for logistical reasons. Accordingly, any person wishing to file via non-electronic means may contact the OHA and request permission to do so. The OHA will consider granting such requests in circumstances where good cause has been shown why the document cannot or should not be filed electronically.

F. § 1003.11 Filing a Petition

The consolidated procedures by the OHA will be initiated by the filing of a petition by a person who believes he has been adversely affected by a DOE decision or action, or who is otherwise authorized by law.

1. *Form and Elements of a Petition.* The revised part 1003 contains requirements for the form and elements of a petition. While the form is substantially similar to the form of like filings under the previous iteration of the regulation, the proposed elements are more specific and comprehensive and are intended to reduce the need for information requests from the OHA.

2. *Motions for Stay.* The OHA is requiring that motions for a stay be filed at the same time as petitions. However, if a petitioner can show good cause as to why it should be able to file a motion for stay later, part 1003 allows the OHA the flexibility to fairly address the situation.

A stay is a type of order that has the effect of pausing a legal process, such as a proceeding or order. Unlike under the previous iteration of part 1003, where the procedure for requesting a stay was set forth in its own subpart, subpart D, the consolidated procedures the OHA is adopting in this rulemaking do not apply to requests for stays. The OHA now will issue stays as interlocutory orders, rather than as Decisions and Orders. The legal standard for consideration of stay requests is outlined in previous OHA decisions, which have precedential authority. Motions and interlocutory orders will be posted to the e-docket, allowing the public an opportunity to comment.

G. § 1003.12 Notice

The OHA is allowing notice via electronic or other means. Additionally, the OHA may require additional or alternative notice if the standard provisions prove ineffective or overly burdensome.

H. § 1003.13 Alternative Dispute Resolution

The OHA is adding a section encouraging the use of Alternative Dispute Resolution.

I. § 1003.14 Evaluation of Petitions

1. *Timing.* The OHA is imposing time limits, mandatory communication with litigants, and procedural guidelines on its evaluation of petitions.

2. *Conduct of the Proceedings.* The OHA is specifying that the OHA Director has the judicial powers necessary to conduct proceedings, including, but not limited to, granting or denying motions and entering interlocutory orders. This provision allows the OHA Director to exercise the full range of judicial powers—even those not specified in the regulation—that are necessary to ensure a fair and full evaluation of the petition. For example, while discovery is not typically a part of part 1003 proceedings, it may be ordered by the OHA Director in certain cases where appropriate.

3. *Hearings.* The OHA is eliminating the subpart on hearings and inserting a new section outlining the criteria used to determine whether a hearing should be conducted. Nothing in this regulation prohibits a party from requesting a hearing.

J. § 1003.15 Subpoenas, Information Requests, Oaths, Witnesses

1. The OHA is changing the term ''Special Report Order'' to ''information request,'' which the OHA considers a more accurate description of the tool used by the OHA to elicit information related to a proceeding.

2. The OHA is adding standards for oaths or affirmations. The oath or affirmation must now refer the witness to federal statutes describing penalties for perjury and falsification.

The OHA understands 18 U.S.C. 1001 and 18 U.S.C. 1621 to apply to all statements and submissions to the OHA, whether oral or written. Therefore, the OHA is removing duplicative references to these statutes from the regulation.

K. § 1003.16 Dismissal of Petitions

The OHA is expanding upon and codifying the circumstances under which it may dismiss petitions. Dismissals are separated into two categories: Dismissal with prejudice and dismissal without prejudice. A dismissal is considered a Decision and Order.

L. § 1003.17 Standard of Review

The OHA is creating a default standard of review for petitions not otherwise governed by an authority that prescribes a standard of review. Under the new standard, the OHA will pay deference to the subject matter expertise of the DOE component whose action is under review, while at the same time ensuring that such component acted legally and with appropriate consideration.

The OHA's standard of review for petitions filed under the authority of 42 U.S.C. 7194 continues to include a consideration of whether the petitioner has made a showing of serious hardship, gross inequity or unfair distribution of burdens.

M. § 1003.18 Decision and Order

The OHA is requiring that a decision granting or denying the relief sought by a petitioner be presented in a particular format, referred to as a Decision and Order. The Decision and Order will include the legal and factual basis for the decision, state whether it is the DOE's final agency action on the matter,

and state what review is available to the parties.

The OHA is eliminating the administrative appeal of a Decision and Order, except as provided by federal statute. This stems from logistical necessity. Decisions under part 1003 are issued by the OHA Director. There is no higher authority in the OHA to which a person can appeal. Furthermore, as the OHA's jurisdiction under part 1003 is almost entirely delegated from the Secretary of Energy, there is no other entity within the DOE with authority to make decisions or hear appeals on such matters.

N. § 1003.19 Reconsideration

The OHA is allowing for reconsideration of a Decision and Order if the motion to do so is filed by the 20th day after the Decision and Order is made available to the public. The Director may grant a motion for reconsideration only if he determines that the Decision and Order contains an error that materially influenced the proceeding's outcome.

III. Public Comment

Interested persons were invited to participate in the proposed rulemaking (84 FR 41654, August 15, 2019) proceeding by submitting data, views, or arguments. The comment period ended on September 16, 2019. No comments were received during that time.

IV. Regulatory Review

A. Executive Order 12866

It was determined that this action is not a significant regulatory action subject to review under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993) by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Executive Orders 13771, and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The Order required that the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

Pursuant to OMB's *Guidance Implementing Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs''* (April 5, 2017), this action does not constitute an ''E.O. 13771 regulatory action'' because it does not meet the E.O. 12866 definition of a significant regulatory action. DOE determined, however, that this action furthers the policy goals outlined in Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' which encourages the repeal, replacement, or modification of existing regulations that, among other things, are outdated, unnecessary, or ineffective. Prior to this action, Part 1003 was outdated, repetitive, and, in some sections, inefficient. Certain provisions, particularly the requirement that notice be served via U.S. Mail, had become onerous for regulated parties. This action clarifies the regulation's language, streamlines the proceedings, and removes burdensome requirements. This should result in increased time and resource savings for litigants and DOE.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's website: *http://www.gc.doe.gov.*

DOE has reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule will simplify procedural rules primarily for litigants and reduce the financial and administrative burdens involved in bringing cases before the OHA. DOE has determined that the final rule will not result in a significant economic impact on a substantial number of small entities because the revisions are specifically designed to ease and reduce the obligations of litigants. For example, allowing service via email and other electronic methods significantly reduces the time and expense of bringing a part 1003 proceeding for petitioners, most of whom are corporations and small businesses. Moving the public reference room from a physical location in Washington, DC, to an online location makes research far easier for litigants outside the Capital region. In making changes such as the ones mentioned here and described elsewhere in the preamble, the OHA has not added new burdens on participants in part 1003 proceedings, resulting in a net decrease in burdens.

DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. The Paperwork Reduction Act of 1995

The changes to part 1003 do not contain information collection requirements subject to review and approval by OMB under the Paperwork Reduction Act.

E. The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine

closely the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments. 2 U.S.C. 1534.

This final rule will not 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. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. The Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The DOE has examined this final rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. The DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). The DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Congressional Notification

As required by 5 U.S.C. 801(2), DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this document. The report will state it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 1003

Administrative practice and procedure, Appeal procedures, Hearing and appeal procedures.

Signed in Washington, DC, on: October 22, 2019.

Poli A. Marmolejos,

Director, Office of Hearings and Appeals.

■ For the reasons set out in the preamble, the DOE amends title 10, Code of Federal Regulations, chapter X, by revising part 1003 to read as follows:

PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

Sec.

1003.1 Purpose and scope.
1003.2 Definitions.
1003.3 Appearance before the OHA.
1003.4 Computation of time.
1003.5 Extension of time.
1003.6 Service.
1003.7 General filing requirements.
1003.8 Effective date of orders.
1003.9 Method of submission of petitions, documents, and other materials.
1003.10 Public reference room.
1003.11 Filing a petition.
1003.12 Notice.
1003.13 Alternative Dispute Resolution.
1003.14 Evaluation of petitions.
1003.15 Subpoenas, information requests, oaths, witnesses.
1003.16 Dismissal of petitions.
1003.17 Standard of review.
1003.18 Decision and Order.
1003.19 Reconsideration.

Authority: 15 U.S.C. 761 *et seq.;* 42 U.S.C. 7101 *et seq.*

§ 1003.1 Purpose and scope.

(a) This part establishes the procedures to be utilized in certain proceedings before the Office of Hearings and Appeals of the Department of Energy, where comprehensive procedures are not to be found in another part of DOE's regulations. These

procedures provide standard rules of practice in a variety of informal adjudications when jurisdiction is vested in the Office of Hearings and Appeals, including requests for adjustments from DOE rules, regulations, and orders under the authority of 42 U.S.C. 7194 as well as other requests for relief with respect to final dispositions of DOE. Any or all of the procedures contained in this part may be adopted by reference in another DOE program, statute, rule, regulation, guidance, or DOE delegation of authority that invokes the adjudicatory authority of the Office of Hearings and Appeals. These rules do not apply to proceedings governed by a federal statute or DOE regulation that contains comprehensive procedures specifically applicable to proceedings conducted under the authority of that regulation. (*e.g.*, 10 CFR part 708—DOE Contractor Employee Protection Program; 10 CFR part 710—Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material; 10 CFR part 1004—Freedom of Information Act (FOIA); 10 CFR part 712—Human Reliability Program.)

(b) Wherever another DOE program, statute, rule, regulation, guidance, or DOE delegation of authority references or adopts by reference the procedures set forth in a subpart contained in a previous iteration of this part, regardless of the subpart referenced, the procedures set forth in this part shall be deemed to apply.

§ 1003.2 Definitions.

(a) As used in this part:

Action means an affirmative act by DOE that carries the force of law.

Aggrieved, with respect to a person, means adversely affected by an action of the DOE.

Alternative Dispute Resolution means any technique for resolving disputes and managing conflict without resorting to litigation in either an administrative or judicial forum. Alternative Dispute Resolution techniques include, but are not limited to, mediation, facilitation, and shuttle diplomacy.

Decision and Order means the OHA's final decision on a petition brought under this part.

Director means the Director of the Office of Hearings and Appeals or duly authorized delegate.

DOE means the Department of Energy, created by the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), and the National Nuclear Security Administration (NNSA).

Duly authorized representative means a person who has been designated to appear before the Office of Hearings and Appeals in connection with a proceeding on behalf of a person interested in or aggrieved by an action of the DOE. Such appearance may consist of the submission of a written document, a personal appearance, verbal communication, or any other participation in the proceeding.

Federal legal holiday means any calendar day designated as a federal holiday by federal statute or Executive order.

Final disposition of DOE means a DOE rule, order, or other action in any matter other than:

(i) A rulemaking;

(ii) An internal DOE order or directive issued by the Secretary of Energy or his delegate in the management and administration of departmental elements and functions; or

(iii) Any decision or order issued under 41 U.S.C. 4712 or under part 708, part 710, part 712, or part 1004 of this title.

OHA means the Office of Hearings and Appeals of the Department of Energy.

Participant means a non-party entity that submits a comment, briefing, or other filing in a proceeding.

Party means the petitioner and any adverse entity, which may include the DOE, which assumes the role of defendant or respondent in the proceeding.

Person means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

Petition means a written submission to the OHA requesting that the OHA grant the petitioner relief.

Petitioner means any person filing a petition with the OHA.

Proceeding means the process and activity, and any part thereof, instituted by the OHA—either on its own initiative or in response to a petition submitted by a person—that may lead to an action by the OHA.

Verified email address means an email address that is publicly published or available upon request, or, if no such address exists, an email address through which the sender has communicated with the recipient in the previous 12 months.

(b) Throughout this part the use of a word or term in the singular includes the plural, and the use of the male pronoun is gender neutral.

§ 1003.3 Appearance before the OHA.

(a) An interested person may make an appearance, including a personal appearance at the discretion of the OHA, and participate in any proceeding described in this part on his own behalf or by a duly authorized representative. Any document filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative.

(b) The OHA may deny, temporarily or permanently, in whole or in part, the privilege of participating in proceedings, including oral presentation, to any individual who is found by the OHA—

(1) To have made false or misleading statements, either orally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the party or participant; or

(4) To have engaged in or to be engaged in conduct that substantially disrupts a proceeding.

§ 1003.4 Computation of time.

(a) *Days.* Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the OHA, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period runs until the end of the following day that is not a Saturday, Sunday, or a federal legal holiday. Documents received after 5 p.m., Eastern Time, are deemed filed on the following regular business day.

(b) *Hours.* If the period of time prescribed in an order issued by the OHA is stated in hours rather than days, the period of time begins to run upon actual notice of such order, whether by oral or written communication, to the person directly affected, and will run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended, or rescinded. When a written order is transmitted by oral communication, the written order must be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an order, notice or other document and the order, notice, or other

document is served solely by mail, 3 days will be added to the prescribed period.

§ 1003.5 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the OHA upon good cause shown.

§ 1003.6 Service.

(a) All documents required to be served under this part must be served personally, by first class United States mail, or by verified email address, except as otherwise provided.

(b) Service upon a person's duly authorized representative constitutes service upon that person.

(c) Official United States Postal Service receipts from certified mailing and email delivery receipts constitute evidence of service.

(d) The OHA may, at its discretion, allow for alternate forms of service when it determines that such would be advisable.

§ 1003.7 General filing requirements.

(a) *Purpose and scope.* The provisions of this section apply to all documents required or permitted to be filed with the OHA.

(b) *Signing.* Any document that is required to be signed, must be signed by the person filing the document. Any document filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative. The signature by the filer constitutes a certificate by the signer that the signer has read the document and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact, warranted under existing law, and submitted in good faith and not for any improper purpose such as to harass or to cause unnecessary delay. If a document is signed in violation of this section, the OHA may impose the sanctions specified in § 1003.3 and other sanctions determined to be appropriate.

(c) *Labeling.* A petition must be clearly labeled according to the nature of the action involved both on the petition itself and, where applicable, in the subject line of the email in which the petition is transmitted.

(d) *Obligation to supply information.* A person who files a petition is under a continuing obligation during the proceeding to provide the OHA with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other submission that is subsequently filed by that person with any DOE office.

(e) *The same or related matters.* A person who files a petition with the OHA must state whether, to the best knowledge of that person, the same or related action as that which is the subject of the petition has been or presently is being considered or investigated by any other DOE office, other federal agency, department, or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with any proceeding described in this part. In addition, the person must state whether contact has been made by the person or one acting on his behalf with any person who is employed by the DOE with regard to the same or a related issue, act, or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was oral or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) If any person filing a document with the OHA claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if such person requests the OHA not to disclose such information, such person must file together with the document a copy of the document from which the information for which confidential treatment is being sought has been deleted. The person must indicate in the original document that it is confidential or contains confidential information and must file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. For example, if the person states that the information comes within the exception codified at 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit a copy of the document with the confidential information deleted, the OHA may assume that there is no objection to public disclosure of the document in its entirety.

(2) The OHA will make a determination regarding any claim of confidentiality under criteria specified in 10 CFR 1004.11. Notice of the decision by the OHA to deny such claim, in whole or in part, and an opportunity to respond will be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

(g) *Submitting multiple petitions.* Each petition to the OHA must be submitted as a separate document, even if the petitions deal with the same or a related action or are submitted in connection with the same proceeding.

§ 1003.8 Effective date of orders.

Any order issued under this part is effective as against all persons having actual or constructive notice thereof upon issuance, in accordance with its terms, unless and until it is stayed or suspended. An order is deemed to be issued on the date, as specified in the order, on which it is signed by the Director, unless the order provides otherwise.

§ 1003.9 Method of submission of petitions, documents, and other materials.

Absent exceptional circumstances, all submissions to the OHA, as provided in this part or otherwise, must be filed electronically in accordance with the instructions set forth on the OHA website, found at *https://www.energy.gov/oha/filing-information.* The OHA may grant permission to file via mail or facsimile. Any submissions made in hard copy will not be returned.

§ 1003.10 Public reference room.

The OHA maintains an electronic public reference room at *https://www.energy.gov/oha/decision-summaries.* The following information is included:

(a) A list of all persons who have filed a petition and a digest of each petition;

(b) Each Decision and Order, with confidential information deleted, issued in response to a petition; and

(c) Any other information in the possession of the OHA which is required by statute to be made available for public inspection and copying, and any other information that the OHA determines should be made available to the public.

§ 1003.11 Filing a petition.

(a) *Who may file.* Any person may file a petition under this part who is aggrieved by a final disposition of DOE or who is so authorized by a program, statute, rule, regulation, guidance, or DOE delegation of authority.

(b) *Form of petition.* The person seeking relief under this part must file a petition. The general filing requirements in § 1003.7 apply in addition to the requirements stated in this part.

(c) *Elements of a petition.* Petitions to the OHA must include, as applicable:

(1) A full and complete statement of all relief requested from the OHA;

(2) A citation to the statute, regulation, delegation, or other authority pursuant to which the OHA has jurisdiction to consider the petition;

(3) A full and complete statement of all relevant facts pertaining to the action that is the subject of the petition and to the OHA relief sought;

(4) A statement of the factual and legal justification for the relief requested in the petition;

(5) A copy of all documents, including, but not limited to, contracts, financial records, communications, plans, analyses, and diagrams related to the petitioner's eligibility for the relief requested in the petition; and,

(6) A motion for stay, if a stay is sought by the petitioner. The OHA may grant a motion for stay filed after the petition only upon a showing of good cause.

(d) *Service certification.* The petitioner must submit to the OHA a certification that the petitioner has served the notice required pursuant to § 1003.12 of this part. The OHA must receive the certification within 15 days of the date on which the OHA received the petition. The OHA may grant an extension of time only upon a showing of good cause. The certification must include the names, addresses, telephone numbers, and email addresses of all potentially aggrieved persons or a statement that such information, in whole or in part, is not reasonably ascertainable.

(e) *Where to file.* A petition must be filed with the OHA in the manner specified in § 1003.9.

§ 1003.12 Notice.

(a) The petitioner must serve a copy of the petition and any subsequent amendments or other documents relating to the petition, or a copy from which confidential information has been deleted in accordance with § 1003.7(f), to each person who is reasonably ascertainable by the petitioner as a person who would be aggrieved by the OHA relief sought. The copy of the petition must be accompanied by a statement that the person may submit comments regarding the petition to the OHA within 10 days. The OHA may, in its discretion, extend the comment period. The petitioner must file a service certification with the OHA, in accordance with § 1003.11(d), stating that the requirements of this paragraph have been complied with and must include the names, addresses, and verified email addresses of each person to whom a copy of the petition was sent. The OHA may require the petitioner to provide additional or alternative notice, may identify additional persons on whom an applicant must serve notice, or may determine that notice should be published in the **Federal Register**.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the petitioner determines that compliance with paragraph (a) of this section would be impracticable, the petitioner must:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the certification a description of the persons or class or classes of persons to whom notice was not sent, as well as a brief explanation of why notice to each person or class of person was impracticable.

(c) Any person submitting written comments to the OHA regarding a petition filed under this part must serve a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 1003.7(f), to the petitioner. The person must certify to the OHA that he has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.13 Alternative Dispute Resolution.

The DOE encourages the use of Alternative Dispute Resolution (ADR) to resolve disputes and controversies at any stage of the proceedings. Accordingly, parties appearing before the OHA are encouraged to use ADR when practical. The DOE Alternative Dispute Resolution Office, which employs multiple neutrals trained in mediation and other ADR services, provides ADR services for disputes involving the DOE and its affiliated organizations (*e.g.,* DOE contractors). ADR is voluntary and the OHA will never require parties to engage in settlement negotiations or mediation.

§ 1003.14 Evaluation of petitions.

(a) The OHA will acknowledge receipt of all petitions filed pursuant to this part.

(b) The OHA may request information of a petitioner, including, but not limited to, financial documents, responses to interrogatories, copies of communications, and such other information the OHA determines may inform its evaluation of the petition.

(1) The OHA will provide a petitioner with a period of time within which to provide any information requested by the OHA pursuant to this paragraph and instructions on how to deliver the information to the OHA.

(2) The OHA may extend the period of time for a petitioner to provide information requested by the OHA upon a showing of good cause by the petitioner. Such extensions will generally be for a period of no more than 30 days, and in no case will the OHA grant an extension that would result in the undue delay of its evaluation of a petition.

(c) In evaluating a petition, the OHA may consider relevant information from any source, including information received from a third party, provided that the petitioner is afforded an opportunity to respond to all third-party submissions.

(d) The OHA will complete its evaluation of a petition within 180 days of receipt of the petition. However, the Director may extend the period for the OHA's review for good cause, the reasoning for which must be set forth in the order extending the review period.

(e) In its evaluations, the OHA will use as a guide, but will not be bound by, the Federal Rules of Civil Procedure and Federal Rules of Evidence.

(f) The Director has all of the judicial powers necessary to conduct the proceeding, including, but not limited to, grants or denials of motions and entry of interlocutory orders.

(g) The OHA may conduct a hearing with regard to the petition if, in its discretion, it considers that such hearing will materially advance the proceeding. In deciding whether to conduct a hearing, the OHA may consider various factors, including, but not limited to, the number of persons potentially aggrieved by a petition, the extent to which witness testimony will assist the OHA in developing a complete factual record, and the estimated costs of conducting a hearing at a venue reasonably convenient to all parties.

§ 1003.15 Subpoenas, information requests, oaths, witnesses.

(a) In accordance with the provisions of this section and as otherwise authorized by law, the Director may sign, issue, and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; and subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or

other automated systems in the possession of the subpoenaed person.

(b) The OHA may issue an information request requiring any person subject to the jurisdiction of the OHA to file a report providing information relating to the OHA proceeding, including, but not limited to, written answers to specific questions. The information request may be in addition to any other reports required.

(c) The Director, for good cause shown, may extend the time prescribed for compliance with the subpoena or information request and determine the terms of satisfactory compliance.

(d) Prior to the time specified for compliance, but within 10 days after the date of service of the subpoena or information request, the person upon whom the document was served may file a request for review of the subpoena or information request with the Director. The Director then will provide notice of receipt to the person requesting review, may extend the time prescribed for compliance with the subpoena or information request, and may determine the terms of satisfactory compliance.

(e) If the subpoena or information request is not modified or rescinded within 10 days of the date of the Director's notice of receipt:

(1) The subpoena or information request will be effective as issued; and

(2) The person upon whom the document was served must comply with the subpoena or information request within 20 days of the date of the Director's notice of receipt, unless otherwise notified in writing by the Director.

(f) A subpoena or information request must be served upon a person named in the document.

(g) If any person upon whom a subpoena or information request is served pursuant to this section refuses or fails to comply with any provision of the subpoena or information request, a proceeding may be commenced in the appropriate United States District Court to enforce the subpoena or information request.

(h) Documents produced in response to a subpoena must be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that:

(1) A diligent search has been made for each document responsive to the subpoena; and

(2) To the best of his knowledge, information, and belief each document responsive to the subpoena is being produced.

(i) Any information furnished in response to an information request must be accompanied by the sworn certification, under penalty of perjury, of the person to whom it was directed or his authorized agent who actually provides the information that:

(1) A diligent effort has been made to provide all information required by the information request; and

(2) All information furnished is true, complete, and correct.

(j) If any document responsive to a subpoena is not produced or any information required by an information request is not furnished, the certification must include a statement setting forth every reason for failing to comply with the subpoena or information request. If a person to whom a subpoena or information request is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (h) or (i) of this section must also submit a written list of the documents or the information withheld indicating a description of each document or piece of information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, and an identification of the person whose privilege is being asserted.

(k) If testimony is taken pursuant to a subpoena, the Director will determine whether the testimony will be recorded and the means by which the testimony is recorded.

(l) A witness whose testimony is recorded may procure a copy of his testimony by making a written request for a copy and paying the appropriate fees.

(m) The Director may sequester any person subpoenaed to furnish documents or give testimony. Unless permitted by the Director, neither a witness nor his attorney is permitted to be present during the examination of any other witnesses.

(n) The Director may require testimony to be given under oath, regardless of the form of the testimony. The oath or affirmation will direct the witness's attention to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(o) The Director may require submissions to the OHA to be accompanied by an oath or affirmation attesting to the truth and accuracy of the submission. The oath or affirmation will direct the submitter's attention to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(p) A witness whose testimony is taken may be accompanied, represented and advised by his attorney as follows:

(1) Upon the initiative of the attorney or witness, the attorney may advise his client, in confidence, with respect to the question asked his client, and if the witness refuses to answer any question, the witness or his attorney is required to briefly state the legal grounds for such refusal; and

(2) If the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(q) The Director will take all necessary steps to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or language. The OHA may take steps as the circumstances warrant in regard to any instances where any person or attorney refuses to comply with directions or provisions of this section.

§ 1003.16 Dismissal of petitions.

The Director may issue a Decision and Order dismissing a petition at any time during the course of a proceeding. The Decision and Order shall state whether the dismissal is with prejudice or without prejudice. A Decision and order Dismissing a petition may be the subject of a motion for reconsideration in accordance with § 1003.19 of this part.

(a) *Dismissal with prejudice.* The dismissal of a petition with prejudice by the OHA terminates the OHA's review of the petition and bars the petitioner from submitting any future petition concerning the same, or substantially the same, issues as those in the petition. The OHA may dismiss a petition with prejudice if:

(1) The OHA lacks jurisdiction to consider the petition;

(2) The petitioner has already received a Decision and Order from the Director in response to a previously filed petition that addresses the same issue;

(3) The petitioner provides a false statement under oath or files a false instrument with the OHA, as determined by the OHA;

(4) The petitioner refuses to comply with an order issued by the OHA;

(5) The petition is untimely;

(6) The issues raised in the petition are moot;

(7) The petitioner repeatedly fails to comply with procedural requirements; or,

(8) The same or a substantially similar petition was previously dismissed by

the OHA without prejudice, and the same basis for dismissal without prejudice exists upon refiling by the same petitioner.

(b) *Dismissal without prejudice.* The dismissal of a petition without prejudice by the OHA terminates the OHA's review of the petition but does not bar the petitioner from resubmitting the petition provided that the facts or circumstances leading to the dismissal have been resolved. In dismissing a petition without prejudice, the OHA may order that the petitioner may not resubmit the petition, or a substantially similar petition, for a period of time not to exceed 180 days. The OHA may dismiss a petition without prejudice if:

(1) The petitioner fails to include any of the required elements of a petition set forth in § 1003.11 of this part;

(2) The petitioner fails to provide notice as required by § 1003.12 of this part;

(3) The petitioner fails to timely provide documents or information at the request of the OHA pursuant to § 1003.14 or § 1003.15 of this part;

(4) The petition fails to state a claim upon which the OHA can grant relief; or

(5) The OHA determines that there is insufficient information upon which to base a decision.

§ 1003.17 Standard of review.

(a) The OHA will grant a petition that seeks an adjustment from a DOE rule, regulation or order under the authority of 42 U.S.C. 7194 only if it determines that doing so will alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.

(b) Except as provided by program, statute, rule, regulation, or DOE delegation of authority, the OHA will grant any other petition filed under this part upon a showing that the DOE acted arbitrarily, capriciously, or in violation of a law, rule, regulation, or delegation with respect to the final disposition of DOE that is the subject of the petition.

(c) Petitions shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous petitions of the same kind.

§ 1003.18 Decision and Order.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the OHA will issue a Decision and Order granting or denying the petition and ordering relief as appropriate. The OHA will serve the Decision and Order on the parties to the proceeding and make it available to the public.

(b) The Decision and Order will set forth its legal basis and the relevant facts, state whether it is a final agency action of the DOE, and state what further review, if any, is available.

(c) There is no administrative appeal of a Decision and Order, except as provided by federal statute.

§ 1003.19 Reconsideration.

A participant in the proceeding may submit to the OHA a motion for reconsideration of a Decision and Order. The motion for reconsideration must be filed by the 20th day after the OHA makes the Decision and Order available to the public. The motion must include a statement of the grounds on which the movant believes reconsideration is warranted. Such grounds may include, but are not limited to, procedural, legal, or factual errors in the Decision and Order. A motion for reconsideration may be granted if the Director determines the Decision and Order contains an error that materially impacted the outcome of the proceeding.

[FR Doc. 2019–23509 Filed 10–29–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2019–0022]

RIN 1557–AE68

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1678]

RIN 7100–AF–61

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC), Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The OCC, the Board, and the Bureau are finalizing amendments to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk mortgages,'' termed ''higher-priced mortgage loans'' or ''HPMLs'' in the agencies' regulations.

The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) issued joint final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage increase in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the CPI–W in effect as of June 1, 2019, the exemption threshold will increase from $26,700 to $27,200, effective January 1, 2020.

DATES: This final rule is effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: MaryAnn Nash, Counsel, Chief Counsel's Office, (202) 649–6287; for persons who are deaf or hard of hearing TTY, (202) 649–5597.

Board: Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: Kristen Phinnessee, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to add special appraisal requirements for ''higher-risk

mortgages.'' [1] In January 2013, the Agencies issued a joint final rule implementing these requirements and adopted the term ''higher-priced mortgage loan'' (HPML) instead of ''higher-risk mortgage'' (the January 2013 Final Rule).[2] In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule (the 2013 Supplemental Proposed Rule).[3] In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).[4] Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of $25,000 or less, to be adjusted annually for inflation.

The OCC's, the Board's, and the Bureau's versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.[5]

The OCC's, Board's, and Bureau's regulations,[6] and their accompanying interpretations,[7] provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust the threshold amounts from the prior year.[8]

On November 30, 2016, the OCC, the Board, and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that the values for the exemption threshold keep pace with the CPI–W (HPML Small Dollar Adjustment Calculation Rule).[9] The HPML Small Dollar Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the OCC, the Board, and Bureau will not adjust the exemption threshold from the prior year. The HPML Small Dollar Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2020 Adjustment and Commentary Revision

Effective January 1, 2020, the exemption threshold amount is increased from $26,700 to $27,200. This increase is based on the CPI–W in effect on June 1, 2019, which was reported on May 10, 2019. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; indices are reported in the middle of the prior month. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 10, 2019, reflects a 1.9 percent increase in the CPI–W from April 2018 to April 2019. Accordingly, the 1.9 percent increase in the CPI–W from April 2018 to April 2019 results in an exemption threshold amount of $27,200. The OCC, the Board, and the Bureau are revising the commentaries to their respective regulations to add new comments as follows:

- Comment 203(b)(2)–3.vii to 12 CFR part 34, appendix C to subpart G (OCC);
- Comment 43(b)(2)–3.vii to Supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)–3.vii to Supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2020, through December 31, 2020, the threshold amount is $27,200. These revisions are effective January 1, 2020.[10]

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously memorialized in the December 2013 Supplemental Final Rule and the HPML Small Dollar Adjustment Calculation Rule. For these reasons, the OCC, the Board, and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[13] the agencies

[1] Public Law 111–203, section 1471, 124 Stat. 1376, 2185–87 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

[2] 78 FR 10368 (Feb. 13, 2013).

[3] 78 FR 48548 (Aug. 8, 2013).

[4] 78 FR 78520 (Dec. 26, 2013).

[5] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the Bureau's version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the Bureau's version. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[6] 12 CFR 34.203(b)(2) (OCC); 12 CFR 226.43(b)(2) (Board); and 12 CFR 1026.35(c)(2)(ii) (Bureau).

[7] 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 (Bureau).

[8] *See* 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 and –2 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 and –2 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 and –2 (Bureau).

[9] *See* 81 FR 86250 (Nov. 30, 2016).

[10] The Office of the Federal Register requires the OCC, the Board, and the Bureau to reprint sections of commentary being amended in their entirety, rather than solely printing the amended portion. Therefore, sections of commentary included in this document show the language of those sections in their entirety.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Unfunded Mandates Reform Act

The OCC analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating a final rule for which a general notice of proposed rulemaking was published.[14] As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary.

Bureau Congressional Review Act Statement

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

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

[14] 2 U.S.C. 1532.

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. In appendix C to subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans,* revise Paragraph 34.203(b)(2) to read as follows:

Appendix C to Subpart G—OCC Interpretations

* * * * *

Section 34.203—Appraisals for Higher-Priced Mortgage Loans

* * * * *

Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 203(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 34.203 applies. See § 34.203(b) and (d)(7).

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans,* revise *Paragraph 43(b)(2)* to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Section 226.43—Appraisals for Higher-Risk Mortgage Loans

* * * * *

Paragraph 43(b)(2)

1. *Threshold amount.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 43(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. See § 226.43(b) and (d)(7).

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 5. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans,* revise Paragraph 35(c)(2)(ii) to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to

satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. See § 1026.35(c)(2) and (c)(4)(vii).

* * * * *

Dated: September 27, 2019.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 20, 2019.

Ann E. Misback,

Secretary of the Board.

Dated: September 24, 2019.

Thomas Pahl,

Policy Associate Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–21559 Filed 10–29–19; 8:45 am]

BILLING CODE: 4810–33– 6210–01– 4810–AM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1676]

RIN 7100–AF 59

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1013

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are finalizing amendments to the official interpretations and commentary for the agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the Board and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2019, the exemption threshold will increase from $57,200 to $58,300 effective January 1, 2020. Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Board and the Bureau are making similar amendments to each of their respective regulations implementing the Truth in Lending Act elsewhere in this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: Kristen Phinnessee, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, and the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,[1] from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation Z (which implements TILA) (collectively, the Board Final Threshold Rules).[3]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation M implementing the CLA, 12 CFR part 1013, substantially duplicating the Board's Regulation M.[4] Although the Bureau has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.[5]

The Board's and the Bureau's regulations,[6] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] 76 FR 18349 (Apr. 4, 2011); 76 FR 18354 (Apr. 4, 2011).

[4] *See* 76 FR 78500 (Dec. 19, 2011); 81 FR 25323 (Apr. 28, 2016).

[5] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service. 12 U.S.C. 5519(b).

[6] 12 CFR 213.2(e)(1) (Board) and 12 CFR 1013.2(e)(1) (Bureau).

CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[7] Since 2011, the Board and the Bureau have adjusted the Regulation M exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Board and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation M Adjustment Calculation Rule).[8] The Regulation M Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust the exemption threshold from the prior year. The Regulation M Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2020 Adjustment and Commentary Revision

Effective January 1, 2020, the exemption threshold amount is increased from $57,200 to $58,300. This is based on the CPI–W in effect on June 1, 2019, which was reported on May 10, 2019. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; indices are reported in the middle of the prior month. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 10, 2019, reflects a 1.9 percent increase in the CPI–W from April 2018 to April 2019. Accordingly, the 1.9 percent increase in the CPI–W from April 2018 to April 2019 results in an exemption threshold amount of $58,300. The Board and the Bureau are revising the commentaries to their respective regulations to add new comment 2(e)–11.xi to state that, from January 1, 2020 through December 31, 2020, the threshold amount is $58,300. These revisions are effective January 1, 2020.[9]

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[10] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation M Adjustment Calculation Rule. For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[11] As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[12] the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Bureau Congressional Review Act Statement

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

List of Subjects

12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1013

Advertising, Consumer leasing, Reporting and recordkeeping requirements, Truth in lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

■ 2. In Supplement I to part 213, under *Section 213.2—Definitions,* revise *2(e) Consumer Lease* to read as follows:

Supplement I to Part 213—Official Staff Interpretations

* * * * *

Section 213.2—Definitions

* * * * *

2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more

[7] *See* comments 2(e)–9 in Supplements I of 12 CFR parts 213 and 1013.

[8] *See* 81 FR 86256 (Nov. 30, 2016).

[9] The Office of the Federal Register requires the Board and the Bureau to reprint sections of commentary being amended in their entirety, rather than solely printing the amended portion. Therefore, sections of commentary included in this document show the language of those sections in their entirety.

[10] 5 U.S.C. 553(b)(B).

[11] 5 U.S.C. 603(a) and 604(a).

[12] 44 U.S.C. 3506; 5 CFR part 1320.

than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)-11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)-11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this Part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

■ 3. The authority citation for part 1013 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

■ 4. In Supplement I to part 1013, under *Section 1013.2—Definitions,* revise *2(e) Consumer Lease* to read as follows:

Supplement I to Part 1013—Official Interpretations

* * * * *

Section 1013.2—Definitions

* * * * *

2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis

(even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 1013.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 1013.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 1013.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 20, 2019.

Ann E. Misback,

Secretary of the Board.

Dated: September 24, 2019.

Thomas Pahl,

Policy Associate Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–21554 Filed 10–29–19; 8:45 am]

BILLING CODE 6210–01–P; 4810–AM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1677]

RIN 7100–AF 60

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z)

AGENCY: Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations and commentary.

SUMMARY: The Board and the Bureau are publishing final rules amending the official interpretations and commentary for the agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer

Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the Board and the Bureau will not adjust this exemption threshold from the prior year. However, in years following a year in which the exemption threshold was not adjusted, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2019, the exemption threshold will increase from $57,200 to $58,300 effective January 1, 2020. Because the Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases, the Board and the Bureau are making similar amendments to each of their respective regulations implementing the Consumer Leasing Act elsewhere in this issue of the **Federal Register**.

DATES: This final rule is effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

Bureau: Kristen Phinnessee, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) increased the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,[1] and the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), as published by the Bureau of Labor Statistics. In April 2011, the Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation M (which implements the CLA) (collectively, the Board Final Threshold Rules).[3]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation Z implementing TILA, 12 CFR part 1026, substantially duplicating the Board's Regulation Z.[4] Although the Bureau has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.[5]

The Board's and the Bureau's regulations,[6] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[7] Since 2011, the Board and the Bureau have adjusted the Regulation Z exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Board and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation Z Adjustment Calculation Rule).[8] The Regulation Z Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Board and Bureau will not adjust the exemption threshold from the prior year. The Regulation Z Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2020 Adjustment and Commentary Revision

Effective January 1, 2020, the exemption threshold amount is increased from $57,200 to $58,300. This is based on the CPI–W in effect on June 1, 2019, which was reported on May 10, 2019. The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] 76 FR 18354 (Apr. 4, 2011); 76 FR 18349 (Apr. 4, 2011).

[4] *See* 76 FR 79768 (Dec. 22, 2011); 81 FR 25323 (Apr. 28, 2016).

[5] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that subsection (a) shall not apply to any person, to the extent that such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service. 12 U.S.C. 5519(b).

[6] 12 CFR 226.3(b)(1)(ii) (Board) and 12 CFR 1026.3(b)(1)(ii) (Bureau).

[7] *See* comments 3(b)–1 in Supplements I of 12 CFR parts 226 and 1026.

[8] *See* 81 FR 86260 (Nov. 30, 2016).

change on June 1; indices are reported in the middle of the prior month. The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 10, 2019 reflects a 1.9 percent increase in the CPI–W from April 2018 to April 2019. Accordingly, the 1.9 percent increase in the CPI–W from April 2018 to April 2019 results in an exemption threshold amount of $58,300. The Board and the Bureau are revising the commentaries to their respective regulations to add new comment 3(b)–3.xi to state that, from January 1, 2020 through December 31, 2020, the threshold amount is $58,300. These revisions are effective January 1, 2020.[9]

Additionally, the Board and the Bureau have made certain nonsubstantive technical amendments to their respective commentaries in order to bring certain internal cross-references into alignment with the Office of the Federal Register's Code of Federal Regulations style guidelines. These technical amendments have been made to Supplement I to 12 CFR part 226, subpart A, Section 226.3—Exempt Transactions, comments 3(b)–4.iv.B(2), 3(b)–4.iv.B(3),and 3(b)–8.ii; and Supplement I to 12 CFR part 1026, subpart A, Section 1026.3—Exempt Transactions, comments 3(b)–4.iv.B.*2,* 3(b)–4.iv.B.*3,* and 3(b)–8.ii.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board and the Bureau find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[10] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation Z Adjustment Calculation Rule. For these reasons, the Board and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[11] As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[12] the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Bureau Congressional Review Act Statement

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

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l) and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 2. In Supplement I to part 226, under *Section 226.3—Exempt Transactions,* revise *3(b) Credit over applicable threshold amount* to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

[9] The Office of the Federal Register requires the Board and the Bureau to reprint sections of commentary being amended in their entirety, rather than solely printing the amended portion. Therefore, sections of commentary included in this document show the language of those sections in their entirety.

[10] 5 U.S.C. 553(b)(B).

[11] 5 U.S.C. 603(a), 604(a).

[12] 44 U.S.C. 3506; 5 CFR part 1320.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 226.6 (account-opening disclosures), § 226.7 (periodic statements), § 226.52 (limitations on fees), and § 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph 4.iv.B(1) of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph 4.iv.B(1) of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the

extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met.

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i. of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 4. In Supplement I to part 1026, under *Section 1026.3—Exempt Transactions,* revise *3(b) Credit Over Applicable Threshold Amount* to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 1026.6 (account-opening disclosures), § 1026.7 (periodic statements), § 1026.52 (limitations on fees), and § 1026.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 1026.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 1026.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

2. Same facts as in paragraph 4.iv.B.1 of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 1026.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

3. Same facts as in paragraph 4.iv.B.1 of this section except that, on April 1 of year

two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 1026.3(b) exemption on April 1 of year two, the account does not qualify for a § 1026.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 20, 2019.

Ann E. Misback,

Secretary of the Board.

Dated: September 21, 2019.

Thomas Pahl,

Policy Associate Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–21557 Filed 10–29–19; 8:45 am]

BILLING CODE 4801–AM–6210–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[3084–AB15]

Energy Labeling Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: The Commission amends the Energy Labeling Rule (''Rule'') to make the Rule easier to use by reorganizing several sections, amending language to increase clarity, eliminating several obsolete provisions, and making minor corrections.

DATES: The amendments are effective on November 29, 2019.

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

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202–326–2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Energy Labeling Rule (''Rule'') in 1979,[1] pursuant to the Energy Policy and Conservation Act of 1975 (''EPCA'').[2] The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to

[1] 44 FR 66466 (Nov. 19, 1979).

[2] 42 U.S.C. 6294. EPCA also requires the Department of Energy (DOE) to develop test procedures that measure how much energy appliances use and to determine the representative average cost a consumer pays for different types of energy.

many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three key disclosures: Estimated annual energy cost, a energy consumption or energy efficiency rating as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. The Rule requires marketers to use national average costs for applicable energy sources (*e.g.,* electricity, natural gas, oil) as calculated by DOE in all cost calculations. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.[3]

II. Notice of Proposed Rulemaking

In March 2019, the Commission published a Notice of Proposed Rulemaking (''NPRM'') (84 FR 9261 (Mar. 14, 2019)) seeking comments on a series of proposed amendments intended to improve the Rule's organization and clarity. The Commission proposed such changes because various amendments over the years had caused some sections to become lengthy and difficult to navigate.

The NPRM sought comment on three general categories of proposed Rule changes. First, the proposed amendments divided current section 305.3 (Description of covered products), which lists the specific product types (*e.g.,* clothes washers, LED lamps) covered by the Rule, into four different provisions organized by general product category (*i.e.,* appliances, furnaces and central air conditioners, lighting, and plumbing).[4] As the Commission explained in the NPRM, these changes should make it easier for stakeholders to identify relevant covered products, particularly for categories such as lighting, which contain several different product types and exemptions.

Second, the amendments proposed in the NPRM divided section 305.11 into several different sections to make it easier to identify the labeling requirements applicable to specific products. Current section 305.11 addresses the label format and content for several appliances through a long list of instructions and exceptions. The proposed new provisions included a single section for general layout and formatting, plus six additional sections covering label content for refrigerators, clothes washers, dishwashers, water heaters, room air conditioners, and pool heaters.[5]

Third, the proposed amendments removed obsolete references to products produced decades ago (*e.g.,* exemptions for plumbing products produced before 1994).[6] As noted in the NPRM, such provisions are no longer necessary because units produced before those dates are unlikely to be sold as new today. Finally, the proposed amendments made several minor changes to eliminate unnecessary cross references and made minor corrections.

The Commission sought comment on these proposed amendments and any suggestions to clarify, correct, improve, or otherwise make the Rule easier to use. The NPRM stated that the Commission was not seeking comments on substantive changes to the Rule, such as modifications to label content, disclosure requirements, or product coverage.

III. Comments Received and Final Amendments

In response to the NPRM, the Commission received four comments.[7] All of them supported (or did not object to) the Commission's proposed amendments. AHAM, for example, stated that the revisions ''streamline some areas and reduce redundancy.'' AHRI supported the effort ''to reorganize and clarify'' the Rule. In addition, commenter Drakontaidis stated that changes would make the rule much ''easier to comprehend and more accessible to'' both businesses and consumers. Given the comments, the Commission issues the amendments as proposed. In addition, some commenters offered suggestions not included in the NPRM, some of which the Commission includes in the final amendments as discussed below.

First, AHAM recommended a small change to refrigerator-freezer model descriptions in the Appendix A tables (''Without Through-the-Door Ice'') to match the sample refrigerator label (''No through-the-door ice'').[8] Second, AHAM, along with commenter Korpal, noted the need to adjust the size of the ENERGY STAR logo on the sample labels in Appendix L.[9] Third, AHRI recommended the Commission allow manufacturers to use a larger text size for part or publication numbers used on EnergyGuide labels (as allowed by the current Rule) to ensure manufacturers can match labels to the correct models. The final amendments contain these minor corrections and changes.[10] To avoid any burden associated with these minor label amendments, manufacturers may wait to implement any necessary changes until their next label print run. If manufacturers have any questions

[3] 16 CFR 305.10.

[4] The four proposed product category sections were: § 305.3 (Description of appliances and consumer electronics), § 305.4 (Description of furnaces and central air conditioners), § 305.5 (Description of lighting products), and § 305.6 (Description of plumbing products).

[5] Under the proposal, the revised sections would include: § 305.13 (Layout, format, and placement of labels for all products), § 305.14 (Label content for refrigerators, refrigerator-freezers, and freezers), § 305.15 (Label content for clothes washers), § 305.16 (Label content for dishwashers), § 305.17 (Label content for water heaters), § 305.18 (Label content for room air conditioners), and § 305.19 (Label content for pool heaters). The proposed amendments renumbered but otherwise retained the current labeling sections for heating and cooling equipment, ceiling fans, lighting products, plumbing products, and televisions.

[6] The proposed amendments also removed an obsolete provision (§ 305.4(d)(3)) related to industry petitions for revised energy representations made in response to new or amended DOE test procedures. At the time of the Rule's initial publication, the Commission had responsibility for reviewing such petitions under EPCA. However, DOE has that responsibility under the current statute, making this particular provision no longer operable. *See* 42 U.S.C. 6293(c)(3).

[7] Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Drakontaidis, Korpal, and Association of Home Appliance Manufacturers (AHAM) submitted comments. The comments are available at *https://www.regulations.gov/docket?D=FTC-2019-0015.*

[8] The Rule does not mandate specific language for the product descriptions at top, left of label. However, such descriptions may not include extraneous features beyond those identified in the Rule itself. *See* 83 FR 7593, 7595 (Feb. 22, 2018) and 81 FR 63634, 63639, n. 39 (Sept. 15, 2016).

[9] The amendments make five additional minor corrections and updates: (1) Minor adjustments to the font size instructions on the refrigerator prototype label in Appendix L (''Estimated Yearly Electricity Use'' and ''*ftc.gov/energy*'') to match the sample itself and the online template; (2) corrections to line thicknesses on the Clothes Washer prototype and sample labels in Appendix L (does not affect the template label); (3) replacement of references to ANSI standards in the fluorescent and incandescent lamp definitions with appropriate references to EPCA; (4) updates to cross references in Appendices K1 and K2, and in the sample Lighting Facts labels in Appendix L; and (5) a clarification in new section 305.13 that labels affixed to boxes for certain products may have a yellow or a neutral contrasting background. In addition, FTC staff has corrected several issues AHAM identified with the online label templates posted on the FTC website for the convenience of manufacturers. *See https://www.ftc.gov/tips-advice/business-center/guidance/energyguide-labels-templates-manufacturers.*

[10] The amendments allow up to 12-point text for part or publication numbers on appliances, furnaces, and central air conditioner labels in newly designated sections 305.14–305.20. Given the size of such labels, the change should have no effect on consumer use or understanding. The amendments do not alter requirements for smaller EnergyGuide labels (*e.g.,* television labels) because larger font sizes may crowd those labels.

about the timing of such changes, they may contact FTC staff for guidance.[11]

AHAM also requested an amendment to allow manufacturers to attach hangtags on clothes washer exteriors. The Commission declines to make this change as part of this proceeding. The current Rule does not allow hangtags on the outside of products due to concerns raised in an earlier proceeding about the durability of such tags, and AHAM has not indicated why such concerns are no longer valid.[12] Furthermore, such an amendment falls outside of the scope of this rulemaking. If manufacturers wish to place labels on the outside of clothes washers, they may use adhesive labels under the current Rule.[13]

Finally, AHRI, which expressed support for Commissioner Wilson's dissenting statement on the NPRM (84 FR at 9272–73), recommended a broader, substantive rule review aimed at reducing regulatory burden. Specifically, AHRI urged elimination of physical labels for central air conditioners, heat pumps, and furnaces. According to AHRI, the large majority of those products are not purchased off the shelves at retail stores, and consumers generally do not view them before installation. The Commission is not considering such changes at this time because they fall outside of the scope of this rulemaking, which, as explained in the NPRM, is limited to improving the Rule's organization and making minor modifications and corrections. In addition, the Commission considered similar concerns in the past and concluded that the labels on such equipment help consumers in both their use of existing equipment and their purchasing decisions for replacement products.[14] The Commission may consider AHRI's concerns and other broad issues in future proceedings.[15]

IV. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act. OMB has approved the Rule's existing information collection requirements through November 30, 2019 (OMB Control No. 3084–0069). The amendments do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and therefore do not require further OMB clearance.

V. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the proposed amendments do not impose any new or different obligations on entities regulated by the Energy Labeling Rule. As explained elsewhere in this document, the amendments do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has, therefore, concluded that a regulatory flexibility analysis is not necessary, and certifies, under 5 U.S.C. 605(b), that the amendments will not have a significant economic impact on a substantial number of small entities. This rulemaking document constitutes notice of the above certification and statement to the Small Business Administration required under 5 U.S.C. 605(b).

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Final Rule Language

For the reasons set out above, the Commission amends 16 CFR part 305 as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Amend § 305.2, by revising paragraphs (n), (q), and (aa) to read as follows:

§ 305.2 Definitions.

* * * * *

(n) *Covered product* means any consumer product or consumer appliance product described in § 305.3, § 305.4, § 305.5, or § 305.6 of this part.

* * * * *

(q) *Estimated annual energy consumption and estimated annual operating or energy cost*—(1) *Estimated annual energy consumption* means the energy or (for plumbing products) water that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) *Kilowatt-hour use per year,* or *kWh/yr.,* means estimated annual energy consumption expressed in kilowatt-hours of electricity.

(ii) *Therm use per year,* or *therms/yr.,* means estimated annual energy consumption expressed in therms of natural gas.

(iii) *Gallon use per year,* or *gallons/yr.,* means estimated annual energy consumption expressed in gallons of propane or No. 2 heating oil.

(2) *Estimated annual operating or energy cost* means the aggregate retail cost of the energy that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

* * * * *

(aa) *New covered product* means a covered product the title of which has not passed to a purchaser who buys the product for purposes other than resale or leasing for a period in excess of one year.

* * * * *

■ 3. Revise § 305.3 to read as follows:

§ 305.3 Description of appliances and consumer electronics.

(a) *Refrigerators and refrigerator-freezers*—(1) *Electric refrigerator* means a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F (0 °C), but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C).

(2) *Electric refrigerator-freezer* means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food and designed to be capable of achieving storage

[11] The Commission finds good cause for implementing these various minor technical corrections and changes without further notice and comment. *See* 5 U.S.C. 553(b)(3)(B); 16 CFR 1.26(b).

[12] 72 FR 49947, 49961 (Aug. 29, 2007).

[13] *See* newly designated section 305.13.

[14] 72 FR 49947, 49956 (Aug. 29, 2007).

[15] Commenter Drakontaidis suggested that the Commission create a summary section in the Rule ''as a sort of refresher for anything that might be missed by the reader.'' Because the amendments already shorten the Rule, such a summary does not appear necessary.

temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C) which may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below. The source of refrigeration requires single phase, alternating current electric energy input only.

(b) *Freezer* means a cabinet designed as a unit for the freezing and storage of food at temperatures of 0 °F or below, and having a source of refrigeration requiring single phase, alternating current electric energy input only.

(c) *Dishwasher* means a cabinet-like appliance which, with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils and most cooking utensils by chemical, mechanical, and/or electrical means and discharges to the plumbing drainage system.

(1) *Water heating dishwasher* means a dishwasher which is designed for heating cold inlet water (nominal 50 °F) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120 °F and may operate at either of these inlet water temperatures by providing internal water heating to above 120 °F in at least one wash phase of the normal cycle.

(2) [Reserved]

(d) *Water heater* means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(1) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(2) Instantaneous type units that heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(3) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

(e) *Room air conditioner* means a consumer product, other than a packaged terminal air conditioner, which is powered by a single phase electric current and which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating.

(f) *Clothes washer* means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, and must be one of the following classes: Automatic clothes washers, semi-automatic clothes washers, and other clothes washers.

(1) *Automatic clothes washer* means a class of clothes washer which has a control system capable of scheduling a pre-selected combination of operations, such as regulation of water fill level, and performance of wash, rinse, drain and spin functions, without the need for the user to intervene subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves.

(2) *Semi-automatic clothes washer* means a class of clothes washer that is the same as an automatic clothes washer except that the user must intervene to regulate the water temperature by adjusting the external water faucet valves.

(3) *Other clothes washer* means a class of clothes washer that is not an automatic or semi-automatic clothes washer.

(g) *Ceiling fan* means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades, excluding large-diameter and high-speed small diameter fans as defined in appendix U of subpart B of 10 CFR part 430. The requirements of this part are otherwise limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage.

(h) *Television* means a product that is designed to produce dynamic video, contains an internal TV tuner encased within the product housing, and is capable of receiving dynamic visual content from wired or wireless sources including but not limited to: Broadcast and similar services for terrestrial, cable, satellite, and/or broadband transmission of analog and/or digital signals; and/or display-specific data connections, such as HDMI, Component video, S-video, Composite video; and/or media storage devices such as a USB flash drive, memory card, or a DVD; and/or network connections, usually using internet Protocol, typically carried over Ethernet or Wi-Fi. The requirements of this part are limited to those televisions for which the Department of Energy has adopted and published test procedures for measuring energy use.

(i) *Pool heater* means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

§ 305.11 [Removed]

■ 4. Remove § 305.11.

§§ 305.4 through 305.8, 305.10, 305.12 through 305.17, and 305.19 through 305.25 [Redesignated as §§ 305.7 through 305.11, 305.12, 305.20 through 305.25, and 305.26 through 305.32]

■ 5. Redesignate the sections listed in the ''Old Section'' column as the sections listed in the ''New Section'' column as shown in the following table:

Old Section	New Section
§ 305.4	§ 305.7
§ 305.5	§ 305.8
§ 305.6	§ 305.9
§ 305.7	§ 305.10
§ 305.8	§ 305.11
§ 305.10	§ 305.12
§ 305.12	§ 305.20
§ 305.13	§ 305.21
§ 305.14	§ 305.22
§ 305.15	§ 305.23
§ 305.16	§ 305.24
§ 305.17	§ 305.25
§ 305.19	§ 305.26
§ 305.20	§ 305.27
§ 305.21	§ 305.28
§ 305.22	§ 305.29
§ 305.23	§ 305.30
§ 305.24	§ 305.31
§ 305.25	§ 305.32

■ 6. Add new § 305.4 to read as follows:

§ 305.4 Description of furnaces and central air conditioners.

(a) *Furnaces*—(1) *Furnace* means a product that utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(i) Is designed to be the principal heating source for the living space of a residence;

(ii) Is not contained within the same cabinet with a central air conditioner

whose rated cooling capacity is above 65,000 Btu per hour;

(iii) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(iv) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

(2) *Electric central furnace* means a furnace designed to supply heat through a system of ducts with air as the heating medium, in which heat is generated by one or more electric resistance heating elements and the heated air is circulated by means of a fan or blower.

(3) *Forced air central furnace* means a gas or oil burning furnace designed to supply heat through a system of ducts with air as the heating medium. The heat generated by combustion of gas or oil is transferred to the air within a casing by conduction through heat exchange surfaces and is circulated through the duct system by means of a fan or blower.

(4) *Gravity central furnace* means a gas fueled furnace which depends primarily on natural convection for circulation of heated air and which is designed to be used in conjunction with a system of ducts.

(5) *Electric boiler* means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds per square inch gauge (psig) steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature.

(6) *Low pressure steam or hot water boiler* means an electric, gas or oil burning furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F water temperature.

(7) *Outdoor furnace or boiler* is a furnace or boiler normally intended for installation out-of-doors or in an unheated space (such as an attic or a crawl space).

(8) *Weatherized warm air furnace or boiler* means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

(b) *Central air conditioner* means a product, other than a packaged terminal air conditioner, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling only unit.

(1) *Condenser-evaporator coil combination* means a condensing unit made by one manufacturer and one of several evaporator coils, either manufactured by the same manufacturer or another manufacturer, intended to be combined with that particular condensing unit.

(2) *Condensing unit* means a component of a ''central air conditioner'' which is designed to remove heat absorbed by the refrigerant and to transfer it to the outside environment, and which consists of an outdoor coil, compressor(s), and air moving device.

(3) *Evaporator coil* means a component of a central air conditioner that is designed to absorb heat from an enclosed space and transfer the heat to a refrigerant.

(4) *Single package unit* means any central air conditioner in which all the major assemblies are enclosed in one cabinet.

(5) *Split system* means any central air conditioner in which one or more of the major assemblies are separate from the others.

(c) *Heat pump* means a product, other than a packaged terminal heat pump, which consists of one or more assemblies, powered by single phase electric current, rated below 65,000 Btu per hour, utilizing an indoor conditioning coil, compressor, and refrigerant-to-outdoor air heat exchanger to provide air heating, and may also provide air cooling, dehumidifying, humidifying, circulating, and air cleaning.

■ 7. Add new § 305.5 to read as follows:

§ 305.5 Description of lighting products.

(a) *Fluorescent lamp ballast* means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

(b) *Fluorescent lamp* means:

(1) A low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more;

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more;

(iii) Any rapid start lamp as defined at 42 U.S.C. 6291(30)(A)(iii); and

(iv) Any instant start lamp as defined at 42 U.S.C. 6291(30)(A)(iv); but

(2) *Fluorescent lamp* does not mean any lamp excluded by the Department of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service fluorescent lamp* means a fluorescent lamp which can be used to satisfy the majority of fluorescent applications, but does not mean any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth;

(ii) Fluorescent lamps specifically designed for cold temperature installations;

(iii) Colored fluorescent lamps;

(iv) Impact-resistant fluorescent lamps;

(v) Reflectorized or aperture lamps;

(vi) Fluorescent lamps designed for use in reprographic equipment;

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and

(viii) Lamps with a color rendering index of 82 or greater.

(c) *General service lamp* means:

(1) A lamp that is:

(i) A medium base compact fluorescent lamp;

(ii) A general service incandescent lamp;

(iii) A general service light-emitting diode (LED or OLED) lamp; or

(iv) Any other lamp that the Secretary of Energy determines is used to satisfy lighting applications traditionally served by general service incandescent lamps.

(2) Exclusions: The term *general service lamp* does not include—

(i) Any lighting application or bulb shape described in paragraphs (e)(3)(ii)(A) through (T) of this section; and

(ii) Any general service fluorescent lamp.

(d) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as a direct replacement for a general service

incandescent lamp; however, the term does not include—

(1) Any lamp that is:

(i) Specifically designed to be used for special purpose applications; and

(ii) Unlikely to be used in general purpose applications, such as the applications described in the definition of ''General Service Incandescent Lamp'' in paragraph (e)(3)(ii) of this section; or

(2) Any lamp not described in the definition of ''General Service Incandescent Lamp'' in this section and that is excluded by the Department of Energy, by rule, because the lamp is—

(i) Designed for special applications; and

(ii) Unlikely to be used in general purpose applications.

(e) *Incandescent lamp* means:

(1) A lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.25 inches, and has a rated wattage that is 40 watts or higher;

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types;

(3) *General service incandescent lamp* means:

(i) In general, a standard incandescent, halogen, or reflector type lamp that—

(A) Is intended for general service applications;

(B) Has a medium screw base;

(C) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(D) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(ii) Exclusions. The term ''general service incandescent lamp'' does not include the following incandescent lamps:

(A) An appliance lamp as defined at 42 U.S.C. 6291(30);

(B) A black light lamp;

(C) A bug lamp;

(D) A colored lamp as defined at 42 U.S.C. 6291(30);

(E) An infrared lamp;

(F) A left hand thread lamp;

(G) A marine lamp;

(H) A marine signal service lamp;

(I) A mine service lamp;

(J) A plant light lamp;

(K) A rough service lamp as defined at 42 U.S.C. 6291(30);

(L) A shatter resistant lamp (including a shatter-proof lamp and a shatter-protected lamp);

(M) A sign service lamp;

(N) A silver bowl lamp;

(O) A showcase lamp;

(P) A traffic signal lamp;

(Q) A vibration service lamp as defined at 42 U.S.C. 6291(30);

(R) A G shape lamp as defined at 42 U.S.C. 6291(30)(D)(ii)(XX);

(S) A T shape lamp as defined at 42 U.S.C. 6291(30)(D)(ii)(XXI); or

(T) A B, BA, CA, F, G16-1/2, G–25, G–30, S, or M–14 lamp as defined at 42 U.S.C. 6291(30)(D)(ii)(XXII).

(4) *Incandescent reflector lamp* means a lamp described in paragraph (e)(1)(ii) of this section; and

(5) *Tungsten halogen lamp* means a gas filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(f) *Light emitting diode (LED)* means a p-n junction solid state device the radiated output of which is a function of the physical construction, material used, and exciting current of the device. The output of a light emitting diode may be in—

(1) The infrared region;

(2) The visible region; or

(3) The ultraviolet region.

(g) *Organic light emitting diode (OLED)* means a thin-film light-emitting device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).

(h) *General service light-emitting diode (LED or OLED) lamp* means any light emitting diode (LED or OLED) lamp that:

(1) Is a consumer product;

(2) Is intended for general service applications;

(3) Has a medium screw base;

(4) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(5) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(i) *Metal halide lamp fixture* means a light fixture for general lighting application that is designed to be operated with a metal halide lamp and a ballast for a metal halide lamp and that is subject to and complies with Department of Energy efficiency standards issued pursuant to 42 U.S.C. 6295.

(1) *Metal halide ballast* means a ballast used to start and operate metal halide lamps.

(2) *Metal halide lamp* means a high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

(j) *Specialty consumer lamp* means:

(1) Any lamp that:

(i) Is not included under the definition of general service lamp in this part;

(ii) Has a lumen range between 310 lumens and no more than 2,600 lumens or a rated wattage between 30 and 199;

(iii) Has one of the following bases:

(A) A medium screw base;

(B) A candelabra screw base;

(C) A GU–10 base; or

(D) A GU–24 base; and

(iv) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(2) Inclusions: The term *specialty consumer lamp* includes, but is not limited to, the following lamps if such lamps meet the conditions listed in paragraph (1):

(i) Vibration-service lamps as defined at 42 U.S.C. 6291(30)(AA);

(ii) Rough service lamps as defined at 42 U.S.C. 6291(30)(X);

(iii) Appliance lamps as defined at 42 U.S.C. 6291(30)(T); and

(iv) Shatter resistant lamps (including a shatter proof lamp and a shatter protected lamp) as defined in 42 U.S.C. 6291(30)(Z).

(3) Exclusions: The term *specialty consumer lamp* does not include:

(i) A black light lamp;

(ii) A bug lamp;

(iii) A colored lamp;

(iv) An infrared lamp;

(v) A left-hand thread lamp;

(vi) A marine lamp;

(vii) A marine signal service lamp;

(viii) A mine service lamp;

(ix) A sign service lamp;

(x) A silver bowl lamp;

(xi) A showcase lamp;

(xii) A traffic signal lamp;

(xiii) A G-shape lamp with diameter of 5 inches or more;

(xiv) A C7, M–14, P, RP, S, or T shape lamp;

(xv) A intermediate screw-base lamp; and

(xvi) A plant light lamp.

■ 8. Add new § 305.6 to read as follows:

§ 305.6 Description of plumbing products.

(a) *Showerhead* means a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.

(b) *Faucet* means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(c) *Water closet* means a plumbing fixture having a water-containing receptor which receives liquid and solid body waste and, upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

(d) *Urinal* means a plumbing fixture that receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

■ 9. In newly re-designated § 305.7:

■ a. Remove the reference ''§ 305.20'' and add in its place ''§ 305.27'' in paragraph (b)(5);

■ b. Remove the reference ''§ 305.26'' and add in its place ''§ 305.9'' in paragraph (b)(6);

■ c. Remove the reference ''§ 305.19'' and add in its place ''§ 305.26'' in paragraph (c);

■ d. Remove paragraph (d)(3); and

■ e. Revise paragraph (e).

The revision reads as follows:

§ 305.7 Prohibited acts.

* * * * *

(e) This part shall not apply to:

(1) Any covered product if it is manufactured, imported, sold, or held for sale for export from the United States, so long as such product is not in fact distributed in commerce for use in the United States, and such covered product or the container thereof bears a stamp or label stating that such covered product is intended for export.

(2) Televisions manufactured before May 10, 2011.

* * * * *

■ 10. In newly redesignated § 305.8, revise paragraph (c) to read as follows:

§ 305.8 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

* * * * *

(c) Representations for ceiling fans under § 305.21 and televisions under § 305.25 must be derived from applicable procedures in 10 CFR parts 429, 430, and 431.

■ 11. Revise newly redesignated § 305.9 to read as follows:

§ 305.9 Duty to provide labels on websites.

For each covered product required by this part to bear an EnergyGuide or Lighting Facts label, the manufacturer must make a copy of the label available on a publicly accessible website in a manner that allows catalog sellers to hyperlink to the label or download it for use in websites or paper catalogs. The label for each specific model must remain on the website for six months after production of that model ceases.

■ 12. In newly redesignated § 305.11, revise paragraph (a)(5), and in paragraph (b)(1) introductory text, remove the reference to ''§ 305.8(a)'' and add in their place ''§ 305.11(a)''.

The revision reads as follows:

§ 305.11 Submission of data

(a) * * *

(5) Manufacturers must submit a website address for the online EnergyGuide labels covered by § 305.9 in new model and annual reports required by this section. Manufacturers may accomplish this by either submitting a specific link to a URL for each label, a link to a PDF download for each label, or a link to a website that takes users directly to a searchable database of the covered labels from which the label image or download may be accessed using the model number as certified to DOE pursuant to 10 CFR part 429 and the model number advertised in product literature. Such label information must be submitted either at the time the model is certified to DOE pursuant to 10 CFR part 429 or at some time on or before the annual report date immediately following such certification. In lieu of submitting the required information to the Commission, manufacturers may submit such information to the Department of Energy via the CCMS at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12. The requirements in this paragraph do not apply to Lighting Facts labels.

* * * * *

■ 13. In newly redesignated § 305.12:

■ a. In paragraph (b):

■ i. Remove the reference ''§ 305.11'' and add in its place ''§ 305.14 through § 305.19'';

■ ii. Remove the reference to ''§ 305.20'' and add in its place ''§ 305.27''; and

■ b. Revise paragraphs (c) introductory text and (c)(1);

The revisions read as follows:

§ 305.12 Ranges of comparability on the required labels.

* * * * *

(c) *Operating costs or efficiency ratings outside current range.* When the estimated annual operating cost or energy efficiency rating of a given model of a product covered by this section falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall:

(1) Omit placement of such product on the scale appearing on the label, and

* * * * *

■ 14. Add new § 305.13 to read as follows:

§ 305.13 Layout, format, and placement of labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

(a) *Coverage.* The requirements of this section apply to labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.

(b) *Layout.* Energy labels shall use one size, similar colors, and typefaces with consistent positioning of headline, copy, and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for the labels shall be as follows: Width must be between 5¼ inches and 5½ inches (13.34 cm. and 13.97 cm.); length must be between 7⅜ inches (18.73 cm.) and 7⅝ (19.37 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype and sample labels appearing at the end of this part illustrating the basic layout. All positioning, spacing, type sizes, and line widths should be similar to and consistent with the prototype and sample labels in appendix L to this part.

(c) *Type style and setting.* The Arial series typeface or equivalent shall be used exclusively on the label. Specific sizes and faces to be used are indicated on the prototype labels. No hyphenation should be used in setting headline or copy text. Positioning and spacing should follow the prototypes closely. Generally, text must be set flush left with two points leading except where

otherwise indicated. See the prototype labels for specific directions.

(d) *Colors.* Except as indicated in paragraph (e)(3) of this section, the basic colors of all labels covered by this section shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be print process black.

(e) *Label types.* Except as indicated in paragraph (e)(3) of this section, the labels must be affixed to the product in the form of an adhesive label for any product covered by this section, or in the form of a hang tag for refrigerators, refrigerator-freezers, freezers, dishwashers, and clothes washers, as follows:

(1) *Adhesive labels.* All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25″ x 38″) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard. In lieu of a label with adhesive backing, manufacturers may adhere the label with adhesive tape, provided the tape is affixed along the entire top and bottom of the label.

(2) *Hang tags.* Labels may be affixed to the product interior in the form of a hang tag using cable ties or double strings connected through reinforced punch holes, or with attachment and label material of equivalent or greater strength and durability. If paper stock is used for hang tags, it shall have a basic weight of not less than 110 pounds per 500 sheets (25½″ x 30½″ index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

(3) *Package labels for certain products.* Labels for electric instantaneous water heaters shall be printed on or affixed to the product's packaging in a conspicuous location. Labels for room air conditioners produced on or after October 1, 2019 shall be printed on or affixed to the principal display panel of the product's packaging. The labels for electric instantaneous water heaters and room air conditioners shall be black type and graphics on a process yellow or other neutral contrasting background.

(f) *Placement*—(1) *Adhesive labels.* Manufacturers shall affix adhesive labels to the covered products in such a position that it is easily read by a consumer examining the product. The label should be generally located on the upper-right-front corner of the product's front exterior. However, some other prominent location may be used as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer. The top of the label should not exceed 74 inches from the base of taller products. The label can be displayed in the form of a flap tag adhered to the top of the appliance and bent (folded at 90°) to hang over the front, as long as this can be done with assurance that it will be readily visible.

(2) *Hang tags.* A hang tag shall be affixed to the interior of the product in such a position that it can be easily read by a consumer examining the product. A hang tag can be affixed in any position that meets this requirement as long as the label will not become dislodged during normal handling throughout the chain of distribution to the retailer or consumer. Hang tags may only be affixed in refrigerators, refrigerator-freezers, freezers, dishwashers, and clothes washers.

■ 15. Add new § 305.14 to read as follows:

§ 305.14 Label content for refrigerators, refrigerator-freezers, and freezers.

(a) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part, are standard for all labels.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with this part. The capacity provided on the label shall be the model's total refrigerated volume (VT) as determined in accordance with this part and the model description must be consistent with the categories described in Appendices A and B to this part.

(5) Unless otherwise indicated in this paragraph, estimated annual operating costs must be determined in accordance with this part. Labels for dual-mode refrigerator-freezers that can operate as either a refrigerator or a freezer must reflect the estimated energy cost of the model's most energy intensive configuration.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for estimated annual operating costs are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs.

(8) Labels must contain the model's estimated annual energy consumption as determined in accordance with this part and as indicated on the sample labels in appendix L.

(9) Labels must contain statements as illustrated in the prototype labels in appendix L and specified as follows by product type:

(i) Labels for refrigerators, refrigerator-freezers, and freezers shall contain the text and graphics illustrated in sample labels of appendix L, including the statement:

Compare ONLY to other labels with yellow numbers.

Labels with yellow numbers are based on the same test procedures.

(ii) Labels for refrigerators and refrigerator-freezers must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate energy cost figure):

Your cost will depend on your utility rates and use.

Both cost ranges based on models of similar size capacity.

[Insert statement required by paragraph (a)(9)(iii) of this section].

Estimated energy cost based on a national average electricity cost of ____ cents per kWh.

ftc.gov/energy.

(iii) Labels for refrigerators and refrigerator-freezers shall include the following as part of the statement required by paragraph (a)(9)(ii) of this section:

(A) For models covered under appendix A1 to this part, the sentence shall read:

Models with similar features have automatic defrost and no freezer.

(B) For models covered under appendix A2 to this part, the sentence shall read:

Models with similar features have manual defrost.

(C) For models covered under appendix A3 to this part, the sentence shall read:

Models with similar features have partial automatic defrost.

(D) For models covered under appendix A4 to this part, the sentence shall read:

Models with similar features have automatic defrost, top-mounted freezer, and no through-the-door ice.

(E) For models covered under appendix A5 to this part, the sentence shall read:

Models with similar features have automatic defrost, side-mounted freezer, and no through-the-door ice.

(F) For models covered under appendix A6 to this part, the sentence shall read:

Models with similar features have automatic defrost, bottom-mounted freezer, and no through-the-door ice.

(G) For models covered under appendix A7 to this part, the sentence shall read:

Models with similar features have automatic defrost, bottom-mounted freezer and through-the-door ice.

(H) For models covered under appendix A8 to this part, the sentence shall read:

Models with similar features have automatic defrost, side-mounted freezer, and through-the-door ice.

(iv) Labels for freezers must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate energy cost figure):

Your cost will depend on your utility rates and use.

[Insert statement required by paragraph (a)(10)(v) of this section].

Estimated energy cost based on a national average electricity cost of ____ cents per kWh.

ftc.gov/energy.

(v) For freezers, the following sentence shall be included as part of the statement required by paragraph (a)(9)(iv) of this section:

(A) For models covered under appendix B1 to this part, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with manual defrost.

(B) For models covered under appendix B2 to this part, the sentence shall read:

Cost range based only on upright freezer models of similar capacity with automatic defrost.

(C) For models covered under appendix B3 to this part, the sentence shall read:

Cost range based only on chest and other freezer models of similar capacity.

(10) The following statement shall appear on each label as illustrated in the prototype and sample labels in appendix L to this part:

Federal law prohibits removal of this label before consumer purchase.

(b) *Additional information.* No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(1) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 12-point type or smaller.

(2) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(3) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 16. Add new § 305.15 to read as follows:

§ 305.15 Label content for clothes washers.

(a) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part, are standard for all labels.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with this part.

(5) Estimated annual operating costs are as determined in accordance with this part. Labels must disclose estimated annual operating cost for both electricity and natural gas as illustrated in the sample labels in appendix L to this part.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for estimated annual operating costs are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs.

(8) Labels must contain the model's estimated annual energy consumption as determined in accordance with this part and as indicated on the sample labels in appendix L.

(9) The label shall contain the text and graphics illustrated in the sample labels in appendix L, including the statement:

Compare ONLY to other labels with yellow numbers.

Labels with yellow numbers are based on the same test procedures.

(10) Labels must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate capacity and energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated energy cost is based on six wash loads a week and a national average electricity cost of ____ cents per kWh and natural gas cost of $ ____ per therm.

ftc.gov/energy.

(11) The following statement shall appear on each label as illustrated in the prototype and sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(b) *Additional information.* No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(1) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 12-point type or smaller.

(2) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(3) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with

the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 17. Add new § 305.16 to read as follows.

§ 305.16 Label content for dishwashers.

(a) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part, are standard for all labels.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with this part.

(5) Estimated annual operating costs are as determined in accordance with this part. Labels must disclose estimated annual operating cost for both electricity and natural gas as illustrated in the sample labels in appendix L to this part.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for estimated annual operating costs are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs.

(8) Labels must contain the model's estimated annual energy consumption as determined in accordance with this part and as indicated on the sample labels in appendix L.

(9) Labels must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the brackets with the appropriate capacity and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [compact/standard] capacity models.

Estimated energy cost is based on four wash loads a week, and a national average electricity cost of [____] cents per kWh and natural gas cost of $[____] per therm.

For more information, visit *www.ftc.gov/energy.*

(10) The following statement shall appear on each label as illustrated in the prototype and sample labels in appendix L to this part:

Federal law prohibits removal of this label before consumer purchase.

(b) *Additional information.* No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(1) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 12-point type or smaller.

(2) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(3) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 18. Add new § 305.17 to read as follows:

§ 305.17 Label content for water heaters.

(a) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part, are standard for all labels.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with this part. Capacity for storage water heaters shall be presented in both rated storage volume (''tank size (storage capacity)'') and first hour rating as indicated on the sample label in appendix L to this part.

(5) Estimated annual operating costs are as determined in accordance with this part.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for estimated annual operating costs are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs.

(8) Labels must contain the model's estimated annual energy consumption as determined in accordance with this part and as indicated on the sample labels in appendix L to this part.

(9) Labels must contain a statement as illustrated in the prototype labels in appendix L to this part and specified as follows by product type:

(i) For water heaters covered by appendices D1, D2, and D3 to this part, the statement will read as follows (fill in the blanks with the appropriate fuel type, and energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on models fueled by [natural gas, oil, propane, or electricity] with a [very small, low, medium, or high] first hour rating [fewer than 18 gallons, 18–50.9 gallons, 51–74.9 gallons, or greater than 75 gallons].

Estimated energy cost is based on a national average [electricity, natural gas, propane, or oil] cost of [____ cents per kWh or $____ per therm or gallon].

Estimated yearly energy use: ____ [kWh or therms].

ftc.gov/energy.

(ii) For instantaneous water heaters, the statement will read as follows (fill in the blanks with the appropriate model type, and the energy cost figures):

Your costs will depend on your utility rates and use.

Cost range based only on [electric models or models fueled by natural gas] with a [very small, low, medium, or high] gallons per minute rating [0 to 1.6, 1.7 to 2.7, 2.8 to 4.0, or greater than 4.0].

Estimated energy cost is based on a national average [electricity, natural gas, or propane] cost of [____ cents per kWh or $____ per therm or gallon].

Estimated yearly energy use: ____ [kWh or therms].

ftc.gov/energy.

(10) The following statement shall appear on each label as illustrated in the prototype and sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(b) *Additional information.* No marks or information other than that specified

in this part shall appear on or directly adjoining this label except that:

(1) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 12-point type or smaller.

(2) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(3) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 19. Add § 305.18 to read as follows:

§ 305.18 Label content for room air conditioners.

(a) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part, are standard for all labels.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with this part.

(5) Estimated annual operating costs are as determined in accordance with this part.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for estimated annual operating costs are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual operating costs.

(8) Labels must contain the model's estimated annual energy consumption as determined in accordance with this part and as indicated on the sample labels in appendix L. Labels must contain the model's energy efficiency rating, as applicable, as determined in accordance with this part and as indicated on the sample labels in appendix L to this part.

(9) Labels must contain a statement as illustrated in the prototype labels in appendix L and specified as follows (fill in the blanks with the appropriate model type, year, energy type, and energy cost figure):

Your costs will depend on your utility rates and use.

Cost range based only on models [of similar capacity without reverse cycle and with louvered sides; of similar capacity without reverse cycle and without louvered sides; with reverse cycle and with louvered sides; or with reverse cycle and without louvered sides].

Estimated annual energy cost is based on a national average electricity cost of ____ cents per kWh and a seasonal use of 8 hours use per day over a 3 month period.

For more information, visit *www.ftc.gov/energy.*

(10) The following statement shall appear on each label as illustrated in the prototype and sample labels in appendix L:

Federal law prohibits removal of this label before consumer purchase.

(b) *Additional information.* No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(1) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 12-point type or smaller.

(2) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(3) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 20. Add new § 305.19 to read as follows:

§ 305.19 Label content for pool heaters.

(a) *Label content.* (1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part, are standard for all labels.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) Model number(s) will be the designation given by the manufacturer or private labeler.

(4) Capacity or size is that determined in accordance with this part.

(5) Thermal efficiencies are as determined in accordance with this part.

(6) Unless otherwise indicated in this paragraph, ranges of comparability for thermal efficiencies are found in the appropriate appendices accompanying this part.

(7) Placement of the labeled product on the scale shall be proportionate to the lowest and highest thermal efficiencies.

(8) Labels must contain the model's energy efficiency rating or thermal efficiency, as applicable, as determined in accordance with this part and as indicated on the sample labels in appendix L to this part.

(9) Labels must contain a statement as illustrated in the prototype labels in appendix L and specified as follows:

Efficiency range based only on models fueled by [natural gas or oil].

For more information, visit *www.ftc.gov/energy.*

(10) The following statement shall appear on each label as illustrated in the prototype and sample labels in appendix L to this part:

Federal law prohibits removal of this label before consumer purchase.

(b) *Additional information.* No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(1) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 12-point type or smaller.

(2) The energy use disclosure labels required by the governments of Canada

or Mexico may appear directly adjoining this label, as desired by the manufacturer.

(3) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

§ 305.20 [Amended]

■ 21. In newly redesignated § 305.20:

■ a. Remove the reference ''§ 305.5'' and add in its place ''this part'' in paragraph (f)(5);

■ b. Remove ''6-point'' and add in its place ''12-point'' in paragraph (f)(10)(i);

■ c. Remove the reference ''§ 305.5'' and add in its place ''this part'' in two occurrences in paragraph (g)(5);

■ d. Remove ''7A'' and add in its place ''7'' in paragraph (g)(6)(i); and

■ e. Remove ''6-point'' and add in its place ''12-point'' in paragraph (g)(15)(i).

§ 305.21 [Amended]

■ 22. In newly redesignated § 305.21, remove the references to ''§ 305.5'' and add in their place the reference ''§ 305.8'' in paragraphs (a)(1)(iii) and (iv).

§ 305.23 [Amended]

■ 23. In newly redesignated § 305.23:

■ a. Remove the reference ''§ 305.2(n)'' and add in its place ''this part'' in paragraph (a)(1);

■ b. Remove the reference ''§ 305.2(w)'' and add in its place ''this part'' in paragraph (b)(3)(iii);

■ c. Remove the reference ''§ 305.2(hh)'' and add in its place ''this part'' in paragraph (b)(3)(v); and

■ d. Remove the reference ''§ 305.2(w)'' and add in its place ''this part'' in paragraph (c)(2)(i)(C).

§ 305.24 [Amended]

■ 24. Amend newly redesignated § 305.24 by removing paragraphs (b)(4) and (5).

§ 305.25 [Amended]

■ 25. In newly redesignated § 305.25, in the locations cited in the ''Paragraph'' column, remove the reference indicated in the ''Remove'' column, and add in its place the reference indicated in the ''Add'' column.

Paragraph	Remove	Add
(d)(3)	§ 305.11(d)(2)	§ 305.13(e)(2).
(f)(4)	§ 305.5 of this part	this part.
(f)(7)	§ 305.5	this part.
(g)	§ 305.6	§ 305.9.

§ 305.26 [Amended]

■ 26. In newly redesignated § 305.26:

■ a. Remove the reference ''305.11(f)'' and add in its place ''this part'' in paragraph (a)(4); and

■ b. Remove the reference ''305.4(e)'' and add in its place ''§ 305.7(e)'' in paragraph (b)(4);

§ 305.27 [Amended]

■ 27. In newly redesignated § 305.27, in the locations cited in the ''Paragraph'' column, remove the reference indicated in the ''Remove'' column, and add in its place the reference indicated in the ''Add'' column.

Paragraph	Remove	Add
(b)(1)(i)(F) and (G)	§ 305.5	this part.
(b)(1)(i)(A) and (B)	§ 305.5 and appendix K of this Part	this part.
(b)(1)(i)(C)	§ 305.5 and appendix K	this part.
(b)(1)(i)(A)–(C) and (G)	§ 305.7	this part
(b)(1)(i)(E)	§ 305.13	§ 305.21.
(b)(1)(i)(D)	§ 305.15	§ 305.23.
(b)(1)(i)(D)	§ 305.15(b)(3)(iv)	§ 305.23(b)(3)(iv).
(b)(1)(i)(D)	§ 305.15(d)(1)	§ 305.23(g)(1).
(a)(1)(ii)(A)	§ 305.16	this part.
(b)(1)(ii)	§ 305.20(a)(1)(ii)	§ 305.27(a)(1)(ii).
(b)(2)	§ 305.20(b)(1)(i) and (ii)	§ 305.27(b)(1)(i) and (ii).

§ 305.29 [Amended]

■ 28. In newly redesignated § 305.29, remove the reference to ''§ 305.21(b)'' and add in its place the reference ''§ 305.28(b)''.

■ 29. Revise the heading for appendix A4 to part 305 to read as follows:

Appendix A4 to Part 305—Refrigerator-Freezers With Automatic Defrost With Top-Mounted Freezer No Through-the-Door Ice

* * * * *

■ 30. Revise the heading for appendix A5 to part 305 to read as follows:

Appendix A5 to Part 305—Refrigerator-Freezers With Automated Defrost With Side-Mounted Freezer No Through-the-Door Ice

* * * * *

■ 31. Revise the heading for appendix A6 to part 305 to read as follows:

Appendix A6 to Part 305—Refrigerator-Freezers With Automated Defrost With Bottom-Mounted Freezer No Through-the-Door Ice

* * * * *

* * * * *

Appendix K1 to Part 305 [Amended]

■ 32. In appendix K1, remove ''§§ 305.11 and 305.20'' and add in its place ''§§ 305.14, 305.15, 305.17, and 305.27''.

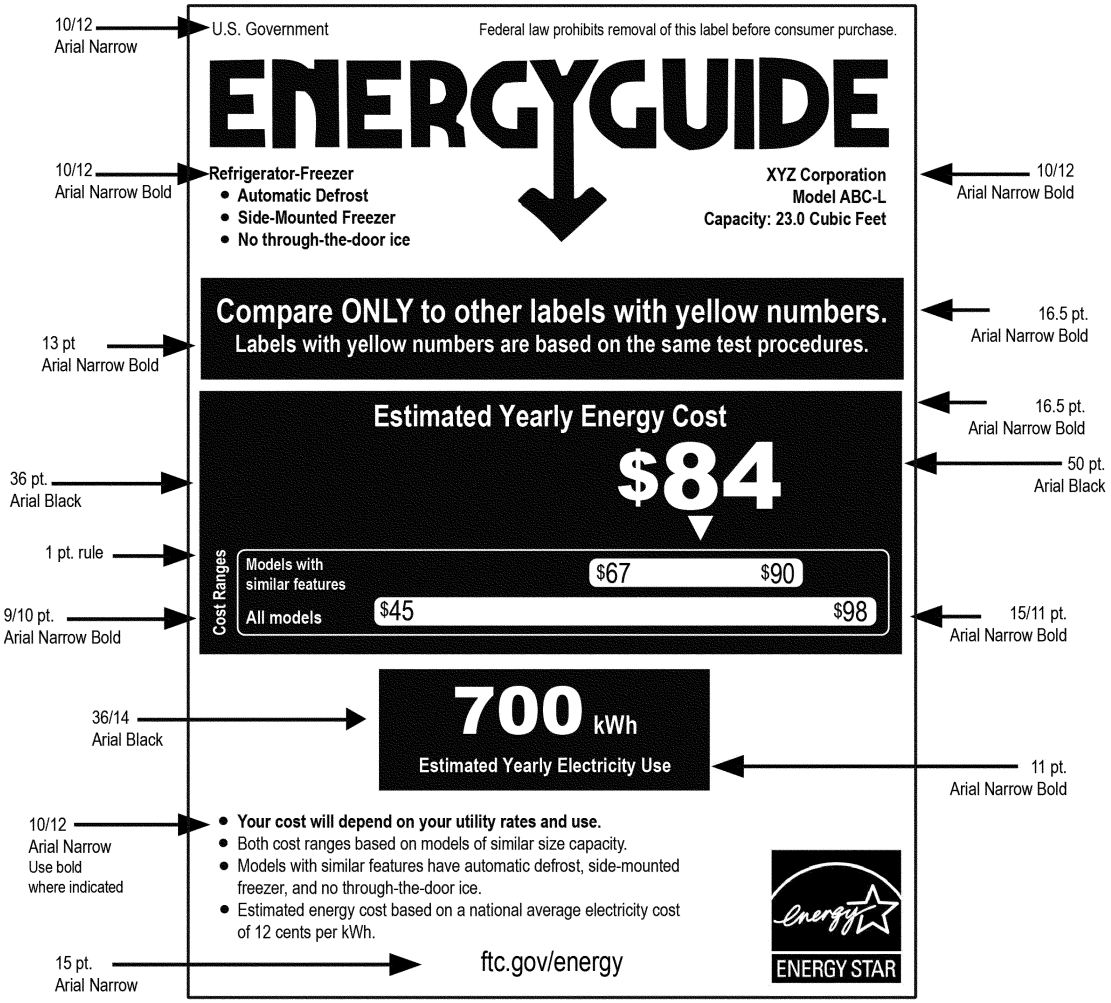
Appendix K2 to Part 305 [Amended]

■ 33. In appendix K2, remove ''§§ 305.11 and 305.20'' and add in its place ''§§ 305.16, 305.18 and 305.27''.

■ 34. In appendix L, revise Prototype Labels 1, 2, 6, and 7 and Sample Labels 1, 2, 3, 13C, and 13D to read as follows:

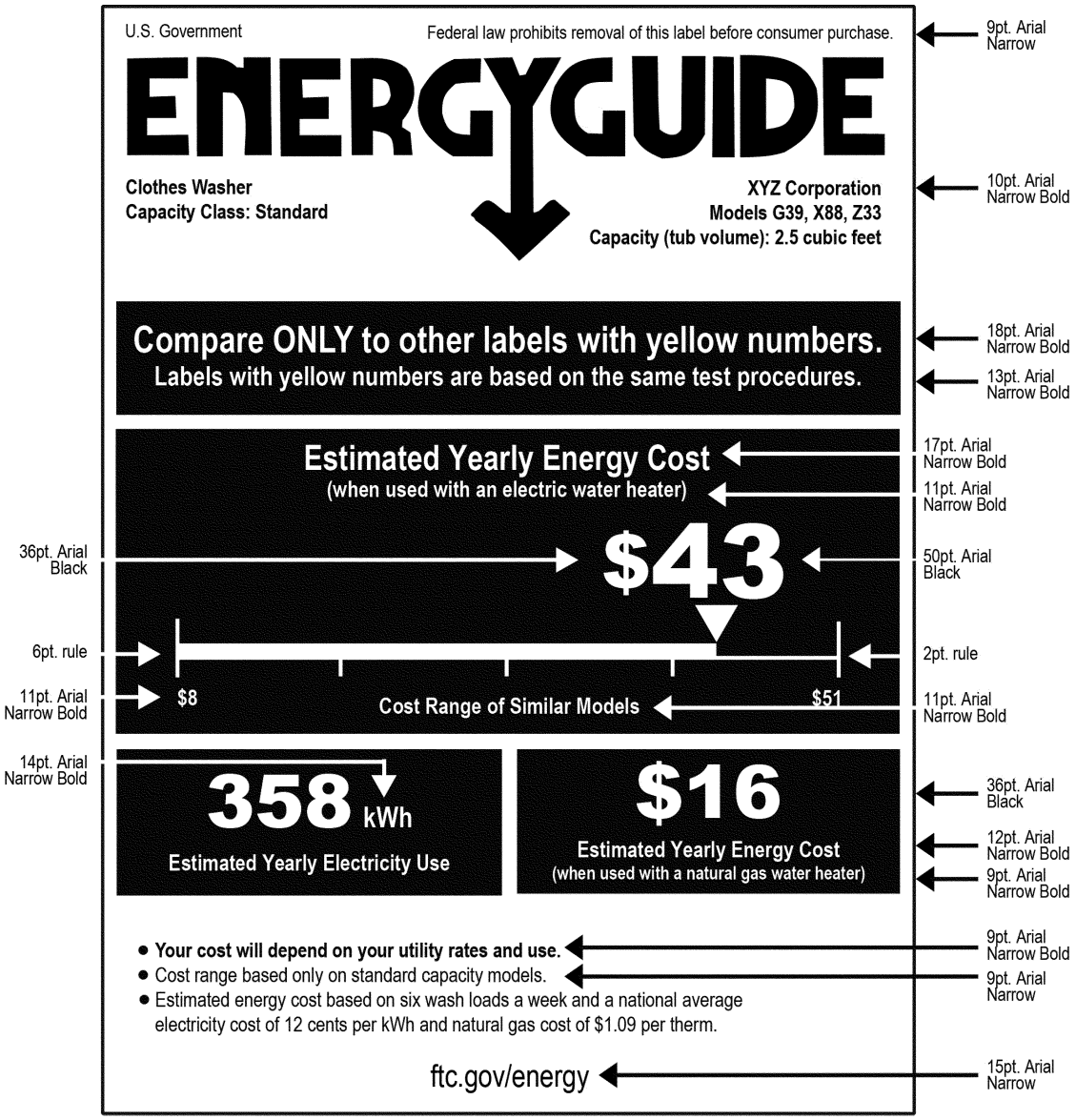
BILLING CODE 6750–01–P

Appendix L to Part 305—Sample Labels

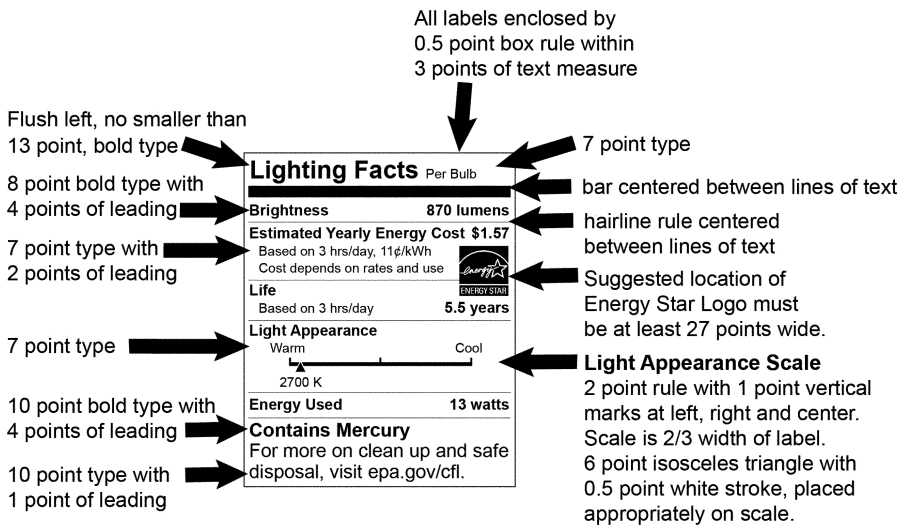


Prototype Label 1 – Refrigerator-Freezer

* * * * *



Prototype Label 2 – Clothes Washer

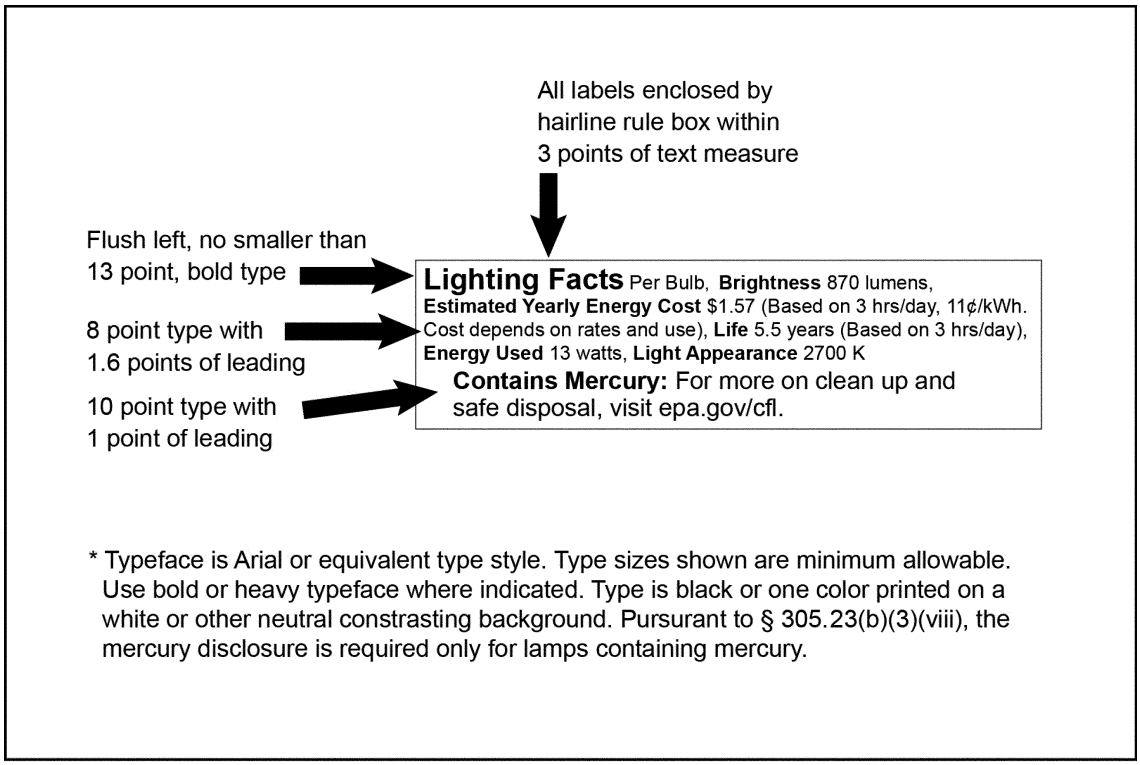


* Typeface is Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black or one color printed on a white or other neutral contrasting background. Pursuant to § 305.23(b)(3)(vi), the Energy Star logo may appear only on qualified lamps. Pursuant to § 305.23(b)(3)(viii), the mercury disclosure is required only for lamps containing mercury.

Prototype Label 6

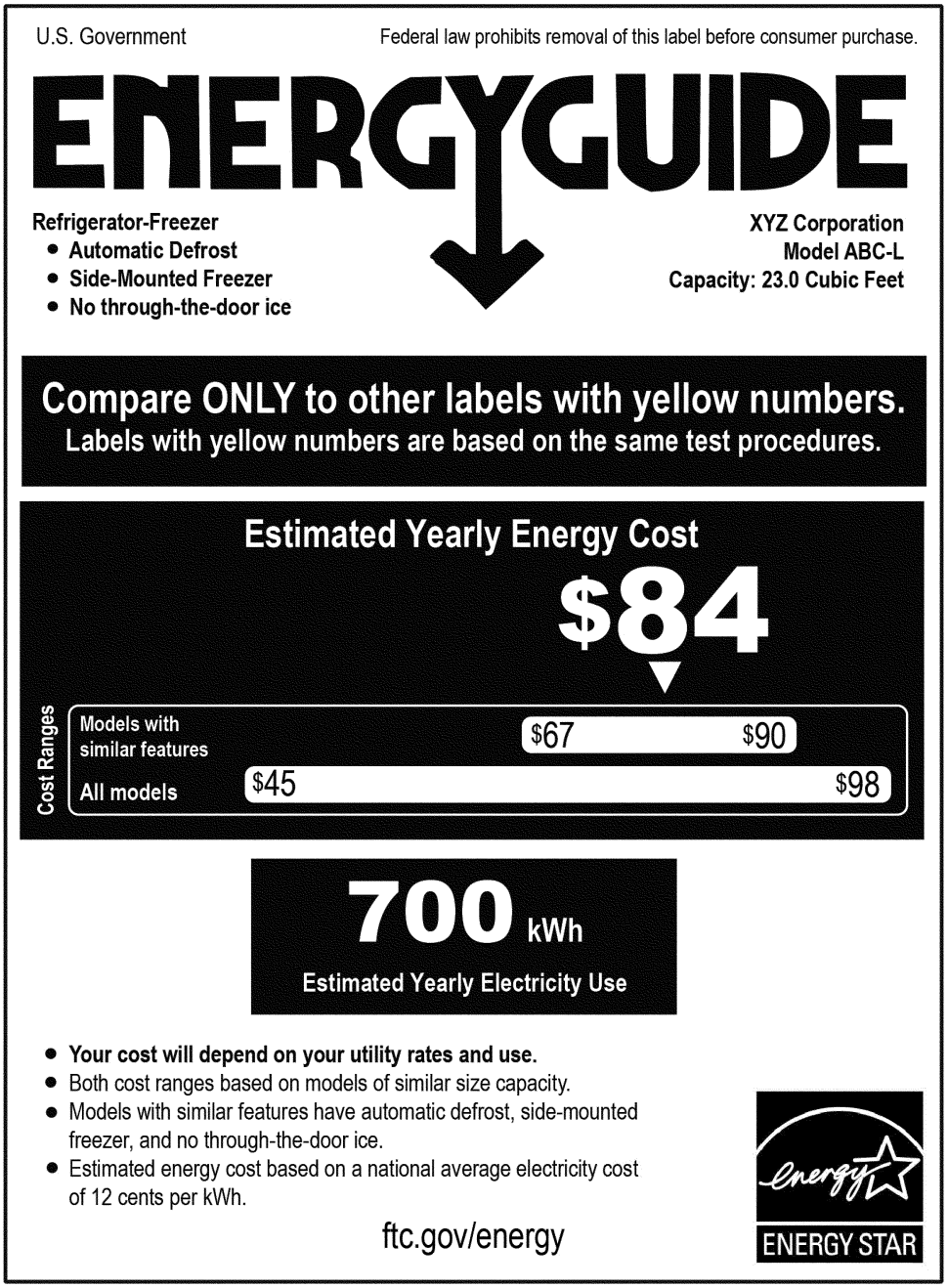
Lighting Facts Label for General Service Lamps (Standard Format)

* * * * *

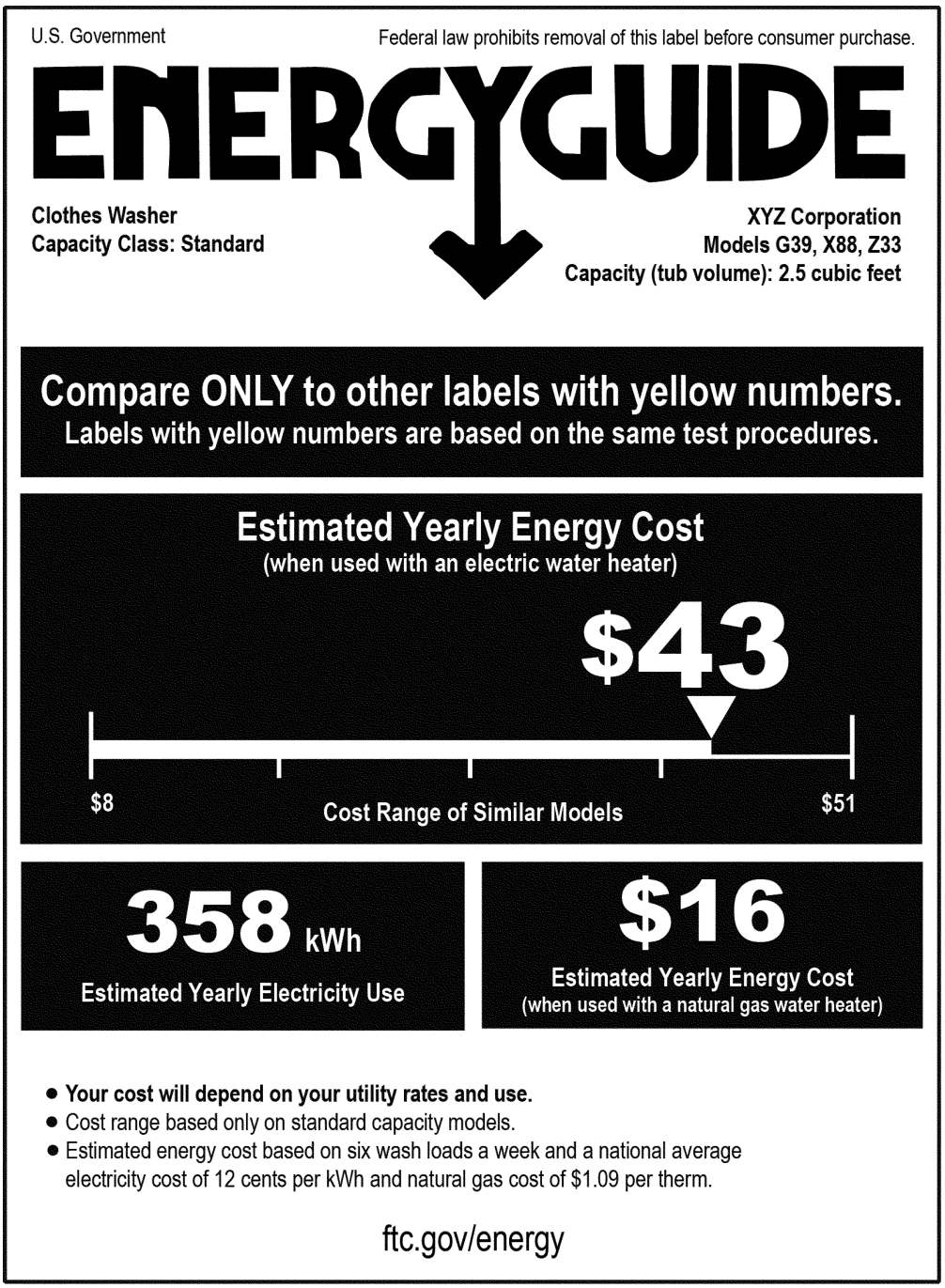


Prototype Label 7

Lighting Facts Label for General Service Lamps Containing Mercury (Linear Format)

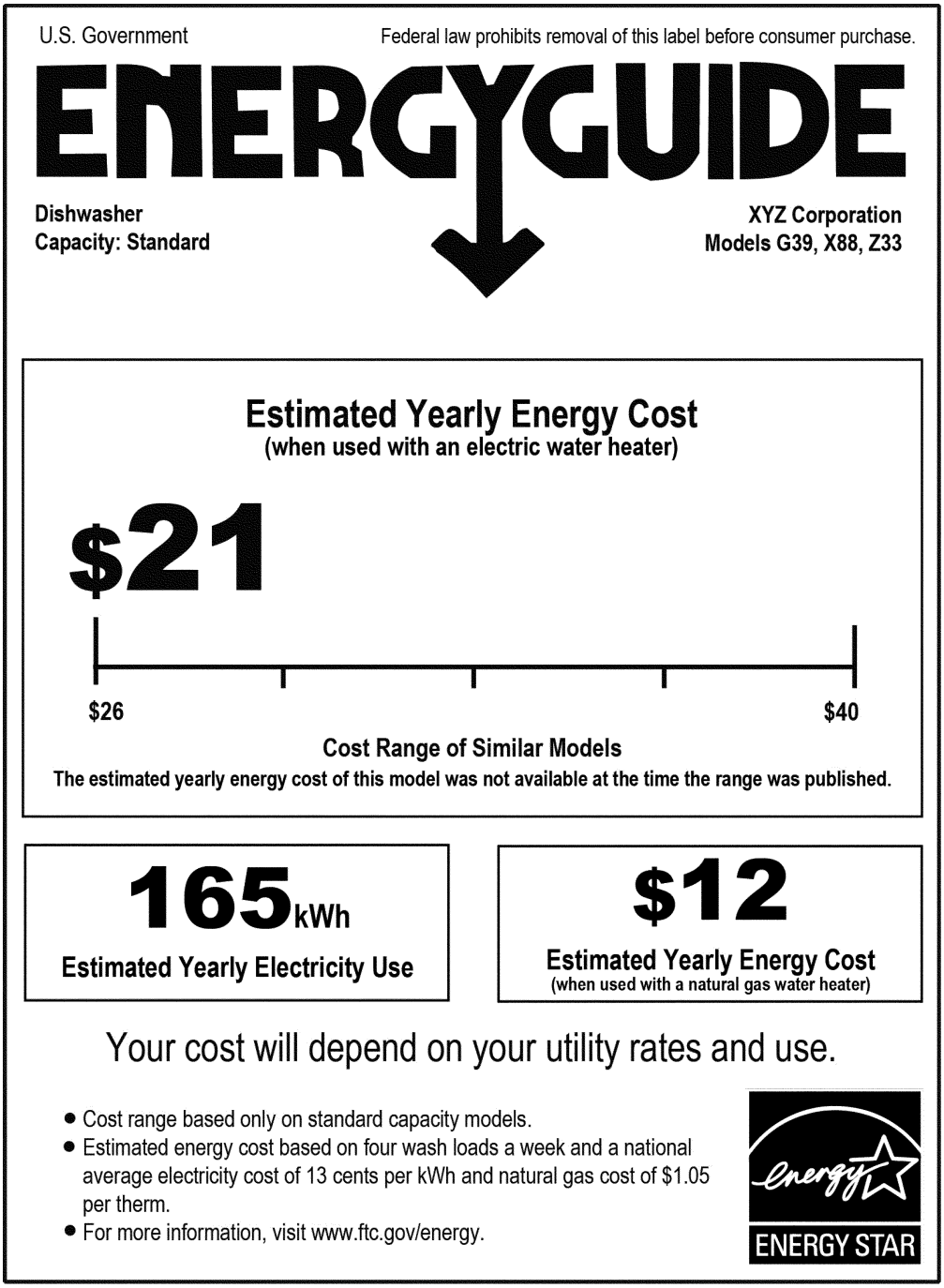

U.S. Government
Federal law prohibits removal of this label before consumer purchase.
ENERGYGUIDE
Refrigerator-Freezer
• Automatic Defrost
• Side-Mounted Freezer
• No through-the-door ice
XYZ Corporation
Model ABC-L
Capacity: 23.0 Cubic Feet
Compare ONLY to other labels with yellow numbers.
Labels with yellow numbers are based on the same test procedures.
Estimated Yearly Energy Cost
$84
Cost Ranges
Models with similar features
$67
$90
All models
$45
$98
700 kWh
Estimated Yearly Electricity Use
• Your cost will depend on your utility rates and use.
• Both cost ranges based on models of similar size capacity.
• Models with similar features have automatic defrost, side-mounted freezer, and no through-the-door ice.
• Estimated energy cost based on a national average electricity cost of 12 cents per kWh.
ftc.gov/energy
energy
ENERGY STAR

Sample Label 1 – Refrigerator-Freezer

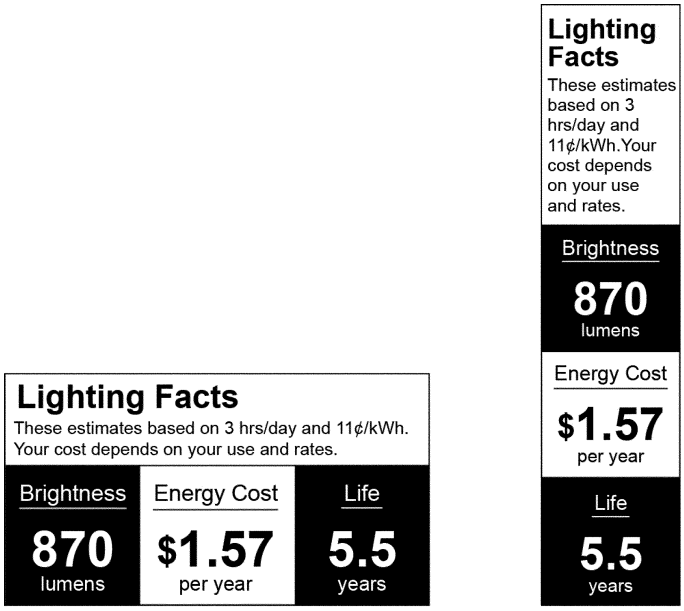


* * * * *

Sample Label 2 – Clothes Washer



Sample Label 3 - Dishwasher



Sample Label 13C

Lighting Facts Label Alternative for Specialty Consumer Lamps

Sample Label 13D

Icon for Specialty Consumer Lamp Packages that Meet the Requirements of Section 305.23(c)(2)(iv)

* * * * *

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–23505 Filed 10–29–19; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–472a]

Schedules of Controlled Substances: Extension of Temporary Placement of FUB-AMB in Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary rule; temporary scheduling order; extension.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to extend the temporary schedule I status of a synthetic cannabinoid, methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA), including its optical, positional and geometric isomers, salts, and salts of isomers. The schedule I status of FUB-AMB currently is in effect until November 4, 2019. This temporary order will extend the temporary scheduling of FUB-AMB for one year, or until the permanent scheduling action for this substance is completed, whichever occurs first.

DATES: This temporary scheduling order, which extends the order (82 FR 51154, November 3, 2017), is effective November 3, 2019 and expires on November 3, 2020. If the Drug Enforcement Administration publishes a final rule making this scheduling action permanent, this order will expire on the effective date of that rule, if the effective date is earlier than November 3, 2020.

FOR FURTHER INFORMATION CONTACT: Scott Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

On November 3, 2017, the Acting Administrator of the Drug Enforcement Administration (DEA) published a temporary scheduling order in the **Federal Register** (82 FR 51154) placing methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (other names: FUB-

AMB, MMB-FUBINACA, AMB-FUBINACA), a synthetic cannabinoid (SC) substance, in schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). That order was effective on the date of publication, and was based on findings by the Acting Administrator of the DEA that the temporary scheduling of this SC was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA, 21 U.S.C. 811(h)(2), requires that the temporary control of this substance expires two years from the effective date of the scheduling order, or on November 3, 2019. However, the CSA also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling [1] of that substance could be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services (HHS),[2] or on the petition of any interested party.

The Acting Administrator of the DEA (Acting Administrator), on his own motion pursuant to 21 U.S.C. 811(a), has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule FUB-AMB. The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for this SC. On March 9, 2018, the DEA submitted a request to the HHS to provide the DEA with a scientific and medical evaluation of available information and a scheduling recommendation for FUB-AMB, and in accordance with 21 U.S.C. 811(b) and (c). Upon evaluating the scientific and medical evidence, on September 19, 2019, the HHS submitted to the Acting Administrator of the DEA its scientific and medical evaluation and a scheduling recommendation for FUB-AMB. Upon receipt of the scientific and medical evaluation and scheduling recommendation from the HHS, the DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of FUB-AMB in accordance with 21 U.S.C. 811(c). The DEA published a notice of proposed rulemaking for the placement of FUB-AMB in schedule I elsewhere in this issue of the **Federal Register**. If the scheduling of this substance is made permanent, the DEA will publish a final rule in the **Federal Register**.

Pursuant to 21 U.S.C. 811(h)(2), the Acting Administrator orders that the temporary scheduling of FUB-AMB, including its optical, positional and geometric isomers, salts, and salts of isomers, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

In accordance with the temporary scheduling order in this document, the schedule I requirements for handling FUB-AMB, including its optical, positional and geometric isomers, salts, and salts of isomers, will remain in effect for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

Regulatory Matters

The CSA provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). The Attorney General may, by order, schedule a substance in schedule I on a temporary basis. *Id.* 21 U.S.C. 811(h) also provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this extension of the temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Acting Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety. Further, the DEA believes that this order extending the temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, ''any rule for which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.'' 5 U.S.C. 808(2). It is in the public interest to maintain the temporary placement of FUB-AMB in schedule I because it poses a public health risk. The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice and comment rulemaking procedures. The DEA understands that the CSA frames temporary scheduling actions as orders rather than rules to ensure that the process moves swiftly, and this extension of the temporary scheduling order continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to place this substance in schedule

[1] Though DEA has used the term ''final order'' with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(h), which refers to a ''temporary scheduling order.'' No substantive change is intended.

[2] Because the Secretary of the Department of Health and Human Services (HHS) has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this temporary scheduling order, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

I because it poses an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order extending the temporary scheduling order shall take effect immediately upon its publication. The DEA has submitted a copy of this temporary scheduling order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Congressional Review Act, 5 U.S.C. 801–808, because, as noted above, this action is an order, not a rule.

Dated: October 21, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–23372 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–036–FOR; Docket No. OSM–2017–0001; S1D1S SS08011000; SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is approving an amendment to the Montana coal regulatory program (the Montana program or the State program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The proposed changes to the Montana program are in response to a 2011 state legislative change, which enacted a new State statutory provision under the Montana Strip and Underground Mine Reclamation Act (MSUMRA). The statutory change, directs the State Board to adopt rules governing underground mining that uses in situ coal gasification. Montana proposes to revise its State program to incorporate the addition and proposes changes to the Administrative Rules of Montana (ARM) pertaining to the regulation of in situ coal gasification operations.

DATES: The effective date is November 29, 2019.

FOR FURTHER INFORMATION CONTACT: Howard Strand, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202, Telephone: (303) 293–5026, Email: *hstrand@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Amendment
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.12, 926.15, 926.16, and 926.30.

II. Submission of the Amendment

By letter dated February 27, 2017 (Document ID No. OSM–2017–0001–0002), Montana sent us a proposed amendment to its State program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed changes were submitted in response to Montana Senate Bill 292 (SB 292), enacted by the Montana Legislature in 2011, and subsequently codified within MSUMRA at Montana Code Annotated (Mont. Code Ann.) sec. 82–4–207. Montana proposes to amend its State program to incorporate the statutory change at Mont. Code Ann. sec. 82–4–207 and it also proposes amendments to its rules.

We announced receipt of the proposed amendment in the May 8, 2018, **Federal Register** (83 FR 20773) (Document ID No. OSM–2017–0001–0001). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none were requested. The public comment period ended on June 7, 2018.

III. OSMRE's Findings

Following is a summary of the proposed statutory and rule changes submitted by Montana, as well as OSMRE's findings concerning Montana's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. For the reasons discussed below, we are approving the amendment.

A. Mont. Code Ann. Sec. 82–4–207—Rulemaking—In Situ Coal Gasification

Montana proposes to add Mont. Code Ann. sec. 82–4–207 under MSUMRA. Subsection (1) of Mont. Code Ann. sec. 82–4–207 directs the Montana Board of Environmental Review (BER) to adopt rules necessary to regulate underground mining that uses in situ coal gasification operations under the Montana program. The new statutory provision additionally states that the BER may not adopt rules specific to in situ gasification that are more stringent than the comparable Federal regulations or guidelines that address the same circumstances. Mont. Code Ann. sec. 82–4–207(2). Subsection (3) of the statutory provision relates to rule processing.

The proposed Montana statute, at Mont. Code Ann. sec. 82–4–207, provides the necessary statutory authority to allow the BER to adopt rules to regulate underground mining using in situ coal gasification. Because in situ coal processing is an activity regulated under SMCRA's implementing regulations, at 30 CFR 785.22 and 30 CFR part 828, we find Mont. Code Ann. sec. 82–4–207 to be consistent with SMCRA and the Federal regulations. Under section 503(a)(7) of SMCRA, State programs must be capable of carrying out the provisions of SMCRA and meeting the Act's purposes through rules consistent with the Federal regulations implemented under the Act. Mont. Code Ann. sec. 82–4–207 simply allows the State to proceed with rulemaking specific to in situ coal gasification, an activity already approved as part of Montana's existing program. This statutory provision is therefore consistent with SMCRA and the Federal regulations.

Regarding subsection (2) of the statutory provision, SMCRA sections 503 and 505, and the Federal regulations at 30 CFR 730.5, establish the criteria for approval of State SMCRA programs. A State program must set forth requirements that satisfy the Federal minimum standards and must include provisions that are no less stringent than SMCRA and no less effective than the Federal regulations.

As long as these minimum Federal standards are met, a State may indicate that its State program shall not be more stringent than the Federal program. Montana's proposed statutory provision is not inconsistent with SMCRA or the Federal regulations. We are therefore approving the incorporation of Mont. Code Ann. sec. 82–4–207 into the Montana program.

B. Proposed Amendments to the Montana Rules

In its program amendment submission, Montana proposes to adopt a new rule section, ARM 17.24.905, which is intended to clarify that certain rules are not applicable to in situ coal operations under the Montana program requirements. Montana also proposes revisions to its existing rules at ARM 17.24.902 and 17.24.903 to incorporate a reference to, and reflect the in situ coal gasification exemptions set forth at, ARM 17.24.905.

For the following reasons, OSMRE finds that the proposed changes are consistent with, and no less effective than, the counterpart Federal regulations. We are therefore approving Montana's proposed rule changes.

1. ARM 17.24.905—Rules Not Applicable to In Situ Coal Operations

OSMRE previously approved the definition of ''in situ coal gasification'' as part of the Montana program and published the final rule in the September 19, 2012, **Federal Register** (77 FR 58022). The Montana program, at Mont. Code Ann. sec. 82–4–203(27)(a), defines in situ coal gasification as an in-place extraction method involving a well or conduit where limited surface disturbance occurs.

The Federal regulations specify which requirements apply to in situ coal processing at 30 CFR 785.22 and 30 CFR part 828. Montana's existing program at ARM 17.24.902 and 17.24.904 contain similar requirements. Both the State and Federal programs establish that in situ operations must comply with regulations governing underground mining. Underground mining performance standards are outlined in the Montana program at ARM 17.24.903. Those requirements are similar to the Federal underground mining performance standards at 30 CFR part 817. As discussed in further detail below, the Federal regulations do not require in situ processing operations to comply with all Federal coal program requirements, especially those pertaining to surface mining operations, due to the limited nature of the disturbances associated with this mining method. Similarly, Montana's existing program does not routinely apply surface mining regulations to in situ operations. This is consistent with the State's definition of ''in situ coal gasification'' in Mont. Code Ann. sec. 82–4–203(27)(a), which indicates that this mining method involves limited surface disturbances, and the counterpart Federal requirements.

In its submission package for this program amendment, the Montana Department of Environmental Quality (MDEQ or the Department) explained that it determined most of the rules relating to underground coal mining should apply to in situ operations. However, in an effort to minimize duplication of existing rules, Montana decided to adopt a new rule, proposed as ARM 17.24.905, that instead lists the rules that would be inapplicable to in situ operations. Montana's amendment seeks to clarify which additional regulations, beyond those already explicitly applied to all in situ operations, the State may and may not impose at its discretion. This will provide regulatory certainty to potential permittees by indicating that although the State has the discretion to apply additional requirements beyond those applicable to all in situ operations, it may not impose the specific surface mining regulations listed under new ARM 17.24.905(1)(a)–(c).

This proposed new section, ARM 17.24.905(1)(a)–(c), exempts in situ coal gasification operations from three separate groups of regulatory requirements: ARM 17.24.311 (Air Pollution Control Plan); ARM 17.24.519 (Monitoring for Settlement); and ARM 17.24.831 through ARM 17.24.837 (auger mining and remining rules). Montana further proposed language at ARM 17.24.905(2), which states that all other rules may apply on a mine-specific basis. These changes would not modify existing ARM 17.24.904, In Situ Coal Processing Operation Performance Standards, which requires in situ operations to comply with general performance standards for underground mining operations, as well as additional requirements, which explicitly apply to all in situ operations.

At subsection 17.24.905(1)(a), Montana proposes to exempt in situ operations from ARM 17.24.311 (Air Pollution Control Plan). ARM 17.24.311 applies only to strip mining operations with projected production rates exceeding 1,000,000 tons of material per year. In situ operations do not fall within the scope of this provision. Similarly, in situ operations are not subject to air pollution control plan requirements under the Federal program at 30 CFR 780.15. Therefore, the ARM 17.24.905(1)(a) exemption is not inconsistent with the Federal regulations.

Under ARM 17.24.902(1)(d), Montana requires in situ operations to include, among other requirements, plans for monitoring air quality. Likewise, under 30 CFR 784.26, the Federal program requires in situ processing operations to have an air quality monitoring program. Montana seeks to clarify that, although it has a requirement to include plans for monitoring air quality similar to underground mining operations, it will not impose the air pollution control plan requirements of ARM 17.24.311, which apply only to surface mining operations.

Because the Federal regulations do not require in situ operations to comply with surface mining air pollution control plan requirements, and both programs require air quality monitoring for in situ operations, Montana's proposed exemption is no less effective than the corresponding Federal regulations.

ARM 17.24.905(1)(b) proposes to exempt in situ operations from ARM 17.24.519 (Monitoring for Settlement), which pertains to regraded surface mine areas. The Federal regulations do not contain an analogous provision and therefore in situ operations are not subject to this requirement under the Federal program. The need to regrade spoil would not arise because in situ operations do not involve land excavation. Therefore, in situ operations would not necessitate monitoring for settlement of regraded areas. Rather, monitoring for subsidence would be appropriate. This is required under the Federal program at 30 CFR 784.20, Subsidence Control Plan, and under Montana's program at ARM 17.24.911, Subsidence Control Plan. *See* ARM 17.24.902(1) (which incorporates 17.24.901 by reference), and ARM 17.24.901(1)(c)(iii)(A)(III)) (which incorporates ARM 17.24.911 by reference). For these reasons, Montana's proposal to exempt in situ operations from monitoring for settlement is consistent with, and no less effective than, the Federal requirements.

ARM 17.24.905(1)(c) proposes to exempt in situ operations from ARM 17.24.831 through 17.24.837 (auger mining and remining). The corresponding Federal regulations having the same effect are found at 30 CFR 785.20 (augering), and 30 CFR 785.25 (lands eligible for remining). These Federal program provisions do not apply to in situ operations. In situ processing cannot occur by the methods of, or under the geologic conditions associated with, either augering or

remining. Therefore, regulatory requirements specific to these types of activities should not be applied to in situ operations. Because in situ operations are not subject to augering or remining provisions under the Federal regulations, Montana's proposed revision exempting them under the State program is consistent with, and no less effective than, the counterpart Federal regulations at 30 CFR 785.20 and 785.25.

Finally, Montana's proposed revision at ARM 17.24.905(2) prescribes, ''all other rules may apply on a mine specific basis.'' This subsection would allow Montana, in its discretion, to impose additional regulatory requirements beyond those already required by the approved program, other than those specifically exempted though this rule provision. As described above, Montana's program requirements, specific to in situ coal gasification operations, satisfy the minimum Federal standards governing in situ operations. Through the addition of ARM 17.24.905, Montana provides itself with the necessary regulatory flexibility to specify any additional requirements to impose on an in situ operation, beyond those already required and applied under its approved State program. Consequently, ARM 17.24.905(2) is not inconsistent with, and does not render its State program less effective than, the Federal requirements.

For the reasons provided above, we are approving ARM 17.24.905.

2. ARM 17.24.902—Application Requirements for In Situ Coal Processing Operations

Montana proposes to revise the language in ARM 17.24.902(1) to add reference to ARM 17.24.905. Because we are approving ARM 17.24.905, revising ARM 17.24.902(1) to include this reference is appropriate to clarify which additional requirements may be applied to in situ coal gasification under the Montana program. We are therefore approving this revision to ARM 17.24.902(1).

3. ARM 17.24.903—General Performance Standards

Similar to the proposed revision at ARM 17.24.902(1), Montana also proposes to revise the language at ARM 17.24.903(1) to incorporate reference to ARM 17.24.905. Because we are approving ARM 17.24.905, adding this reference in ARM 17.24.903(1) is appropriate to clarify which additional requirements may be applied to in situ coal gasification under the Montana program. We are therefore approving this revision to ARM 17.24.903(1).

IV. Summary and Disposition of Comments

Public Comments

OSMRE asked for public comments in the May 8, 2018, **Federal Register** (83 FR 20773) (Document ID No. OSM–2017–0001–0001). OSMRE did not receive any public comments or any request to hold a public meeting or public hearing.

Federal Agency Comments

On March 6, 2017, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Document ID No. OSM–2017–0001–0005). We received comments from the Mine Safety and Health Administration (MSHA) and the United States Army Corps of Engineers (USACE).

On April 10, 2017, MSHA provided a number of comments (Document ID No. OSM–2017–0001–0003), most of which pertained to definition changes in MSUMRA that were included in the Montana SB 292. OSMRE previously approved these definition changes in a separate Montana program amendment approval in the September 19, 2012, **Federal Register** (77 FR 58022). Montana is not currently proposing any changes to its regulatory definitions. However, MSHA did also comment on Montana's proposed statutory revision at Mont. Code Ann. sec. 82–4–207, stating that MSHA may regulate in situ coal gasification as discussed in SB 292, or any other form of coal gasification when active participation of miners occurs, as defined under the Federal Mine Safety and Health Act of 1977, 30 U.S.C.S. 801 *et seq.* (Mine Safety Act). OSMRE agrees that MSHA retains its authority to regulate mining activity under the Mine Safety Act, and OSMRE finds that Montana's amendment will not infringe upon MSHA's authority.

The USACE also commented on the proposed definition changes to MSUMRA that were included in SB 292 (Document ID No. OSM–2017–0001–0004). As stated above, these proposed definition changes were approved by OSMRE in a separate Montana program amendment approval in 2012 (77 FR 58022). Therefore, USACE comments are not germane to the current amendment proposal.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on March 6, 2017, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Document ID No. OSM–2017–0001–0005). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 6, 2017, we requested comments on Montana's amendment (Document ID No. OSM–2017–0001–0006). We did not receive comments from the ACHP or SHPO.

V. OSMRE's Decision

Based on the above findings, we are approving Montana's amendment that was submitted on February 27, 2017.

To implement this decision, we are amending the Federal regulations, at 30 CFR part 926 that codify decisions concerning the Montana program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant

rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

State program amendments are not regulatory actions under Executive Order 13771 because they are exempt from review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3(a) of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that the State of Montana drafted.

Executive Order 13132—Federalism

This rule is not a ''[p]olicy that [has] Federalism implications'' as defined by section 1(a) of Executive Order 13132 because it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Instead, this rule approves an amendment to the Montana program submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in Sections 2 and 3 of the Executive Order and with the principles of cooperative federalism set forth in SMCRA. *See, e.g.,* 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed the program amendment to ensure that it is ''in accordance with'' the requirements of SMCRA and ''consistent with'' the regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Montana program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13405—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13405, because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with Sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and (d), respectively) and the U.S. Department of the Interior Departmental Manual, Part 516 Section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of Section 12(d) of the NTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This

determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated August 30, 2019

David Berry,

Director, Unified Regions 5, 7, 8, 9, 10, 11.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding an entry in chronological order by ''Date of final publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
February 27, 2017	10/30/2019	Mont. Code Ann. 82–4–207 In situ gasification rulemaking ARM 17.24.902, 17.24.903, and 17.24.905, In situ gasification.

[FR Doc. 2019–23514 Filed 10–29–19; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0803]

RIN 1625–AA11

Regulated Navigation Area; Saint Simons Sound, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is amending a temporary RNA for navigable waters in Saint Simons Sound, GA. Entry of vessels greater than 500 gross tons into the area is prohibited, unless specifically authorized by the Captain of the Port (COTP) Savannah. The RNA is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage and pollution response operations taking place near the grounded freight vessel GOLDEN RAY.

DATES: This rule is effective without actual notice from October 30, 2019 until January 29, 2021. For the purposes of enforcement, actual notice will be used from September 24, 2019 through October 30, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0794 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 LT Lauren Bloch, Marine Safety Unit Savannah Office of Waterways Management, Coast Guard; telephone 912–652–4353, extension 232, or email *Lauren.E.Bloch@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
RNA Regulated Navigation Area
COTP Captain of the Port
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is amending 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 freight vessel GOLDEN RAY capsized and grounded in Saint Simons Sound, GA on September 8, 2019. Immediate action is needed to aid in the directing of vessel traffic through the Port of Brunswick in the vicinity of the M/V GOLDEN RAY. It is impracticable to publish an NPRM because we must amend this RNA by September 24, 2019.

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**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential hazards associated with operations in response to the M/V GOLDEN RAY casualty.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Savannah has determined that an amended RNA is needed to allow vessels greater than 500 gross tons to transit safely through the area. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the RNA during salvage and pollution operations in response to the M/V GOLDEN RAY casualty.

IV. Discussion of the Rule

This rule amends the coordinates and expiration date of the temporary RNA published on September 19, 2019. The RNA zone is amended to cover all navigable waters in Saint Simons Sound, GA bounded by a line drawn from a point located at 31°07′48″ N, 081°23′30″ W, thence to 31°07′29″ N, 081°23′37″ W, thence to 31°07′38″ N, 081°24′10″ W, thence to 31°07′22″ N,

081°24′38″ W, thence to 31°07′40″ N, 081°25′01″ W, thence to 31°08′07″ N, 081°24′48″ W. The RNA is amended to expire on January 29, 2021 or when the COTP Savannah determines the M/V GOLDEN RAY is no longer a hazard to the safety of persons and vessels, whichever is sooner. Other provisions remain unchanged. No vessel greater than 500 gross tons may enter the RNA without the prior approval of the COTP Savannah. Upon approval from the COTP each vessel will be provided an authorized timeframe to transit the RNA. Only one-way traffic is allowed through the RNA at all times. When transiting through the RNA all vessels greater than 500 gross tons must have one assist tug, establish and maintain communications with the designated representative of the COTP via VHF–FM radio on channel 13, and not exceed a speed of 8 knots, unless greater speeds are required to maintain bare steerage. Any vessel unable to meet these operating limitations may, with good cause, seek authorization from the COTP Savannah to deviate from these requirements.

The RNA is intended to protect personnel, vessels, and the marine environment in these navigable waters and provide a safe working environment for personnel and vessels responding to the M/V GOLDEN RAY casualty.

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 RNA size, location, notice, duration and provided exceptions. Vessel traffic will be able to safely transit through this RNA which would impact a small designated area of Saint Simons Sound, GA; the size and location of this RNA is limited to an area in the immediate vicinity of the grounded M/V GOLDEN RAY. The Coast Guard will provide mariners notice of the RNA through a Broadcast Notice to Mariners via VHF–FM radio channel 16. Additionally, the RNA is limited in duration. It will remain in effect until January 29, 2021 or until the COTP Savannah determines the M/V GOLDEN RAY is no longer a hazard to the safety of persons and vessels transiting the area, whichever is sooner. Lastly, this RNA will allow vessels to seek permission from the COTP to enter the area.

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.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V. A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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 call or email 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 call or email 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 an RNA for the navigable waters in Saint Simons Sound, GA bounded by a line drawn from a point located at 31°07′48″ N, 081°23′30″ W, thence to 31°07′29″ N, 081°23′37″ W, thence to 31°07′38″ N, 081°24′10″ W, thence to 31°07′22″ N, 081°24′38″ W, thence to 31°07′40″ N, 081°25′01″ W, thence to 31°08′07″ N, 081°24′48″ W. It is categorically excluded from further review under paragraph L[60d] in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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. Revise § 165.T07–0803 to read as follows:

§ 165.T07–0803 Regulated navigation area; Saint Simons Sound, GA.

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of Saint Simons Sound, GA bounded by a line drawn from a point located at 31°07′48″ N, 081°23′30″ W, thence to 31°07′29″ N, 081°23′37″ W, thence to 31°07′38″ N, 081°24′10″ W, thence to 31°07′22″ N, 081°24′38″ W, thence to 31°07′40″ N, 081°25′01″ W, thence to 31°08′07″ N, 081°24′48″ W. All coordinates are North American Datum 1983 (NAD 83).

(b) *Definition.* As used in this section, *designated representative* of the Captain of the Port Savannah (COTP) is any Coast Guard commissioned, warrant or petty officer, or Federal, State, local agency, who has been designated by the COTP Savannah to assist in the patrol or enforcement of the regulated area.

(c) *Regulations.* In addition to the general RNA regulations in § 165.13, the regulations in paragraphs (c)(1) through (8) of this section apply to the RNA described in paragraph (a) of this section.

(1) All vessels greater than 500 gross tons intending to transit through the RNA must seek prior approval from the COTP Savannah at least 24-hours in advance of the vessel's arrival to, or departure from, the Port of Brunswick. The COTP Savannah can be contacted via telephone at 614–943–5532. The COTP Savannah's designated representative can be contacted on VHF–FM radio channel 13. Upon approval to enter the RNA, the COTP Savannah will provide an approved timeframe a vessel may enter the RNA.

(2) Only one-way traffic is authorized within the RNA at all times.

(3) All vessels greater than 500 gross tons must obtain one assist tug while transiting within the RNA.

(4) All vessels greater than 500 gross tons must check in with the designated representative via VHF–FM Channel 13 prior to transiting within the RNA and maintain communications with the designated representative while transiting through the RNA.

(5) While transiting within the RNA all vessels greater than 500 gross tons may not exceed a speed of 8 knots, unless greater speeds are required to maintain bare steerage.

(6) Any vessel unable to meet these operating limitations may, upon showing good cause, seek authorization from the COTP Savannah to deviate from the requirements in this section.

(7) The operator of any vessel transiting in RNA must comply with all lawful directions given by the COTP or the COTP's designated representative.

(8) The inland navigation rules in 33 CFR subchapter E remain in effect within the RNA and must be followed at all times.

Dated: September 24, 2019.

Eric C. Jones,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2019–23540 Filed 10–29–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 191022–0069]

RIN 0648–BI49

Fisheries of the Northeastern United States; Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This final rule implements the measures of Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action establishes a 5-year rebuilding program for Atlantic mackerel, sets 2019–2021 Atlantic mackerel specifications and a river herring and shad cap for the Atlantic mackerel fishery, modifies the Mid-Atlantic Fishery Management Council's risk policy, and modifies in-season closure measures. This action is necessary to prevent overfishing and rebuild the Atlantic mackerel stock based on a recent stock assessment that found the Atlantic mackerel stock to be overfished and subject to overfishing. The intended effect of this final rule is to sustainably manage the Atlantic mackerel fishery and achieve optimum yield on a continuing basis.

DATES: Effective November 29, 2019.

ADDRESSES: Copies of this action, including the environmental assessment (EA) and Regulatory Impact Review (RIR) analysis, prepared in support of this action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331. The small entity compliance guide (bulletin) describing measures approved by this action is available from Michael Pentony, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930. Documents are also accessible via the internet at: *http://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Alyson Pitts, Fishery Management Specialist, (978) 281–9352, *Alyson.Pitts@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

A November 2017 benchmark stock assessment (Stock Assessment Workshop (SAW) 64) concluded that the Atlantic mackerel stock is overfished and subject to overfishing. The Council developed Framework Adjustment 13 (Framework 13) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) to create an Atlantic mackerel rebuilding plan that would prevent overfishing and rebuild the stock, as required by section 303 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action also includes 2019–2021 specifications based on the proposed rebuilding plan, adjustments to in-season closure measures to slow fishery catch and allow Atlantic mackerel bycatch in the Atlantic herring fishery, and modifications to the river herring and shad catch cap. At its August 2018 meeting, the Council adopted final measures under Framework 13. We published a proposed rule to implement Framework 13 in the **Federal Register** on June 7, 2019 (84 FR 26634). The comment period ended on July 8, 2019. We received comment submissions from 14 groups and individuals, which are summarized in the Comments and Responses section of this final rule. Pursuant to section 304(a)(3) of the Magnuson-Stevens Act, when NMFS considers the responses to comments, NMFS may only approve or disapprove measures proposed in a particular fishery management plan, amendment, or framework adjustment, and may not change or substitute any measure in a substantive way.

Each year, the Council reviews the Atlantic mackerel specifications based on updated information. At its June 2019 meeting, the Council considered preliminary results of the 2019 Canadian Atlantic mackerel stock assessment. The Canadian assessment suggested that Atlantic mackerel recruitment in 2016 and 2017 was lower than the long-term average recruitment used to develop projections of 2019–2021 Atlantic mackerel specifications under Framework 13. Based on this information, the Council recommended maintaining the 2019 Atlantic mackerel acceptable biological catch (ABC) outlined in Framework 13 for 2020 instead of increasing the ABC in 2020, as included in Framework 13. If this Council-recommended change to the 2020 ABC in Framework 13 is approved in a subsequent regulatory action, this would revise the Atlantic mackerel rebuilding plan included in Framework 13, because the revised 2020 ABC would be 14 percent lower than the 2020 ABC currently being implemented in this final rule.

Approved Measures

This action approves the management measures proposed in Framework Adjustment 13 to the Atlantic Mackerel, Squid, and Butterfish FMP. The measures implemented in this final rule are:

1. Atlantic Mackerel Rebuilding Plan

This rule adopts a 5-year rebuilding plan, which ends overfishing immediately and establishes measures that are projected to rebuild the stock within no more than 5 years. The 5-year rebuilding plan is as short as possible, while balancing the needs of the fishing communities and considering the interaction of the overfished stock within the marine ecosystem. The 5-year rebuilding plan will allow for a 125-percent increase in 2020 commercial catch compared to 2018, as described further below under the description of specifications.

In adopting the 5-year rebuilding program, the Council noted the substantial overlap between the Atlantic herring and Atlantic mackerel fisheries, and the expected drastic reductions in Atlantic herring quotas and the stability of associated fishing communities. The annual catch associated with the 5-year rebuilding program would help mitigate such economic impacts while still rebuilding the stock within the 10-year maximum allowable rebuilding period. As a precautionary measure, the Council capped ABCs under the 5-year plan at levels associated with the Council's current risk policy for a fully rebuilt Atlantic mackerel stock (33,474 mt), instead of allowing the ABCs to increase in 2021 and beyond, as supported by the Council's Scientific and Statistical Committee (SSC).

We closed the limited access Atlantic mackerel fishery on March 12, 2019, because the fishery harvested the river herring and shad catch cap (84 FR 8999; March 13, 2019). As a result, Atlantic mackerel catch in 2019 will be less than the projected 2019 catch allocation under the 5-year rebuilding plan. We will not know how the low catch in 2019 will affect the projections after the fishing year. Because the 2019 Atlantic mackerel catch is about 75 percent lower than expected catch used to evaluate the rebuilding program and the Council recommended maintaining the lower 2019 catch levels for 2020, it is possible that such lower levels of catch will help expedite the rebuilding program to rebuild the stock before 2023.

In order to implement this 5-year rebuilding plan, this action modifies the Council's risk policy to allow a higher fishing mortality rate to establish the increased 2019–2023 Atlantic mackerel ABCs in consideration of the economic needs of fishing communities. The change to the Council's risk policy in this action is specific to the Atlantic mackerel rebuilding plan, and will not affect the application of the Council's risk policy for any other species or FMP.

3. Atlantic Mackerel Specifications

Table 1 presents the 2019–2021 Atlantic mackerel specifications. An updated stock assessment for Atlantic mackerel is scheduled to be completed in 2020, which would help the SSC and Council to develop and set the specifications for 2021 through 2023. As noted above, the Council will review each component of the Atlantic mackerel specifications annually, and will consider the results of an updated stock assessment in 2020 and other available information to refine future specifications.

TABLE 1—FINAL 2019–2021 ATLANTIC MACKEREL SPECIFICATIONS (mt)

	2019	2020	2021
Overfishing Limit	31,764	N/A	N/A
Total ABC	29,184	32,480	33,474
Canadian Deduction	10,000	10,000	10,000
U.S. ABC-Annual Catch Limit (ACL) (expected Canadian catch deducted)	19,184	22,480	23,474
Recreational Allocation	1,209	1,209	1,209
Commercial Allocation	17,975	21,271	22,265
Management Uncertainty Buffer 3 percent	539	638	669
Commercial Annual Catch Target (ACT)	17,436	20,633	21,597
Domestic Annual Harvest (DAH) (ACT minus 0.37 percent discard rate)	17,371	20,557	21,517

4. In-Season Closure Provisions

In order to achieve optimum yield and effectively use the available commercial landings, Framework 13 adjusts the in-season closure measures for the commercial Atlantic mackerel fishery. The measures adopted by Framework 13 require the Regional Administrator to close the limited access commercial fishery when 90 percent of the DAH is projected to be landed. Once that trigger is reached, the Regional Administrator will reduce Atlantic mackerel possession limits to 40,000 lb (18,144 kg) per trip for Tier 1–3 limited access Atlantic mackerel permits and to 5,000 lb (2,268 kg) for open access permits. When 98 percent of the DAH is projected to be landed, the Regional Administrator will implement a 5,000-lb (2,268–kg) trip limit for all permits for the rest of the fishing year to cover remaining incidental catches. The measures also give the Regional Administrator the discretion to not implement these triggered possession limit reductions in November and December if landings are not projected to exceed the DAH by the end of the fishing year.

5. River Herring and Shad Catch Cap

The initial river herring and shad catch cap for the Atlantic mackerel fishery will be set at 89 mt for 2019–2021. The cap could increase to the overall yearly catch cap if the fishery can first land 10,000 mt of Atlantic mackerel without hitting the initial 89-mt river herring and shad catch cap in each year. The overall yearly catch cap is set at 129 mt in 2019, 152 mt in 2020, and 159 mt in 2021, based on the increasing Atlantic mackerel DAHs approved under the rebuilding plan. The overall yearly catch cap for future years could be revised based on annual Council recommendations of future Atlantic mackerel DAH and river herring and shad bycatch measures.

6. Corrections and Clarifications to Existing Regulations

This final rule includes revisions to correct regulatory text that is unnecessary, outdated, or unclear. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. Specifically, this final rule modifies 50 CFR 648.24(b)(1)(i)(A) and 648.24(b)(6), to reference ''limited access'' and ''open access'' permits instead of the ''directed'' and ''incidental'' fishery to be clear and consistent with the changes being made to the regulations by this action. The language clarification does not change the definition or terms of the permit.

Comments and Responses

We received comment submissions from 14 groups and individuals. This includes comments from nine environmental organizations, two commercial fishing industry groups (SeaFreeze Limited and Garden State Seafood Association), along with two members of the public. Environmental organizations that submitted comments were: Blue Planet Strategies; Conservation Law Foundation; Wild Oceans; Pew Charitable Trusts; Natural Resources Defense Council; Bennett-Nickerson Environmental Consulting; Oceans North; Ecology Action Center; and World Wildlife Federation Canada. One letter from Pew Charitable Trusts was originally submitted on August 9, 2018, and was previously considered by the Council before it adopted final measures under Framework 13. Additionally, the Council received a letter from Oceans North (a Canadian environmental advocacy group), submitted on May 30, 2019, that was not responsive to this action. However, the Council considered this letter at its June 2019 meeting when it adopted 2020 Atlantic mackerel specifications that would be implemented through a separate action. Consolidated responses to similar comments on the proposed measures are provided below.

Atlantic Mackerel Rebuilding Plan

Comment 1: A group letter from several U.S. environmental advocacy groups (Blue Planet Strategies, Conservation Law Foundation, Wild Oceans, Pew Charitable Trusts, Natural Resources Defense Council, and Bennett-Nickerson Environmental Consulting) voiced concern that the proposed 5-year rebuilding period is not legally sufficient to meet the ''as short as possible'' rebuilding time period standard required by the Magnuson-Stevens Act. Both commercial fishing industry groups support the 5-year rebuilding program because it considers the needs of fishing communities.

Response 1: We disagree that the 5-year rebuilding plan is not legally sufficient. It would rebuild the fishery in as short a period possible and within 10 years, as required by section 304(e)(4) of the Magnuson-Stevens Act. The Council may consider other factors, including the needs of fishing communities, when specifying a rebuilding time period. Furthermore, there are several factors that could expedite the rebuilding timeline. Instead of allowing the ABCs to increase in 2021 and beyond, as suggested by assessment projections, the Council capped ABCs under the 5-year plan at levels associated with the Council's current risk policy for a fully rebuilt Atlantic mackerel stock (33,474 mt) as a precautionary measure. As noted above, the low mackerel catch in 2019 could also reduce the rebuilding period, because realized catch is 75 percent lower than estimated catch used in the rebuilding plan projections. In addition, the Council recommended maintaining the 2019 Atlantic mackerel DAH of 17,371 mt for 2020 instead of increasing it to 20,557 mt, as originally proposed in the rebuilding plan. The Council will also review the specifications annually in order to adjust the rebuilding program, as necessary, once new information becomes available, including the results from a stock assessment update to be completed in 2020.

The 5-year rebuilding plan is appropriate because it rebuilds the stock as quickly as possible while considering the needs of fishing communities, consistent with National Standard 8 of the Magnuson-Stevens Act. Due to the substantial overlap between the Atlantic herring and Atlantic mackerel fisheries, the expected reduced quotas and potential mid-water trawl gear restrictions in the Atlantic herring fishery may also have negative socioeconomic impacts on the Atlantic mackerel fishery and negatively affect the stability of associated fishing communities. The higher annual catch associated with the 5-year rebuilding program would help mitigate such economic impacts while still rebuilding the stock within the 10-year maximum allowable rebuilding period.

Comment 2: The Garden State Seafood Association noted the stock status shift from unknown to overfished, which highlights that the information available for making management decisions is more certain now than in the past.

Response 2: We agree that having an approved stock assessment and a definitive stock status determination helps us make better-informed fishery management decisions. The SAW 64 peer review panel concluded that the northwest stock of Atlantic Mackerel is overfished with overfishing occurring. At its May 2018 meeting, the SSC reviewed the SAW 64 report, and approved use of the SAW 64 report as it is the best scientific information available to inform management decisions (*https://www.nefsc.noaa.gov/*

saw/reports.html). The current assessment overcomes many of the problems encountered in the previous assessments. The current assessment does not exhibit a retrospective pattern, and it uses a stockwide egg survey for the first time. The current assessment also differs from previous assessments in that it is able to provide a stock status recommendation based upon biological reference points that were unknown and unavailable for use in previous assessments.

Revision to the Mid-Atlantic Council Risk Policy

Comment 3: Group letters from U.S. and Canadian environmental advocacy groups claim that the Council abandoned its risk policy in order to implement the 5-year rebuilding plan, citing 304(e)(4) of the Magnuson-Stevens Act which requires the Council develop a rebuilding plan that would rebuild the stock in the shortest time possible. The two commercial fishing industry groups support the modification of the Council's risk policy to select a rebuilding plan that allows a higher fishing mortality rate and considers the needs of fishing communities.

Response 3: While the Council did modify its risk policy in order to adopt the 5-year rebuilding plan and accommodate adaptive fisheries management, while considering the needs of fishing communities, this is an appropriate modification. When the Council adopted a standard risk policy in 2011 as part of Amendment 13 to the Atlantic Mackerel, Squid, and Butterfish FMP (76 FR 60605; September 29, 2011), it allowed the risk policy to be revised in the future and allowed the risk policy to be adjusted via a framework adjustment. This allows for flexibility in its application due to the dynamic nature of fisheries and the environment and the uncertainty in available data. The modification to the Council's risk policy approved in this action is specific to the Atlantic mackerel rebuilding plan, and would not affect the application of the Council's risk policy for any other species or FMP.

Atlantic Mackerel Specifications

Comment 4: A group letter from the U.S. environmental advocacy groups listed above commented on the uncertainty around the assessment projections used to make decisions for the rebuilding plan, which relies on the strong 2015 year class. Commenters added that historically, high allowable catch has been followed by stock decline. They also highlight that, while the strong 2015 year class was confirmed in the Canadian assessment, subsequent year classes were not as strong, and that the U.S. projections were created based on speculation and not science. Commenters urged NMFS to disapprove the Framework 13 rebuilding plan, and requested that the SSC reconsider the most recent scientific information found in the Canadian stock assessment to develop a new rebuilding plan.

Response 4: We disagree that the Framework 13 rebuilding plan and associated specifications were based on speculation and not science. The measures included in Framework 13 are based on the best available science at the time of decision-making. While there is some uncertainty in catch projections, this uncertainty was accounted for and considered by the SSC and Council. The assessment included a series of workshops to refine models and methods and was approved by the peer review panel and the SSC. The Canadian stock assessment confirms the above average 2015 year class, which was the driver behind NMFS' projections for the 5-year rebuilding plan. Although the Canadian assessment provides additional data regarding more recent recruitment levels, it does not provide definitive information that would require us to disapprove the 5-year rebuilding program for Atlantic mackerel in Framework 13.

The Canadian Atlantic mackerel stock assessment was not completed and the results were unavailable when the Council adopted the Atlantic mackerel rebuilding program under Framework 13, and therefore were not integrated into projections used for the rebuilding plan. Such information is important, and it was considered by the Council in revising its recommendation for the 2020 Atlantic mackerel specifications that will be implemented in a subsequent action. In reviewing the U.S. Atlantic mackerel stock assessment and associated projections, the SSC expressed concern about the use of long-term recruitment in the projections, noting uncertainty in the size of the 2015 year class and the implications of this uncertainty for the projections. This concern regarding the uncertainty associated with the projections prompted the SSC to recommend conservative estimates, which were integrated into the 5-year rebuilding plan and ultimately adopted by the Council in Framework 13. As noted above, the Council considered the results of the Canadian assessment and recommended continuing the 2019 ABC for 2020 in a subsequent action. In addition the Council, with the support of the SSC, also recommended keeping the 10,000 mt Canadian deduction, which is conservative in comparison to the 8,000 mt ABC that was set after the recent Canadian assessment. This will, in effect, provide a 2,000 mt buffer in the U.S. specifications to prevent an ABC overage. The specifications are reviewed annually and will incorporate any new information, including the result of the U.S. Atlantic mackerel management track stock assessment in 2020. Thus, while it was not available when the Council initially developed this rebuilding plan, the new information from Canada was subsequently used to inform the Council's most recent recommendation for the 2020 Atlantic mackerel specifications. These 2020 specifications will be finalized and updated in future rulemaking actions, consistent with the FMP's requirement to update the specifications yearly, in light of the most recent scientific data. This regular review of the specifications will help ensure that the Framework 13 rebuilding plan approved in this final rule achieves its objectives consistent with applicable law.

Comment 5: A member of the public commented that the Council has the opportunity with Framework 13 to manage forage species in a more sustainable manner and should consider taking actions to manage forage abundance as opposed to increasing the allowable catch amount.

Response 5: The measures approved in this action sustainably manage Atlantic mackerel by ending overfishing and rebuilding the stock, as required by the Magnuson-Stevens Act. The role of Atlantic mackerel as an ecosystem component, that is, as a forage species, was considered in the assessment projections. Analyses of the diets of predator species sampled by the Northeast Fisheries Science Center bottom trawl surveys indicated a low occurrence of Atlantic mackerel in predator diets from 1973–2016, with approximately 0.2 percent of all predator stomachs containing mackerel. Additional potentially important predators of mackerel, including highly migratory species, marine mammals, and seabirds, are not sampled by the NEFSC trawl surveys. Consumption by these predators is more difficult to estimate due to incomplete information on population levels and annual diet information. In addition, predator food habits were not available for the months the northern contingent was outside of the area sampled by the NEFSC trawl survey. Changes in the distribution of Atlantic mackerel to the north and east

have been observed. Several working papers suggested that some of these changes could be associated with environmental variables, but cause and effect could not be formally identified. Thus, assessment upon which Framework 13 is based included consideration of factors such as sustainable forage as one natural cause of Atlantic mackerel mortality.

In-Season Closure Provisions and Associated Corrections and Clarifications to Existing Regulations

Comment 6: Both commercial fishing industry groups support the phased in-season closure and possession limits that are included in Framework 13.

Response 6: This final rule approves the measures to slow the fishery as catch approaches the DAH in order to achieve optimum yield while reducing the risk to exceed the ABC.

Comment 7: Both commercial fishing groups do not support the correction of terminology in the regulatory language that changes ''incidental permits'' to ''open access permits''. Their rationale for not supporting this change is that the emerging jig fishery is using this type of permit to target Atlantic mackerel, but this use would be inconsistent with the definition of the incidental catch permit at § 648.4(a)(5)(iv). SeaFreeze commented that the segment of the fleet that uses the open access permit for directed fishing may encroach upon quota access that limited access permit holders have qualified for, which may result in less quota access for limited access permit holders. Additionally, Garden State Seafood Association highlighted that Tier 3 permits are available for purchase by those who participate in the open access jig fishery.

Response 7: The language change from ''incidental'' to ''open access'' does not change the definition of the permit and does not change any measure controlling operations of such permits. The change was to maintain consistency in the reference to this permit in existing regulations. We disagree that the segment of the fleet that carries out directed fishing on Atlantic mackerel using the open access permit will encroach upon the limited access quota, as quotas are set annually and possession limits are determined by permit, not by allocation. In addition, this concern reflects permit issues that are beyond the scope of Framework 13 and that could be considered by the Council in a separate action.

River Herring and Shad Catch Cap

Comment 8: A member of the public commented on the contrast of the increased river herring and shad catch caps in relation to wetland restoration investments throughout the region that benefit anadromous fish populations with ecosystem consideration.

Response 8: River herring and shad are an important component in the ecosystem. The revised caps in Framework 13 are well within the scope of caps that have been considered since the caps were established in Amendment 14 (79 FR 10029, February 24, 2014). A recent comprehensive status review under the Endangered Species Act (ESA) for alewife and blueback herring (84 FR 28630, June 19, 2019) noted that such caps are an important component in the broader effort to reduce river herring and shad bycatch in federal waters, protect and improve habitat, and rebuild these stocks to sustainable levels. The Council reviews the river herring and shad catch cap annually and can revise such caps for future fishing years based on new information.

Comment 9: The commercial fishing groups both noted that the low river herring and shad catch cap, which is applied to all gear types, is the limiting factor preventing the commercial fishing fleet from achieving optimum yield (OY). Both organizations highlighted that in 2014, the first year the cap was implemented, the cap was 236 mt compared to the 129 mt, 152 mt, and 159 mt cap limits evaluated in Framework 13. SeaFreeze Limited does not support the initial cap of 89 mt, stating the overall yearly cap of 129 mt itself is a bycatch avoidance factor. The commenters suggested that these caps should be modified after the recent 5-year status review to allow a meaningful increase in order to catch the allowable mackerel quota and achieve OY.

Response 9: When the river herring and shad catch cap was initially set at 236 mt, the DAH was 33,821 mt and was based on the 0.74 percent ratio used in 2015 that is also used in Framework 13 to establish the catch caps of 129 mt in 2019, 152 mt in 2020, and 159 mt, which are relative to the DAH for each year (79 FR 10029; February 24, 2014). The 89 mt catch cap as a scaling provision was established in 2015 and represents the median of actual river herring and shad catches by the Atlantic mackerel fishery from 2005–2012 (80 FR 14870; March 20, 2015). The 89 mt cap was well within the initial river herring and shad catch cap established in Framework 14, as described above. The cap has been reached in 2018 and 2019, effectively closing the directed Atlantic mackerel fishery. The river herring and shad catch cap is intended to create an incentive for industry to avoid river herring and shad bycatch. The Council will review the river herring and shad catch cap for 2020 at its August 2019 meeting.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 13 to the Atlantic Mackerel, Squid, and Butterfish FMP is necessary for the conservation and management of the Atlantic mackerel fishery managed by the Mid-Atlantic Council and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

This final rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

A Final Regulatory Flexibility Act (FRFA) analysis was prepared for this action and is included below. The FRFA incorporates the Initial Regulatory Flexibility Act (IRFA) analysis. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. The FRFA below includes a summary of the significant issues raised by the public comments in response to the IRFA and the NMFS responses to those comments, and a summary of the analyses completed in the Framework 13 EA. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 13 and in the preambles of the proposed rule and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available upon request (see **ADDRESSES**).

Summary of the Significant Issues Raised by Public Comments in Response to the IRFA, Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

The public did not raise any significant issues in response to the IRFA, so no changes were made from the proposed rule.

Description and Estimate of the Number of Small Entities to Which This Final Rule Would Apply

The measures in Framework 13 apply to vessels that hold any commercial permit for Atlantic mackerel. We analyzed the impacts using NMFS's database for Atlantic mackerel permit holders in 2017 (the most recent year of full year permit data) cross-referenced with NMFS ownership data. Some small entities own multiple vessels with Atlantic mackerel permits. For purposes of the Regulatory Flexibility Act, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The determination of whether the entity is large or small is based on the average annual revenue for the most recent 3 years for which data are available. In 2017, 1,829 separate vessels held Atlantic mackerel permits. These vessels were owned by 1,379 entities, nearly all of which (1,368) were small business entities. Based on revenue from all species landed, 951 of these small business entities were commercial fishing entities, 116 were for-hire entities, and 301 had no revenue, but are considered small businesses. For those small businesses with revenues, average revenues were $0.6 million in 2017, which is well under the NMFS threshold of $11 million. 299 entities reported revenue from Atlantic mackerel during 2017. Of these entities, 4 were large and 295 were small. In 2017, 145 vessels were issued limited access permits and may be affected by the directed fishery closure measures proposed in this action. They are owned by 105 entities, of which 98 are small entities. Thus, NMFS concluded that almost all (98 entities with vessels issued limited access permits that could be affected by the directed fishery closure measures, and 295 entities reporting revenue from Atlantic mackerel) of the entities affected by this action are small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

There are no significant adverse economic impacts of Framework 13. All of the rebuilding alternatives considered allow an increase in landings over time and have positive long-term socio-economic benefits compared to taking no action. The approved 5-year and 7-year rebuilding program specifications would significantly increase the allowable quota by over 8,000 mt in the first year, with increases in subsequent years. The proposed 5-year rebuilding program would result in an additional $7 million in fishing revenue annually in 2020–2021, compared to 2020–2021 under the no action alternative (which would continue under current specifications), while the 7-year rebuilding plan would result in an additional $8 million in fishing revenue. While the 7-year program would allow a larger quota increase compared to the 5-year program, the 5-year rebuilding program was selected because it would rebuild the fishery faster than the 7-year rebuilding program.

In conclusion, there are no significant adverse economic impacts on a substantial number of small entities in this action.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of the guide (*i.e.,* permit holder letter) will be sent to all entities issued limited and open access Atlantic mackerel permits. The guide and this final rule will be available upon request from the Regional Administrator (see **ADDRESSES**) and online at *https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/msb/index.html.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: October 24, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.21, revise paragraph (c) to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

* * * * *

(c) *Most restrictive ABC recommendation.* (1) Unless otherwise allowed in paragraph (c)(2) of this section, for instances in which the application of the risk policy approaches in either paragraph (b)(1) or (2) of this section using OFL distribution, as applicable given life history determination, results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the SSC shall recommend to the MAFMC the lower of the ABC values.

(2) The SSC may specify higher 2019–2023 ABCs for Atlantic mackerel based on $F_{REBUILD}$ instead of the methods outlined in paragraph (a) of this section to implement a rebuilding program that would rebuild this stock by 2023.

* * * * *

■ 3. In § 648.24, revise paragraphs (b)(1) and (6) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) *Atlantic mackerel commercial sector EEZ closure*—(i) *First phase commercial closure.* (A) Unless otherwise determined in paragraph (b)(1)(iii) of this section, NMFS will close the commercial Atlantic mackerel fishery, which includes vessels issued an open access or limited access Atlantic mackerel permit, including a limited access Tier 3 Atlantic mackerel permit, in the EEZ when the Regional Administrator projects that 90 percent of the Atlantic mackerel DAH is harvested if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with

incidental catches allowed, as specified in § 648.26.

(B) Unless previously closed pursuant to paragraph (b)(1)(i)(A) of this section, NMFS will close the Tier 3 commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 Atlantic mackerel allocation will be harvested. Unless otherwise restricted, the closure of the Tier 3 commercial mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

(ii) *Second phase commercial quota closure.* When the Regional Administrator projects that 98 percent of the Atlantic mackerel DAH will be landed, NMFS will reduce the possession of Atlantic mackerel in the EEZ applicable to all Atlantic mackerel permits for the remainder of the fishing year as specified in § 648.26(a)(2)(iii)(A).

(iii) NMFS has the discretion to not implement measures outlined in paragraphs (b)(1)(i)(A) or (b)(1)(ii) of this section during November and December if the Regional Administrator projects that commercial Atlantic mackerel landings will not exceed the DAH during the remainder of the fishing year.

* * * * *

(6) *River herring and shad catch cap.* The river herring and shad cap on the mackerel fishery applies to all trips that land more than 20,000 lb (9.08 mt) of mackerel. NMFS shall close the limited access mackerel fishery in the EEZ when the Regional Administrator project that 95 percent of the river herring/shad catch cap has been harvested. Following closures of the limited access mackerel fishery, vessels must adhere to the possession restrictions specified in § 648.26.

* * * * *

■ 4. In § 648.26, revise paragraphs (a)(1)(i) through (iii) and (a)(2) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

(a) * * *

(1) * * *

(i) A vessel issued a Tier 1 limited access mackerel permit is authorized to fish for, possess, or land Atlantic mackerel with no possession restriction in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i)(A).

(ii) A vessel issued a Tier 2 limited access mackerel permit is authorized to fish for, possess, or land up to 135,000 lb (61.23 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i)(A).

(iii) A vessel issued a Tier 3 limited access mackerel permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the DAH has been harvested, or 90 percent of the Tier 3 allocation has been harvested, as specified in § 648.24(b)(1)(i)(A) and (B), respectively.

* * * * *

(2) *Atlantic mackerel closure possession restrictions.* Any Atlantic mackerel possession restrictions implemented under paragraph (a)(2) of this section will remain in place for the rest of the fishing year, unless further restricted by a subsequent action. If the entire commercial Atlantic mackerel fishery is closed due to harvesting the river herring/shad catch cap, as specified in § 648.24(b)(6) before the fishery harvests 90 percent of the Atlantic mackerel DAH, then the Atlantic mackerel possession restrictions specified in paragraph (a)(2)(iii)(B) of this section shall remain in place for the rest of the fishing year unless further reduced by the possession restrictions specified in paragraph (a)(2)(iii)(A) of this section.

(i) *Limited Access Fishery.* (A) During a closure of the commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(A), when 90 percent of the DAH is harvested, vessels issued a Tier 1, 2, or 3 limited access Atlantic mackerel permit, may not take and retain, possess, or land more than 40,000 lb (18.14 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) During a closure of the Tier 3 commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(i)(B), when 90 percent of the Tier 3 allocation is harvested, vessels issued a Tier 3 limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(ii) *Open Access Fishery.* During a closure of the Atlantic mackerel commercial sector pursuant to § 648.24(b)(1)(i)(A), when 90 percent of the DAH is harvested, vessels issued an open access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(iii) *Entire commercial fishery*—(A) *Commercial quota closure.* During a closure of the entire commercial Atlantic mackerel fishery pursuant to § 648.24(b)(1)(ii), when 98 percent of the DAH is harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 5,000 lb (2.27 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(B) *River herring/shad catch cap closure.* During a closure of the limited access commercial Atlantic mackerel fishery pursuant to § 648.24(b)(6), when 95 percent of the river herring/shad catch cap has been harvested, vessels issued an open or limited access Atlantic mackerel permit may not take and retain, possess, or land more than 20,000 lb (9.08 mt) of Atlantic mackerel per trip at any time, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

* * * * *

[FR Doc. 2019–23636 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 210

Wednesday, October 30, 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–2019–0721; Product Identifier 2019–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by a report indicating that during inspection of the installation of oxygen containers, certain fasteners of the oxygen containers and adjacent panels in the passenger supply channels (PSCs) were found damaged or unlocked, which could result in insufficient clearance between the oxygen container and adjacent panels. This proposed AD would require a one-time inspection of the oxygen containers and adjacent panels and applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 16, 2019.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0721.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0721; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0721; Product Identifier 2019–NM–150–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The agency will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0210, dated August 26, 2019 (''EASA AD 2019–0210'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

This proposed AD was prompted by a report indicating that during inspection of the installation of oxygen containers on the production line, certain fasteners of oxygen containers and adjacent panels in the PSCs were found damaged or unlocked; unlocked fasteners could move on the rails, which could result in insufficient clearance between the oxygen container and adjacent panels. This condition, if not addressed, could prevent the oxygen containers from opening and result in failure of the oxygen masks to deploy and provide supplemental oxygen during an in-flight decompression, possibly resulting in injury to cabin occupants. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0210 describes procedures for inspecting the oxygen containers and the installation of adjacent panels located in all PSCs, to check that each fastener of each panel/component is locked and to measure the clearance between the oxygen container door lid and the adjacent panel/component. EASA AD 2019–0210 also describes procedures for applicable corrective actions, including attaining minimum clearance, locking any unlocked fasteners, and replacing damaged parts.

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0210 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0210 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0210 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0210 that is required for compliance with EASA AD 2019–0210 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0721 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 11 airplanes of U.S. registry. The agency estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$3,740

The FAA estimates the following costs to do any necessary corrective action that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need this corrective action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

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.

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0721; Product Identifier 2019–NM–150–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0210, dated August 26, 2019 (''EASA AD 2019–0210'').

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a report that during inspection of the installation of oxygen containers, certain fasteners of the oxygen containers and adjacent panels in the passenger supply channels (PSCs) were found damaged or unlocked; which could result in insufficient clearance between the oxygen container and adjacent panels. The FAA is issuing this AD to address this condition, which could prevent the opening of the oxygen containers and result in failure of the oxygen masks to deploy and provide supplemental oxygen in case of an in-flight decompression, possibly resulting in injury to cabin occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0210.

(h) Exceptions to EASA AD 2019–0210

(1) Where EASA AD 2019–0210 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0210 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0210 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0210 that contains RC procedures and tests: RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2019–0210, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this EASA AD at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. EASA AD 2019–0210 may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0721.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

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

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23530 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0720; Product Identifier 2019–NM–117–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2003–09–04 R1, which applies to certain Bombardier, Inc., Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. AD 2003–09–04 R1 requires revising the airworthiness limitations for certain structural inspections; repair if necessary; and submission of inspection findings to the airplane manufacturer. Since the FAA issued AD 2003–09–04 R1, the agency determined that additional airplanes are affected, that new or more restrictive airworthiness limitations are necessary, and that the compliance time must be revised to include a phase-in time for certain tasks. This proposed AD would revise the applicability to include additional airplanes; revise certain compliance times; and require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 16, 2019.

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

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

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0720; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0720; Product Identifier 2019–NM–117–AD'' at the beginning of your comments. The agency specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. The FAA will consider all comments received by the closing date and may amend this proposed AD based on those comments.

The FAA will post all comments received, without change, to *http://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Discussion

The FAA issued AD 2003–09–04 R1, Amendment 39–13305 (68 FR 54985, September 22, 2003) (''AD 2003–09–04 R1''), for certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes. (AD 2003–09–04 R1 revised AD 2003–09–04, Amendment 39–13133 (68 FR 22587, April 29, 2003).) AD 2003–09–04 R1 requires revising the airworthiness limitations section of the Instructions for Continued Airworthiness to incorporate new structural inspection intervals for the pressure floor skin of the center fuselage at fuselage stations 460 and 513; repair if necessary; and submission of inspection findings to the airplane manufacturer. AD 2003–09–04 R1 resulted from a report of fatigue cracks on the pressure floor skin of the center fuselage at fuselage stations 460 and 513. The FAA issued AD 2003–09–04 R1 to address fatigue cracks of the pressure floor skin of the center fuselage at fuselage stations 460 and 513, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight.

Actions Since AD 2003–09–04 R1 Was Issued

Since the FAA issued AD 2003–09–04 R1, the agency has determined that the applicability must be revised to include additional airplane serial numbers, that new or more restrictive airworthiness limitations are necessary, and that the compliance time must be revised to include a phase-in time for certain airworthiness limitations tasks.

Transport Canada Civil Aviation (TCCA), which is the civil aviation authority for Canada, has issued Canadian AD CF–2002–39R2, dated August 15, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes.

This proposed AD was prompted by a report of fatigue cracks on the pressure floor skin of the center fuselage at fuselage stations 460 and 513. The FAA is proposing this AD to address such fatigue cracks, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Bombardier CL–600–2B19 Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual; and Bombardier CL–600–2B19 Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual. These temporary revisions describe airworthiness limitations for inspections of the pressure floor skin. These documents are distinct since they describe different airworthiness limitations.

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

FAA's Determination

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

Proposed Requirements of This NPRM

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

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that if there are findings from the airworthiness limitations section (ALS) inspection tasks, corrective actions must be accomplished in accordance with Bombardier maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. The FAA considers those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

The FAA estimates that this proposed AD would affect 37 airplanes of U.S. registry.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–09–04 R1, Amendment 39–13305 (68 FR 54985, September 22, 2003), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2019–0720; Product Identifier 2019–NM–117–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

This AD replaces AD 2003–09–04 R1, Amendment 39–13305 (68 FR 54985, September 22, 2003) (''AD 2003–09–04 R1'').

(c) Applicability

This AD applies to Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 8999 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by a report of cracks occurring on the pressure floor skin at fuselage stations (FS) 460 and 513. The FAA is issuing this AD to address such fatigue cracks, which could result in failure of the pressure floor skin and consequent rapid decompression of the airplane during flight.

(f) Compliance

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

(g) Maintenance Program Revision for Serial Numbers 7003 Through 8079

For airplane serial numbers 7003 through 8079 inclusive: Within 30 days from the effective date this AD, revise the existing maintenance or inspection program, as applicable, by incorporating the information specified in Airworthiness Limitations (AWL) task number 53–41–149 of Bombardier CL–600–2B19 Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual.

(1) The initial compliance time for doing the task is at the time specified in figure 1 to paragraph (g) of this AD, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For airplanes on which Bombardier Service Bulletin 601R–53–067, Bombardier Service Bulletin 601R–53–077, and AWL task number 53–41–194 have been done, the inspections in AWL task number 53–41–149 are not required in the areas covered by doublers at FS460 and FS513.

Figure 1 to paragraph (g) – *Initial Inspection Phase-In*

Total Flight Cycles (FC) Accumulated as of October 7, 2003 (the effective date of AD 2003-09-04 R1)	Compliance Schedule for Initial <HD1>Inspection
8,000 FC or less	Prior to exceeding 10,000 total FC
More than 8,000 FC but less than 10,000 FC	Within 2,000 FC from October 7, 2003 (the effective date of FAA AD 2003-09-04 R1)
10,000 FC or more but less than 15,000 FC	Within 1,500 FC from October 7, 2003 (the effective date of FAA AD 2003-09-04 R1)
15,000 FC or more but less than 17,325 FC	Within 1,000 FC from the effective date of October 7, 2003 (the effective date of FAA AD 2003-09-04 R1)
17,325 FC or more but less than 18,325 FC	Prior to exceeding 18,325 total FC
18,325 FC or more	Not required if the initial inspection has already been performed in accordance with AWL Task number 53-41-149

(3) For airplanes on which the initial inspection has been accomplished at 18,325 or more total flight cycles, and no cracks were found, as of October 7, 2003 (the effective date of AD 2003–09–04), the repetitive interval of 10,000 flight cycles starts from the completion date of the initial inspection.

(4) For airplanes that were previously inspected using AWL task number 53–41–193, perform inspection in AWL task number 53–41–149 within 10,000 flight cycles from the previously accomplished inspection.

(h) Maintenance Program Revision for Serial Numbers 8080 Through 8999

(1) For airplane serial numbers 8080 through 8999 inclusive: Within 30 days from the effective date of this AD, revise the existing maintenance or inspection program, as applicable, by incorporating the information specified in AWL task number 53–41–193 of Bombardier CL–600–2B19 Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual. Except as specified in paragraph (h)(2) of this AD, the initial compliance time for doing the task is at the time specified in Bombardier CL–600–2B19 Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual, or within 90 days after the effective date of this AD, whichever occurs later

(2) For airplanes that were previously inspected using AWL task number 53–41–149, perform inspection in AWL task number 53–41–193 within 10,000 flight cycles from the previously accomplished inspection.

(i) Corrective Actions

If any crack is found during any inspection required by this AD, before further flight, do the actions specified in paragraphs (i)(1) and (2) of this AD.

(1) Repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(2) Revise the existing maintenance or inspection program, as applicable, by inserting a copy of the new airworthiness limitation and inspection requirements associated with the repair approved by the FAA, TCCA, or DAO specified in paragraph (i)(1) of this AD into Bombardier CL–600–2B19 Temporary Revision 2B–2265, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual; or Bombardier CL–600–2B19 Temporary Revision 2B–2266, dated July 19, 2018, to Appendix B—Airworthiness Limitations, of Part 2 of the Bombardier Maintenance Requirements Manual; as applicable.

(j) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraphs (g), (h), and (i)(2) of this AD, as applicable, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531.

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

(ii) AMOCs approved previously for AD 2003–09–04 R1 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective

actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2002–39R2, dated August 15, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0720.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23529 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0726; Product Identifier 2019–NM–102–AD]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules. This proposed AD would require repetitive inspections of certain parts for discrepancies that meet specified criteria, and replacement as necessary; repetitive inspections of certain parts for damage and wear, and rework of parts; and electrical bonding checks of certain couplings. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. For certain airplanes, this proposed AD would allow a modification that would terminate the repetitive inspections. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 16, 2019.

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

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

For service information identified in this NPRM, contact De Havilland Aircraft of Canada Ltd., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0726; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0726; Product Identifier 2019–NM–102–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2017–04R2, dated September 25, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes.

The FAA has received reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules. The FAA is proposing this AD to address such wear, which could reduce the integrity of the electrical bonding paths through the fuel line and components, and ultimately lead to fuel tank ignition in the event of a lightning strike. See the MCAI for more information.

The FAA issued a related NPRM that proposed to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model DHC–8–400 series airplanes. The related NPRM published in the **Federal Register** on July 6, 2018 (83 FR 31488). The related NPRM was also prompted by reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules. Since the

related NPRM was issued, Bombardier developed a new optional terminating modification for certain Model DHC–8–400 series airplanes and issued associated service information. In addition, Bombardier developed new airworthiness limitations related to the identified unsafe condition. In light of these changes, the FAA has withdrawn the related NPRM as of August 28, 2018 (84 FR 45119), and is now issuing this new NPRM for public comment.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0726.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 84–28–20, Revision D, dated November 23, 2018. This service information describes procedures for repetitive detailed inspections of the clamshell coupling bonding wires, fuel couplings, and associated sleeves for discrepancies (wear and damage, including discoloration, worn coating, scuffing and grooves) that meet specified criteria, and replacement. This service information also describes procedures for repetitive detailed inspections for damage and wear of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges, and rework of parts.

Bombardier has also issued Service Bulletin 84–28–21, Revision C, dated July 13, 2018. This service information describes procedures for a detailed inspection for damage and wear of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges; rework (repair, replacement, or blending, as applicable) of parts; and a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions.

Bombardier has also issued Service Bulletin 84–28–26, Revision A, dated November 29, 2018. This service information describes procedures for electrical bonding checks of all threaded couplings on the inboard vent lines in the left and right wings.

Bombardier has also issued Q400 Dash 8 (Bombardier) Temporary Revision ALI–00AS, dated April 24, 2018; and Q400 Dash 8 (Bombardier) Temporary Revision ALI–00AT, dated April 24, 2018. This service information describes airworthiness limitations for fuel tank systems. These documents are distinct since they describe different airworthiness limitations.

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

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require repetitive inspections of the clamshell coupling bonding wires, fuel couplings, and associated sleeves for discrepancies that meet specified criteria, and replacement as necessary; repetitive inspections of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and rework of parts; and electrical bonding checks of all threaded couplings on the inboard vent lines in the left and right wings. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

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

Costs of Compliance

The FAA estimates that this proposed AD affects 52 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
268 work-hours × $85 per hour = $22,780	$0	$22,780	$1,184,560

* Table does not include estimated costs for revising the maintenance or inspection program.

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
525 work-hours × $85 per hour = $44,625	$20,906	$65,531

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required or optional actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
174 work-hours × $85 per hour = $14,790	$16,767	$31,557

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.

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland Aircraft of Canada Limited (Type Certificate previously held by Bombardier, Inc.): Docket No. FAA–2019–0726; Product Identifier 2019–NM–102–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–400, –401 and –402 airplanes, certificated in any category, manufacturer serial numbers 4001, 4003, and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules. The FAA is proposing this AD to address such wear, which could reduce the integrity of the electrical bonding paths through the fuel line and components, and ultimately lead to fuel tank ignition in the event of a lightning strike.

(f) Compliance

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

(g) Initial Inspection Compliance Times

For airplanes having serial numbers 4001 and 4003 through 4575 inclusive that, as of the effective date of this AD, have not done the actions specified in Bombardier Service Bulletin 84–28–21: At the applicable times specified in paragraph (g)(1) or (2) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD.

(1) For all airplanes except those identified in paragraph (g)(2) of this AD: Within 6,000 flight hours or 36 months, whichever occurs first after the effective date of this AD.

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or after the effective date of this AD: Within 6,000 flight hours or 36 months, whichever occurs first after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(h) Repetitive Inspections and Corrective Actions

At the applicable times specified in paragraph (g)(1) or (2) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD. Repeat the actions thereafter at intervals not to exceed 6,000 flight hours or 36 months, whichever occurs first.

(1) Do a detailed inspection of the clamshell coupling bonding wires, fuel couplings, and associated sleeves for discrepancies that meet specified criteria, as identified in, and in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018. If any conditions are found meeting the criteria specified in Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018, before further flight, replace affected parts with new couplings and sleeves of the same part number, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018.

(2) Do a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and rework (repair, replace, or blend, as applicable) the parts, in accordance with paragraph 3.B., ''Procedure,'' of the

Accomplishment Instructions of Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018.

(i) Optional Terminating Action for Repetitive Inspections

For airplanes having serial numbers 4001 and 4003 through 4575 inclusive: Doing a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and reworking (repair, replace, or blend, as applicable) the parts; and doing a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018, terminates the inspections specified in paragraphs (h)(1) and (2) of this AD.

(j) Electrical Bonding Checks

For airplanes having serial numbers 4001, 4003 through 4489 inclusive, and 4491 through 4575 inclusive that, as of the effective date of this AD, have done the actions specified in Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017; and airplanes having serial numbers 4576 through 4581 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, do the actions specified in paragraph (j)(1) or (2) of this AD.

(1) Accomplish electrical bonding checks of all threaded couplings on the inboard vent lines in the left and right wings, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–26, Revision A, dated November 29, 2018.

(2) Do a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and rework (repair, replace, or blend, as applicable) the parts; and a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018.

(k) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Q400 Dash 8 (Bombardier) Temporary Revision ALI–00AS, dated April 24, 2018; and Q400 Dash 8 (Bombardier) Temporary Revision ALI–00AT, dated April 24, 2018. Except as specified in paragraph (l) of this AD, the initial compliance time for doing the tasks in Q400 Dash 8 (Bombardier) Temporary Revision ALI–00AS, dated April 24, 2018, is at the time specified in Q400 Dash 8 (Bombardier) Temporary Revision ALI–00AS, dated April 24, 2018, or within 30 days after the effective date of this AD, whichever occurs later.

(l) Initial Compliance Time for Task 284000–419

The initial compliance time for task 284000–419 is at the time specified in paragraph (l)(1) or (2) of this AD, as applicable, or within 30 days after the effective date of this AD, whichever occurs later.

(1) For airplanes having serial numbers 4001 and 4003 through 4575, inclusive: Within 18,000 flight hours or 108 months, whichever occurs first, after the earliest date of embodiment of Bombardier Service Bulletin 84–28–21 on the airplane.

(2) For airplanes having serial numbers 4576 and subsequent: Within 18,000 flight hours or 108 months, whichever occurs first, from the date of issuance of the original airworthiness certificate or original export certificate of airworthiness.

(m) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

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

(n) No Reporting Requirement

Although Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(o) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (h)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (o)(1)(i), (ii), or (iii) of this AD.

(i) Bombardier Service Bulletin 84–28–20, Revision A, dated December 14, 2016.

(ii) Bombardier Service Bulletin 84–28–20, Revision B, dated February 13, 2017.

(iii) Bombardier Service Bulletin 84–28–20, Revision C, dated April 28, 2017.

(2) For the airplane having serial number 4164, this paragraph provides credit for the initial inspections required by paragraphs (h)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–28–20, dated September 30, 2016.

(3) This paragraph provides credit for the actions specified in paragraph (i) of this AD if those actions were performed before the effective date of this AD using the service information specified in paragraph (o)(3)(i), (ii), or (iii) of this AD.

(i) Bombardier Service Bulletin 84–28–21, dated August 31, 2017.

(ii) Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017.

(iii) Bombardier Service Bulletin 84–28–21, Revision B, dated June 8, 2018.

(4) This paragraph provides credit for the actions required by paragraph (j)(1) of this AD if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–28–26, dated August 14, 2018.

(5) This paragraph provides credit for the actions required by paragraph (j)(2) of this AD if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–28–21, Revision B, dated June 8, 2018.

(6) For airplanes having serial numbers 4001, 4003 through 4489 inclusive, and 4491 through 4575 inclusive, and that are post Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017: This paragraph provides credit for the actions required by paragraph (j) of this AD if those actions were performed prior to the effective date of this AD using the service information specified in paragraph (o)(6)(i) or (ii) of this AD.

(i) Bombardier Modification Summary Package (ModSum) IS4Q2800032, dated February 1, 2018.

(ii) Any airworthiness limitation change request (ACR) specified in figure 1 to paragraph (o)(6)(ii) of this AD.

Figure 1 to paragraph (o)(6)(ii) – *ACRs*

ACR Number	Dated
400-072	January 24, 2018
400-073	January 23, 2018
400-074	January 24, 2018
400-077	February 27, 2018
400-078	March 21, 2018
400-079	April 18, 2018
400-080	April 30, 2018
400-081	May 4, 2018
400-082	May 4, 2018
400-083	June 4, 2018
400-084	May 18, 2018

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2017–04R2, dated September 25, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0726.

(2) For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Ltd., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on October 23, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23575 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0857; Product Identifier 2019–NM–124–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2018–19–26, which applies to all Dassault Aviation Model MYSTERE–

FALCON 200 airplanes. AD 2018–19–26 requires revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. Since the FAA issued AD 2018–19–26, the FAA determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 16, 2019.

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

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0857; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0857; Product Identifier 2019–NM–124–AD'' at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA issued AD 2018–19–26, Amendment 39–19427 (83 FR 49275, October 1, 2018) (''AD 2018–19–26''), for all Dassault Aviation Model MYSTERE–FALCON 200 airplanes. AD 2018–19–26 requires revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. AD 2018–19–26 resulted from a determination that new or more restrictive maintenance requirements and airworthiness limitations are necessary. The FAA issued AD 2018–19–26 to address fatigue cracking, damage, and corrosion in principal structural elements; such fatigue cracking, damage, and corrosion could result in reduced structural integrity of the airplane.

AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) requires repetitive inspections for overpressure tightness on both regulating valves; these inspections have since been incorporated into the airworthiness limitations document for the affected airplanes. Therefore, accomplishing the actions in this proposed AD would terminate the requirements of paragraph (g)(1) of AD 2010–26–05 for Dassault Aviation Model MYSTERE–FALCON 200 airplanes.

Actions Since AD 2018–19–26 Was Issued

Since the FAA issued AD 2018–19–26, the agency has determined that new or more restrictive airworthiness limitations are necessary.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0153, dated July 3, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE–FALCON 200 airplanes.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking, damage, and corrosion in principal structural elements; such fatigue cracking, damage, and corrosion could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0857.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40–00, Airworthiness Limitations, Revision 18, dated January 15, 2019, of the Dassault Falcon 200 Maintenance Manual. This service information describes mandatory maintenance tasks that operators must perform at specified intervals. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

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

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

Costs of Compliance

The FAA estimates that this proposed AD affects 9 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2018–19–26 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2018–19–26, Amendment 39–19427 (83 FR 49275, October 1, 2018), and adding the following new AD:

Dassault Aviation: Docket No. FAA–2019–0857; Product Identifier 2019–NM–124–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

(1) This AD replaces AD 2018–19–26, Amendment 39–19427 (83 FR 49275, October 1, 2018) (''AD 2018–19–26'').

(2) This AD affects 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05'').

(c) Applicability

This AD applies to all Dassault Aviation Model MYSTERE–FALCON 200 airplanes, certificated in any category.

(d) Subject

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

(e) Reason

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

(f) Compliance

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

(g) Retained Revision of Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2018–19–26, with no changes. Within 90 days after November 5, 2018 (the effective date of AD 2018–19–26), revise the maintenance or inspection program, as applicable, to incorporate Chapter 5–40–00, Airworthiness Limitations, Revision 17, dated December 20, 2017, of the Dassault Falcon 200 Maintenance Manual. The initial compliance time for accomplishing the actions is at the applicable time specified in Chapter 5–40–00, Airworthiness Limitations, Revision 17, dated December 20, 2017, of the Dassault Falcon 200 Maintenance Manual; or within 90 days after November 5, 2018 (the effective date of AD 2018–19–26); whichever occurs later.

(h) Retained No Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (h) of AD 2018–19–26, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40–00, Airworthiness Limitations, Revision 18, dated January 15, 2019, of the

Dassault Falcon 200 Maintenance Manual. The initial compliance time for doing the tasks is at the time specified in Chapter 5–40–00, Airworthiness Limitations, Revision 18, dated January 15, 2019, of the Dassault Falcon 200 Maintenance Manual, or within 90 days after the effective date of this AD, whichever occurs later.

(j) New No Alternative Actions or Intervals

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

(k) Terminating Action for Certain Actions in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (i) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model MYSTERE–FALCON 200 airplanes.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2018–19–26, are approved as AMOCs for the corresponding provisions of this AD.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0153, dated July 3, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0857.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23580 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0858; Product Identifier 2019–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by a determination that ram air turbine (RAT) performance may be below the expected (certificated) level when the landing gear is extended. This proposed AD would require installing flight control and guidance system (FCGS) software (SW) X11 Standard (STD), as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 16, 2019.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0858.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0858; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0858; Product Identifier 2019–NM–145–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments received, without change, to *https://*

www.regulations.gov, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0203, dated August 20, 2019 (''EASA AD 2019–0203'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes.

This proposed AD was prompted by a determination that RAT performance may be below the expected (certificated) level when the landing gear is extended. The FAA is proposing this AD to address this condition, which, if not corrected, could lead to partial or total loss of RAT electrical power generation when the RAT is deployed in an emergency situation, possibly resulting in reduced control of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0203 describes procedures for installing FCGS SW X11 STD. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0203 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0203 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0203 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0203 that is required for compliance with EASA AD 2019–0203 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0858 after the FAA final rule is published.

Interim Action

The FAA considers this proposed AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD affects 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × $85 per hour = $680	$4,650	$5,330	$69,290

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0858; Product Identifier 2019–NM–145–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0203, dated August 20, 2019 (''EASA AD 2019–0203'').

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by a determination through testing that ram air turbine (RAT) performance may be below the expected (certificated) level when the landing gear is extended. The FAA is issuing this AD to address this condition, which, if not corrected, could lead to partial or total loss of RAT electrical power generation when the RAT is deployed in an emergency situation, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0203.

(h) Exceptions to EASA AD 2019–0203

(1) Where EASA AD 2019–0203 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0203 does not apply to this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0203 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0203, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0858.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

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

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23579 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202 and 270

[Release No. IC–33658; File No. S7–19–19]

RIN 3235–AM51

Amendments to Procedures With Respect to Applications Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is proposing amending rule 0–5 under the Investment Company Act of 1940 (''Act'') to establish an expedited review procedure for applications that are substantially identical to recent precedent as well as a new rule to establish an internal timeframe for review of applications outside of such expedited procedure. In addition, the Commission is proposing amending rule 0–5 under the Act to deem an application outside of expedited review withdrawn when the applicant does not respond in writing to comments within 120 days.

DATES: Comments should be submitted on or before November 29, 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 No. S7–19–19 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 S7–19–19. 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 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, Room 1580, 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 we do not redact or edit personal identifying information from comment submissions. You should submit only information you wish to make available publicly.

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: Steven Amchan and Hae-Sung Lee, Senior Counsels; Daniele Marchesani, Assistant Chief Counsel; Chief Counsel's Office, at (202) 551–6825; or Keith Carpenter, Senior Special Counsel; Disclosure Review and Accounting Office, at (202) 551–6921, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing an amendment to 17 CFR 270.05 (rule 0–5) under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] (''Act'') and new rule 17 CFR 202.13.

Table of Contents

I. Background
A. Overview of Applications for Relief under the Act
B. Efforts To Improve the Application Process
C. Factors Affecting the Application Process
II. Discussion of Proposed Commission Action
A. Expedited Review Procedure
1. Eligibility for Expedited Review
2. Additional Information Required for Expedited Review
3. Expedited Review Timeframe
B. Timeframe for ''Standard Review'' of Applications
C. Applications Deemed Withdrawn Under the Standard Review Process
D. Release of Comments on Applications and Responses
III. Economic Analysis
A. Introduction
B. Economic Baseline
1. Applications for Relief
2. Review Process
C. Benefits and Costs of the Proposed Amendment to Rule 0–5
1. Benefits
2. Costs
D. Effects on Efficiency, Competition, and Capital Formation
E. Reasonable Alternatives
1. Different Precedent or Timeframe Requirements
F. Request for Comment
IV. Paperwork Reduction Act
A. Rule 0–5(e)
B. Rule 0–5(g)
V. Initial Regulatory Flexibility Analysis
A. Reasons for and Objectives of the Proposed Actions
B. Legal Basis
C. Small Entities Subject to the Proposed Amendment
D. Projected Reporting, Recordkeeping, and Other Compliance Requirements
E. Duplicative, Overlapping or Conflicting Federal Rules
F. Significant Alternatives
G. Request for Comment
VI. Consideration of the Impact on the Economy
VII. Statutory Authority and Text of Proposed Amendments

I. Background

A. Overview of Applications for Relief Under the Act

In 1940, Congress passed the Act in response to numerous abuses that existed in the investment company industry prior to that time.[1] As a result, the Act imposes significant substantive restrictions on the operation of investment companies that it regulates (''funds''). Congress, however, also recognized the need for flexibility to address unforeseen or changed circumstances, consistent with the protection of investors, in the administration of the Act.[2]

The Act, therefore, contains provisions that empower the Commission to issue orders granting exemptions from provisions of the Act, authorizing transactions, or providing other relief.[3] Most significantly, section 6(c) gives the Commission the broad power to exempt conditionally or unconditionally any person, security, or transaction from any provisions of the Act or any rule thereunder, provided that the exemption is ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the Act).''[4]

The Commission regularly receives applications seeking orders for exemptions or other relief under the Act.[5] If the request meets the applicable standards, the Commission publishes a notice of the application in the **Federal Register** and on its public website, stating its intent to grant the requested relief.[6] The notice gives interested persons an opportunity to request a hearing on the application. If the Commission does not receive a hearing request during the notice period, and does not otherwise order a hearing on an application, the Commission subsequently issues an order granting the requested relief.[7]

The staff of the Division of Investment Management (''Staff'' or ''Division'') reviews the applications that the

[1] *See generally* Investment Trusts and Investment Companies, Report of the Securities and Exchange Commission, pt. 3, ch. 7, H.R. Doc. No. 136, 77th Cong., 1st Sess. (1941); 15 U.S.C. 80a–1.

[2] *See, e.g.,* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 872 (1940) (hereinafter 1940 Senate Hearings) (Commissioner Healy, a principal drafter of the Act, stated that ''it seemed possible and even quite probable that there might be companies—which none of us have been able to think of—that ought to be exempted.''); *id.* at 197 (David Schenker, Chief Counsel of the Investment Trust Study, and also a principal drafter of the Act, stated that ''the difficulty of making provision for regulating an industry which has so many variants and so many different types of activities . . . is precisely [the reason that section 6(c)] is inserted.'').

[3] As the orders are subject to the terms and conditions set forth in the applications requesting relief, references in this release to ''relief'' or ''orders'' include the terms and conditions described in the related application.

[4] 15 U.S.C. 80a–6(c). Other sections of the Act provide the Commission with additional or specific exemptive authority. *See, e.g.:* Section 3(b)(2) (Commission may find that an issuer is ''primarily engaged'' in a non-investment company business even though the issuer may technically meet the definition of investment company); section 12(d)(1)(J) (Commission may exempt any person, security, or transaction, or any class or classes of transactions, from section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors); and section 17(b) (Commission may exempt proposed transactions from the Act's affiliated transaction prohibitions) (codified at 15 U.S.C. 80a–3(b)(2), –(12)(d)(1)(J), and –17(b)).

[5] In fiscal year 2018, approximately 134 initial applications were filed under the Act on EDGAR Form Type 40–APP.

[6] Notices of the Commission's intent to deny the requested relief, and the related orders, are rare because applicants typically withdraw or abandon their application in anticipation of such actions.

[7] 15 U.S.C. 80a–39; 17 CFR 270.0–5. In fiscal year 2018, the Commission issued 110 exemptive orders under the Act.

Commission receives under the Act.[8] During the review process, the Division may issue comments to the applicant, asking for clarification of, or modification to, an application to determine whether, or ensure that, the relief meets the Act's standards.[9] In addition, the Commission has granted the Director of the Division of Investment Management (''Director'') delegated authority to issue notices of applications and orders generally where the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.[10] The vast majority of notices of applications and orders are issued by the Commission via the Staff under delegated authority. For those applications for which the Director does not have delegated authority, after the Division's review is completed, the Division presents them to the Commission.

The applications process under the Act has been a significant and valuable tool in the evolution of the investment management industry, and sometimes is the origin of new rules under the Act.[11] Some applications, for example, have requested relief from provisions of the Act to permit funds to operate in a more efficient and less costly manner.[12] Applicants have also sought relief to implement innovative features or create new types of funds that do not fit within the regulatory confines of the Act.[13] For example, over the past 27 years exchange-traded funds (''ETFs'') have originated and developed through the applications process.[14] Because the drafters of the Act in 1940 did not contemplate the ETF structure, ETFs need exemptions from certain provisions of the Act to operate.[15] ETFs registered under the Act now have approximately $3.32 trillion in total net assets, and account for approximately 16% of total net assets managed by investment companies.[16]

B. Efforts To Improve the Application Process

As discussed in the previous section, granting appropriate exemptions from the Act can provide important economic benefits to funds and their shareholders, foster financial innovation, and increase the diversity of opportunities for investors. We thus recognize the importance of considering and, where appropriate, granting relief as efficiently and quickly as possible. However, in light of our statutory mission of investor protection and the substantive concerns underlying the Act, we also recognize the critical importance of analyzing applications carefully to determine whether the relief requested, together with any terms and conditions of the relief, meets the relevant statutory standards.

Over time, some applicants have expressed concern regarding the length of time required to obtain an order on both routine and novel applications. In 1990, the Commission requested comments on, among other things, whether it should adopt different procedures for applications.[17] In response, commenters argued that lengthy review procedures delay the commencement of transactions, prevent applicants from responding quickly to changing market conditions, and slow the entry of new products to the market, all to the detriment of investors.[18] In response, in 1993, the Commission proposed amendments to rule 0–5 under the Act to establish an expedited review procedure for certain routine applications.[19] The Commission, however, did not adopt these proposed amendments.

In subsequent years, initiatives aimed at improving the application process have continued. For example, in 2008, the Staff implemented an internal performance target of providing initial comments on at least 80% of applications within 120 days after their receipt.[20] We believe this performance measure has helped make the application process more efficient. In 2008, the first year with this performance target, the Division provided initial comments within 120 days on 81% of exemptive applications.[21] By 2010, the Division met this target on 100% of exemptive applications, and has not dropped

[8] Applications under the Act are filed on EDGAR. *See* Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E, Investment Company Act Release No. 28476 (Oct. 29, 2008). The Commission has stated that the Staff will not, except in the most extraordinary situations, review draft applications. *See* Commission Policy and Guidelines for Filing of Applications for Exemption, Investment Company Act Release No. 14492 (Apr. 30, 1985) (specifying certain procedures that applicants should follow in order to facilitate the review of applications). Consistent with the Commission's statement, the Staff currently only reviews draft applications in very limited circumstances.

[9] The Staff may place an application on inactive status when an applicant does not respond to comments within 60 days. Such inactive status is for internal tracking purposes only and has no effects on the application process. An applicant may ''reactivate'' an application at any time by filing an amended application or otherwise responding to the comments.

[10] 17 CFR 200.30–5(a)(1) generally delegates the power to issue notices with respect to applications under the Act where the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter. 17 CFR 200.30–5(a)(2) generally delegates the power to authorize the issuance of orders where a notice has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

[11] *See infra* note 23.

[12] *See, e.g.,* Franklin Alternative Strategies Funds, et al., Investment Company Act Release Nos. 33095 (May 10, 2018) (Notice of Application) and 33117 (Jun. 5, 2018) (Order) (permitting applicants to operate a joint lending and borrowing facility).

[13] For example, money market funds needed exemptive relief from section 2(a)(41) (which requires registered investment companies to value their securities based on market values, if available, or if not, as determined in good faith by the board of directors) in order to operate. In a series of orders beginning in the 1970s, the Commission permitted money market funds to use alternative valuation methods, such as amortized cost or penny rounding. The Commission later adopted rule 2a–7 under the Act to allow money market funds to operate without individual exemptive orders. 17 CFR 270.2a–7.

[14] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019).

[15] *See id.*

[16] *See id.* at 6.

[17] Request for Comments on Reform of the Regulation of Investment Companies, Investment Company Act Release No. 17534 (June 15, 1990), 55 FR 25322 (the ''Study Release'').

[18] *See, e.g.,* Letter from the Subcomm. on Investment Companies and Investment Advisers of the Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association, to Jonathan G. Katz, Secretary, SEC, 7–9 (Oct. 18, 1990), File No. S7–11–90.

[19] *See* Expedited Procedure for Exemptive Orders and Expanded Delegated Authority, Investment Company Act Release No. 19362 (March 26, 1993). The proposal sought to implement the Staff's recommendations from the *Protecting Investors* report by proposing amending rule 0–5 under the Act to establish an expedited review procedure for certain routine applications. *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation, Procedures for Exemptive Orders, 503–522 (1992) (considering comments received in response to the Study Release.)

[20] Unlike the 1993 proposal to amend rule 0–5 under the Act, this performance target was an internal measure and did not involve the amendment of any rule. *See* U.S. Securities and Exchange Commission 2008 Performance and Accountability Report, at 40. See also, Remarks Before the ICI 2007 Securities Law Developments Conference by Andrew J. Donohue, Director, Division of Investment Management, *https://www.sec.gov/news/speech/2007/spch120607ajd.htm*. In 2006, the Commission's Inspector General found that the exemptive application process was not always timely and provided recommendations for improving the process. *See* SEC Inspector General Report, IM Exemptive Application Processing (Audit No. 408), September 29, 2006.

[21] *Id.*

below 99% each year since.[22] For filings made on or after June 1, 2019, the Division has now implemented a new internal target of providing comments on both initial applications and amendments within 90 days. Notwithstanding the recent improvements, we have continued to consider ways to improve the applications process as we recognize the importance of completing the review of an application in a timely manner. This proposal is intended to improve the efficiency and speed of the application process while preserving the ability to assess the appropriateness of the requested relief. In addition, the Commission has made it a priority to propose and adopt exemptive rules that would replace lines of routine applications.[23] These rules would benefit the application process by making the corresponding applications no longer necessary, which, in turn, would allow the Staff to devote additional resources to other, more novel types of applications that can promote further industry innovation and expand investment choices for investors.

C. Factors Affecting the Application Process

The amount of time necessary for the Staff to review an application depends in large part on the nature of the application. The Staff generally characterizes applications as falling into two general categories: (1) Applications that seek novel, largely unprecedented relief or relief for which some Commission precedent exists but that raises additional questions of fact, law, or policy, and (2) applications that seek relief substantively identical to relief that the Commission has recently granted (''routine applications'').

Applications in the first category may involve financial innovations or transactions on the forefront of the investment management industry. In those instances, substantial time and resources are needed to analyze thoroughly the legal and policy issues raised, and the recommendations the Staff must make to the Commission often include significant policy considerations. As part of this process, the Staff generally works with the applicant to refine the proposal and to develop appropriate terms and conditions for the relief that address the applicable standards under the Act. This process can be time consuming.

With respect to routine applications, because the Staff has already performed the overall legal and policy analysis underlying the requested relief, the Staff generally should be able to review these applications much more quickly. Sometimes, however, that is not the case. In particular, routine applications for which there is clear precedent nonetheless often contain significantly different versions of the terms or representations compared to the relevant precedent. These applications require extra time to review because the Staff must analyze the changes to determine whether they alter the scope or nature of the requested relief. On more rare occasions, the Staff may re-evaluate the appropriateness of the relief or the terms and conditions associated with the relief, or consider whether the relief can appropriately be granted to a specific applicant.[24]

For all applications, the Commission must consider the applicants' desire to obtain prompt relief while ensuring it has sufficient time to meet its overarching responsibility to consider whether an application meets the standard for the requested relief.

II. Discussion of Proposed Commission Action

Our proposal seeks to make the application process more efficient.[25] In addition, we also are proposing actions to provide additional certainty and transparency in the application process. Specifically, we are proposing an expedited review process for routine applications, a new informal internal procedure for applications that would not qualify for the new expedited process, and a new rule to deem an application withdrawn when an applicant does not respond in writing to Staff comments within 120 days. In addition, we are announcing plans to begin to disseminate Staff comments publicly on applications as well as responses to those comments.

A. Expedited Review Procedure

In order to expedite the review of routine applications, the Commission is proposing amendments to rule 0–5 under the Act, which sets forth the procedure for applications under the Act. These amendments would establish an expedited review procedure for applications that are substantially identical to recent precedent. We believe that the proposed approach balances applicants' desire for a prompt decision on their application with the Commission's need for adequate time to consider requests for relief.

We believe that the new procedure should encourage applicants for expedited review to submit applications substantially identical to precedent, which would then help facilitate Staff review. Accordingly, we should be able to grant relief that meets the applicable standards more quickly, and, in turn, devote additional resources to the review of more novel requests.[26] A more efficient application process would allow applicants to realize the benefits of relief more quickly than otherwise would be the case; and fund shareholders would generally share in these benefits.[27] Further, we believe that the proposed expedited review procedure would make the applications process less expensive for applicants, because we anticipate that it would reduce the number of Staff comments that would require a response and enable applicants to have more certainty

[22] *See* Fiscal Year 2019, Congressional Budget Justification Annual Performance Plan, Fiscal Year 2017, Annual Performance Report, at 99. *https://www.sec.gov/files/secfy19congbudgjust.pdf.* In addition to the Division's performance target for comments on initial filings, the Staff also began tracking and seeking the same target for comments on amendments. In fiscal year 2018, the Division provided comments within 120 days on 100% of exemptive application amendments.

[23] *See* Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) and Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018) (proposed rule). Prior examples of the Commission's adopting rules replacing lines of routine applications, among others, include: in 1992, adopting rule 3a–7 excluding certain structured financings from the definition of ''investment company''(Exclusion from the Definition of Investment Company for Structured Financings, Investment Company Act Release No. 19105 (Nov. 19, 1992) [57 FR 56248 (Nov. 27, 1992)]); in 1999, amending rule 15a-4 addressing changes in control and acquisitions of investment advisers (Temporary Exemption for Certain Investment Advisers, Investment Company Act Release No. 24177 (Nov. 29, 1999) [64 FR 68019 (Dec. 6, 1999)]); and in 2002, adopting rule 17a–8 addressing mergers of affiliated investment companies (Investment Company Mergers, Investment Company Act Release No. 25666 (Jul. 18, 2002) [67 FR 48511 (Jul. 24, 2002)]). *See also* note 13 above and SEC Inspector General Report IM Exemptive Application Processing (Audit No. 408), September 29, 2006, at 4.

[24] Several additional factors may affect the timing of the review including, for example, applicants' responsiveness to Staff comments, the number of pending applications, and market or other developments that affect the applicants' business plans.

[25] Our proposed actions do not concern applications under the Investment Advisers Act of 1940 (''Advisers Act''). The Commission receives only a few applications under the Advisers Act each year, and these applications are filed on paper rather than electronically via the EDGAR system. *See www.sec.gov/rules/iareleases.shtml.* These applications are generally fact intensive, so that they are less likely to qualify for an expedited review process like the one we are proposing here. *See, e.g.,* The Jeffrey Company, Investment Advisers Act Release Nos. 4659 (Mar. 7, 2017), (Notice of Application) and 4681 (Apr. 4, 2017) (Order) (family office application). *Cf. infra* note 31 and accompanying text.

[26] The Staff would issue notices under delegated authority for applications reviewed under the expedited procedure.

[27] *See infra,* discussion in Section III.C.1.

regarding the timing of application processing.

1. Eligibility for Expedited Review

Proposed new rule 0–5(d)(1) provides that an applicant may request expedited review if the application is substantially identical to two other applications for which an order granting the requested relief has been issued within two years of the date of the application's initial filing. Rule 0–5(d)(2) defines ''substantially identical'' applications as those requesting relief from the same sections of the Act and rules thereunder, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested.[28] We intend for applicants only to use the expedited procedure for routine applications that are substantially identical to precedent and seek the same relief that others have already received, so that additional consideration generally is unnecessary.[29] The ''substantially identical'' requirement would help to ensure that applicants use the procedure only when they do not need to modify the terms and conditions of the precedent applications and are not raising new issues for the Commission to consider.[30] In addition, the requirement would help to ensure that applicants submit applications that include language that is substantially identical to the language of the precedent applications, which would facilitate Staff review. The two-year requirement is designed to help ensure that the precedent is relatively recent, so that in most cases, it is less likely that there would be questions as to whether the terms and conditions of the precedent application are still appropriate.

Certain kinds of applications appear highly unlikely to be suitable for expedited review. These would include, for example, applications filed under sections 2(a)(9), 3(b)(2), 6(b), 9(c), and 26(c) of the Act.[31] These types of applications are generally too fact-specific for applicants to be able to meet the substantially identical standard.[32]

We request comment generally on these proposed eligibility provisions and specifically on the following issues:

- Do these requirements strike the appropriate balance between permitting applicants to seek the relief they need and facilitating the Staff's prompt review of routine applications?
- Is the ''substantially identical'' standard appropriate? Does it effectively limit the applications eligible for expedited review to routine applications that the Staff can review in an expedited manner?
- Is the two-year standard appropriate? Does it effectively limit precedents to recent applications where it is unlikely that the Staff's review of whether the terms and conditions of an application are still appropriate would take a significant amount of time? Should the two-year period be longer? There are lines of applications that may be routine, but may not have as frequent filings currently as other lines (*e.g.,* applications permitting the allocation of certain expenses of a fund of funds to affiliated underlying funds),[33] and therefore may not meet the two-year requirement. Would the two-year requirement inappropriately exclude such applications from the proposed expedited review process?
- Is the view that applications under sections 2(a)(9), 3(b)(2), 6(b), 9(c), and 26(c) of the Act appear unlikely to be suitable for the expedited review procedure appropriate? Should rule 0–5 explicitly exclude such applications from expedited review? Are there other applications that would be unsuitable for the expedited review process?
- Are there applications filed under provisions other than rule 0–5 that should be included in the expedited review process?

2. Additional Information Required for Expedited Review

Applicants seeking expedited review will need to include certain information with the application under proposed rule 0–5(e). Proposed rule 0–5(e)(1) requires that the cover page of the application include a notation prominently stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d).'' This proposed requirement would assist the Staff in clearly identifying and effectively processing the request for expedited review. Proposed rule 0–5(e)(2) requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of the two precedent applications. These exhibits would help the Staff to readily discern any variations between the application seeking expedited review and the precedential applications. Proposed rule 0–5(e)(3) requires an accompanying cover letter, signed, on behalf of the applicant, by the person executing the application, (i) identifying the two substantially identical applications that serve as precedent; and (ii) certifying that the applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate.[34] We seek comment generally on this proposal regarding additional information required for expedited review and specifically on the following issues:

- Is the requirement that the application include marked copies showing changes from final versions of the precedent applications appropriate? Would this requirement be

[28] Factual differences not material to the relief requested might include, depending on the facts and circumstances, the applicants' identities, the state of incorporation of a fund, or the constitution of the fund's board of directors.

[29] Because applications must be substantially identical, applicants would not be able to ''mix and match'' relief under the proposed rule. In other words, applications for expedited review would not be able to combine portions or sections of different prior applications.

[30] Even small changes to the terms and conditions of an application, compared to a precedent application, may either raise a novel issue, or require a significant amount of time for the Staff to consider whether it raises such an issue. *See supra* Section I.C.

[31] *See, e.g.,* Bridgeway Capital Management, Inc., Investment Company Act Release Nos. 28685 (Apr. 1, 2009) (Notice of Application) and 28716 (Apr. 28, 2009) (Order) (declaration regarding control, section 2(a)(9) application); Exact Sciences Corporation, Investment Company Act Release Nos. 33228 (Sep. 14, 2018) (Notice of Application) and 33267 (Oct. 11, 2018) (Order) (inadvertent investment companies, section 3(b)(2) application); Hudson Advisors L.P., et al. Investment Company Act Release Nos. 32804 (Aug. 31, 2017) (Notice of Application) and 32834 (Sep. 26, 2017) (Order) (employees securities company, section 6(b) application); Charles Schwab & Co. Inc. and Charles Schwab Investment Management, Inc., Investment Company Act Release Nos. 33157 (July 10, 2018) (Notice of Application) and 33195 (Aug. 7, 2018) (Order) (ineligible—disqualified firm, section 9(c) application); AXA Equitable Life Insurance Company, et al., Investment Company Act Release Nos. 33201 (Aug. 15, 2018) (Notice of Application) and 33224 (Sep. 11, 2018) (Order) (fund substitution, section 26(c) application).

[32] Other lines of applications, such as co-investment applications, would also usually not meet the standard for expedited review. Co-investment applications generally seek relief to permit a business development company and certain closed-end management investment companies to co-invest in portfolio companies with each other and with other affiliated funds. *See www.sec.gov/rules/icreleases.shtml#coinvestment.* Co-investment applications typically include different terms and conditions than those of precedent applications.

[33] *See https://www.sec.gov/rules/icreleases.shtml#jointtrans.*

[34] Section 34(b) of the Act makes it unlawful for any person to make any untrue or misleading statement of material fact in any registration statement, application, report, account, record, or other document filed or transmitted under the Act, or to omit from any such document any fact necessary in order to prevent the statements made therein from being materially misleading. We recognize that in certain cases an applicant and its counsel may view an application to be ''substantially identical'' under rule 0–5(d)(2), even if the application is ultimately found not to meet such requirement under rule 0–5(f)(1)(ii). For a marked copy to be accurate, it would need to, among other things, reflect the applications used to make the comparison as filed on EDGAR.

unnecessarily burdensome for applicants?

• Is the requirement that the applicant include a cover letter identifying precedent and certifying that the requirements of rule 0–5(d) are met appropriate? In particular, is it appropriate to require a ''certification'' for the substantially identical standard, considering that some discretion may be involved in the determination of whether two applications are substantially identical? Should we modify the certification requirement accordingly? Is the requirement of a certification as to the completeness and accuracy of the marked copies of precedent appropriate? How might the certification requirement add to the cost of an application? Is there an alternative mechanism that could help ensure that applicants make correct use of the expedited review process?

3. Expedited Review Timeframe

Under proposed rule 0–5(f), a notice for an application submitted for expedited review would be issued no later than 45 days from the date of filing [35] unless the applicant is notified that (i) the application is not eligible for expedited review because it does not meet the criteria in rule 0–5(d), or (ii) further consideration of the application is necessary for appropriate consideration of the application. We are proposing 45 days as the timeframe for expedited review, based on the Division's experience considering and acting on routine applications.

While we anticipate that the notice for an application meeting proposed rule 0–5(d)'s criteria would typically be issued within the 45-day timeline, there may be situations where further consideration is necessary for appropriate consideration of the application. These may include, for example, cases where the Commission is considering a change in policy that would make the requested relief, or its terms and conditions, no longer appropriate. There also may be cases where the Staff is investigating potential violations of Federal securities laws that may be relevant to the request for relief.[36] In such cases, the Staff might not be in a position to make a determination on the application at the end of the 45-day period.

If the Staff notifies the applicant under rule 0–5(f)(1)(ii) that an application is not eligible for expedited review, it would ask the applicant to either withdraw the application or amend it to make changes so that the application could proceed outside of the expedited review process.

We request comment generally on this proposed timeframe for expedited review and specifically on the following issues:

• Does the proposed 45-day time period strike the right balance between facilitating a prompt review and allowing Staff to appropriately review an application? Should the time period be shorter? Should the time period be longer?

• Are the grounds for ineligibility for expedited review appropriate? Should there be additional, or different, grounds for ineligibility? Is the ''necessary for appropriate consideration of the application'' standard for ineligibility appropriate? Should we replace, delete, or modify it?

Certain conditions would govern the operation of the 45-day time period. In particular, the 45-day period would restart upon the filing of any amendment that the Commission or Staff did not solicit. The Staff would need additional time to review the change or changes made in such an amendment. Notwithstanding this provision, however, the Staff may act before the end of the additional 45-day period, if the unsolicited amendment relates only to factual differences not material to the relief requested or to some other minor change.

In addition, any comment on the application by the Staff would pause the 45-day period. Although the Commission anticipates that the Staff would issue few comments on an application that qualifies for expedited review, there may be times when a comment is necessary, for example, to either reflect an event that occurred after the application was filed, or to resolve technical matters.[37] There may also be times when a non-material revised term or condition is being added in a line of routine applications and the Staff may ask applicants to make corresponding changes to their application.

The proposal provides that the 45-day period would pause upon such a request by the Staff and would resume 14 days after the filing of an amended application that is responsive to such request. The Staff would need the additional time to review the amended application and determine whether a notice can be issued under rule 0–5(f)(1)(i). Based on the Division's experience regarding amendments to routine applications, we propose 14 days as the appropriate amount of time for the Staff to make this determination.

Additionally, the proposed rule provides that the 45-day period will pause upon any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in federal appropriations, national emergency, inclement weather, or ad hoc federal holiday. The 45-day period will resume upon the reopening of the Commission's Washington, DC office to the public for normal business.

The proposed rule would further provide that, if applicants do not file an amendment responsive to the Staff's requests for modification within 30 days of receiving such requests, including a marked copy showing any changes made and a certification that such marked copy is complete and accurate, the application will be deemed withdrawn. This withdrawal would be without prejudice. In the rule we are proposing here, we would be committing to processing routine applications promptly. We believe that for applicants to benefit from the expedited processing, they should also act expeditiously.[38]

• We request comment generally on the proposed amendment procedure for applications requesting expedited review and specifically on the following issues: Is it appropriate to restart the 45-day time period upon filing of an unsolicited amendment? Should the 45-day period pause for a shorter number of days instead? Would the provision for restarting the 45-day period have a chilling effect on applicants wishing to submit unsolicited amendments?

• Is the pause mechanism appropriate for processing amendments submitted in response to comments? Is the 14 days allowed for resuming the 45-day period following submission of a responsive amendment appropriate? Is 14 days too long? Too short?

• Is it appropriate to deem withdrawn any application submitted for expedited review for which applicants have not

[35] Notice of the application, followed by an order disposing of the matter, would be issued under current rule 0–5(a) and (b).

[36] To the extent such circumstances are nonpublic and are not known to the applicant, the Staff may not be able to inform the applicant of the reason for the delay.

[37] In cases where an application is not substantially identical to precedent, the Staff would notify the applicant under rule 0–5(f)(1)(ii) that the application is not eligible for expedited review. Using the comment process to ensure that an application is substantially identical to precedent would require Staff time and defeat the purpose of the expedited review process. *See supra* Section II.A.1. We believe that, as applicants gain familiarity with the ''substantially identical'' standard in practice, the application process would run smoothly over time.

[38] An applicant taking longer than 30 days to respond to Staff comments may suggest that the application is not appropriate for expedited review.

filed an amendment responsive to the Staff comments within 30 days?

B. Timeframe for ''Standard Review'' of Applications

In addition to a new expedited review process, the Commission is also proposing a new rule to provide a timeframe for all other applications filed under rule 0–5. We believe that the proposed rule 17 CFR 202.13 would provide applicants with added transparency regarding the timing of the review of applications. Currently, the Division uses an internal performance timeline to govern the timing of Staff responses to applications and amendments. While the Staff in recent years has been successful in meeting the applicable timeline, and has recently moved to the same 90-day timeline set forth by the proposed rule,[39] the rule should result in a more transparent timeline, including the time at which the Staff would forward an application to the Commission.

Under the proposed rule, the Staff should take action on the application within 90 days of the initial filing and amendments thereto.[40] In addition, the Staff may grant 90-day extensions, and applicants should be notified of any such extension.[41]

For the purposes of the proposed rule, action on an application or amendment would consist of (i) issuing a notice of application; (ii) providing the applicants with comments; or (iii) informing the applicants that the application will be forwarded to the Commission, in which case the application is no longer subject to paragraph (a) of the rule. If the Staff does not support the requested relief, the Staff typically notifies applicants that it would recommend that the Commission deny the application and give applicants the opportunity to withdraw the application before such recommendation is made.[42]

We request comment generally on the procedures for ''standard review'' of applications and specifically on the following issues:

- Is the 90-day period for taking action on applications appropriate? Is this period too long? Too short?
- Are 90-day extension periods appropriate? Are they too long? Too short?
- Is the Commission's specification of potential actions on an application appropriate? Does the proposal adequately cover actions on applications that may be taken?

C. Applications Deemed Withdrawn Under the Standard Review Process

The Commission is also proposing to amend rule 0–5 to deem an application withdrawn if the applicant does not respond in writing to Staff comments. Deeming inactive applications withdrawn will both assist us in maintaining a clear record of pending applications, as well as provide the public, including potential new applicants, with a better sense of the applications that the Commission is actively considering at any given time.

Proposed rule 0–5(g) would provide that, if an applicant has not responded in writing to a request for clarification or modification of an application filed under this section within 120 days after the request, the application will be deemed withdrawn.[43] The withdrawal would be without prejudice and the applicant would be free to refile.

We request comment generally on our proposal regarding deeming applications withdrawn and specifically on the following issues:

- Is the 120-day period appropriate for deeming an application withdrawn? Should it be longer? Shorter?

D. Release of Comments on Applications and Responses

Finally, to improve the transparency of the applications process, we intend to begin to publicly disseminate Staff comments on applications, and responses to those comments, no later than 120 days after the final disposition of an application.[44] These procedures would be the same for both standard and expedited review of applications.

The Staff provides applicants with comments on an application, for example, where it believes that the current application does not meet the standard for granting an exemption.[45] Currently, the Staff releases comments on applications, and responses to those comments only in response to Freedom of Information Act (''FOIA'') requests. We believe it is appropriate to expand the transparency of the applications process, so that the public can benefit from greater transparency into the applications process without the delay or burden of submitting FOIA requests. We intend to do this through the Commission's EDGAR Public Dissemination Service and on our website at *www.sec.gov* following a process similar to the process that the Division of Investment Management and the Division of Corporation Finance use to publicly disseminate comment letters and responses on disclosure filings.[46] Applicants and the Staff would file comments and responses to comments on a non-public basis on EDGAR during the review process.[47] Upon final disposition of an application, the Staff would disseminate such filings through EDGAR to make them publicly available, except for materials (or portions thereof) covered by confidential treatment requests.[48] We anticipate that we would make these materials publicly available no later than 120 days after final disposition of the application.

We plan to announce in any subsequent adopting release a specific date for effectiveness of this new approach; that date will depend on completion of necessary technical modifications.

We invite comments on the approach we intend to take, and specifically on the following issues:

- Is the public dissemination of Staff comments to applications, and responses thereto (subject to confidentiality requests) in the public interest? Would this dissemination potentially lead to competitive harm affecting applicants? Would it create undesirable incentives regarding the use of the process for making confidential treatment requests?
- What types of information that applicants currently disclose in

[39] *See supra* Section II.B.

[40] As with the expedited review process, the 90 day period would also pause upon any irregular closure of the Commission's Washington, DC office to the public for normal business.

[41] The provisions of this rule, including the time frames provided for, are not intended to create enforceable rights by any interested parties and shall not be deemed to do so. Rather, this rule provides informal non-binding guidelines and procedures that the Commission anticipates the Division following.

[42] *See supra* note 6.

[43] An application requesting expedited review would not be subject to this withdrawal provision because under proposed rule 0–5(f)(2)(iii), it would be deemed withdrawn if the applicant has not filed an amendment responsive to a Staff request for modifications within 30 days.

An applicant can request to withdraw an application with a letter filed as form APP–WD on EDGAR, with the corresponding permission being filed as form APP–WDG on EDGAR. The Staff would reflect that an application is deemed withdrawn under proposed rule 0–5(g) by uploading a form APP–WDG on EDGAR, without need for any action by the applicant.

[44] ''Final disposition'' means that the Commission has issued an order granting or denying the requested relief or that the application has been withdrawn.

[45] *See supra* Section I.A. These comments set forth Staff views on a particular filing only and do not constitute an official expression of the Commission's views.

[46] The announcement regarding public release of comment letters and responses may be found at *https://www.sec.gov/news/press/2004-89.htm.*

[47] Applicants have to file the response to comment letters and any other correspondences on EDGAR using the CORRESP file type to conform to EDGAR requirements in making the materials publicly available.

[48] *See* Commission rule 83 (17 CFR 200.83).

comments, if any, would applicants potentially request be kept confidential? How common is such information included in written comments? Do applicants anticipate they would request confidential treatment frequently?

III. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 2(c) of the Act states that when the Commission is engaging in rulemaking under the Act and is required to consider or determine whether the action is necessary or appropriate in (or, with respect to the Act, consistent with) the public interest, the Commission shall consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. The following analysis considers the potential economic effects that may result from the proposed amendment to rule 0–5, including the benefits and costs to applicants and other market participants as well as the broader implications of the proposal for efficiency, competition, and capital formation.

The scope of the benefits and costs of the proposed amendment to rule 0–5 depends on the expected volume of applications generally as well as the expected volume of applications for expedited review in particular. Those benefits and costs also depend on the extent to which applicant experience under the proposed amendment to rule 0–5 is expected to differ from current experience. Below, we describe the number of applications as well as the time the Commission takes in responding to such applications.

B. Economic Baseline

1. Applications for Relief

The table below reports the number of initial applications by category and calendar year for 2016, 2017, and 2018.[49]

Exemption Type[50]	2016	2017	2018	Total
12(d)(3)	1	0	1	2
Affiliated Sales	4	2	2	8
Business Development Companies	1	1	1	3
Co-Investment	11	20	9	40
Distributions	1	1	1	3
Employees Securities Company	2	4	0	6
Exchange Traded Funds	40	41	31	112
Family Office	2	1	2	5
Fund of Funds—Multi-Group	9	9	5	23
Inadvertent Investment Companies	0	1	2	3
Ineligible—Disqualified Firm	1	2	0	3
Insurance Products	7	4	2	13
Inter-fund Lending	12	5	1	18
Interval Funds	1	2	0	3
Joint Transaction	1	0	3	4
Multi-Class	13	11	7	31
Multi-Manager	13	15	10	38
Other	18	9	15	42
Unit Investment Trusts—Other	0	1	0	1
Total	137	129	92	358

Among the 358 applications shown in the above table, the largest broad categories of applications are applications related to exchange traded funds (112 or 31% of applications), applications related to co-investment (40, or 11% of applications), applications related to multi-managers (38, or 11% of applications), applications related to funds of funds (23, or 7% of applications), and applications related to inter-fund lending (18, or 5% of applications). Together, these broad categories of applications comprise 231, or 66% of applications from 2016 to 2018.

The table below reports the number of amended filings associated with initial applications from 2016 to 2018, for those applications that resulted in notices from 2016 to 2018.

NUMBER OF AMENDED FILINGS

0	1	2	3	4	5	Total
42	103	35	21	8	4	213

Of the 213 applications from 2016 to 2018, 42 (20%) initial applications resulted in a notice without any amendment. 103 (48%) applications resulted in a notice after one amendment to the initial application. Overall, 68 (32%) of initial applications required two, or more, amended applications prior to receiving a notice.

2. Review Process

The current rules governing applications for exemption serve as a baseline against which we assess the economic impacts of the proposed amendment to rule 0–5. At present, there are no rules under the Act or other rules governing timeframes for Commission consideration of applications for exemption. While rules governing timeframes for the consideration of applications for exemption have not been formalized, in

[49] We use a combination of EDGAR and internal data for this baseline analysis. The table includes initial applications that were initially filed from 2016 to 2018.

[50] *See https://www.sec.gov/rules/icreleases.shtml.*

2008 the Staff adopted the performance target of providing comments on at least 80% of initial applications within 120 days after their receipt.[51] For filings made on or after June 1, 2019, the Division has now implemented a new internal target of providing comments on both initial applications and amendments within 90 days.

The table below summarizes the number of days between an applicant's initial filing and a response from the Commission from 2016 to 2018.

Year	Mean	% ≤45 days	% ≤90 days	% ≤120 days
2016	76	21	66	100
2017	85	24	56	96
2018	86	25	54	100
Overall	82	24	59	99

Overall, from 2016 through 2018, 24% of applicants experienced times between initial filing and a response from the Commission of 45 days, or less. 59% of applicants experienced times of 90 days, or less, and 99% of applicants experienced times of 120 days, or less.

C. Benefits and Costs of the Proposed Amendment to Rule 0–5

We are proposing an expedited review process for routine applications and a new rule to deem an application for expedited exemptive relief withdrawn when an applicant fails to respond to Staff comments. These proposed actions could have both direct as well as indirect effects. Because the proposed actions affect the application process, the proposed actions could affect both applicants and the Commission. Further, to the extent the proposed actions have a direct effect on the Commission, there could arise an indirect effect on applicants as well as investors. These potential direct and indirect effects are discussed in the context of benefits and costs of the proposal described below.

The magnitude of these estimated expected effects will depend, at least in part, on the extent to which anticipated outcomes differ from the baseline. For example, as noted above, we calculate that in recent years 24% of initial applications have received Commission response within 45 days.[52] The expected benefits and costs will depend on the extent to which the proposed actions result in outcomes that differ from recent experience.[53]

1. Benefits

We expect the proposed expedited review process will have the direct effect of allowing the benefits of relief to be realized by applicants more quickly than otherwise would be the case. Further, we expect that the proposed expedited review procedure would make the application process less expensive. For example, we believe that the new procedure would encourage applicants for expedited review to submit applications that are substantially similar to precedent. Submitting applications that are substantially similar to precedent should reduce the cost of drafting applications as well as reduce costs associated with needing to file multiple amendments.

We estimate that the expedited review process would significantly reduce costs for applicants compared to applicants receiving orders under standard review. We believe the estimated total cost burden per application for applicants to receive an order for an average exemptive application under standard review utilizing outside counsel is approximately $74,550[54] and the estimated hour or cost burden per application for applicants utilizing in-house counsel would be approximately 150 hours or $58,800.[55] The Staff estimates that the total cost burden per application for applicants to receive an order for an exemptive application under the proposed expedited review utilizing outside counsel is approximately $14,910[56] and the estimated hour or cost burden per application for applicants utilizing in-house counsel would be approximately 30 hours or $11,760.[57]

The estimated savings for an application under expedited review compared to an average application under the standard review process would be approximately $59,640[58] per application utilizing outside counsel or 120 hours[59] or $47,040[60] per application utilizing in-house counsel. Accordingly, the expedited review process would decrease the total estimated annual cost burden by approximately $2,385,600 utilizing outside counsel and total estimated annual hour burden by approximately 1,200 hours utilizing in-house counsel.[61] The total estimated annual savings for the expedited review process for both outside and in-house counsel would be $2,856,000.[62] Investors would benefit to the extent those reduced costs were passed along.

We expect that the proposed actions will also have a direct effect on the Commission. As noted previously, often the most significant factor affecting the

[51] *See supra* note 20.

[52] As discussed above, 59% of amended filings have received Commission action within 90 days.

[53] The expected benefits and costs will also depend on the amount of application activity. Recent rulemaking proposals, if adopted, could result in a reduction in the number of future applications. *See supra* note 23.

[54] This estimate is based on the following calculations: $497 (hourly rate for outside counsel) × 150 (estimated hours to receive an order for an application under standard review) = $74,550.

[55] This estimate is based on the following calculations: $392 (hourly rate for in-house counsel) × 150 (estimated hours to receive an order for an application under standard review) = $58,800.

[56] This estimate is based on the following calculations: $497 (hourly rate for outside counsel) × 30 (estimated hours to receive an order for an application under expedited review) = $14,910.

[57] This estimate is based on the following calculations: $392 (hourly rate for in-house counsel) × 30 (estimated hours to receive an order for an application under expedited review) = $11,760.

[58] This estimate is based on the following calculations: $74,550 (estimated total cost under standard review utilizing outside counsel) − $14,910 (estimated total cost under expedited review utilizing outside counsel) = $59,640.

[59] This estimate is based on the following calculations: 150 (estimated total hours under standard review utilizing in-house counsel) − 30 (estimated total hours under expedited review utilizing in-house counsel) = 120.

[60] This estimate is based on the following calculations: $58,800 (estimated total cost under standard review utilizing in-house counsel) − $11,760 (estimated total cost under expedited review utilizing in-house counsel) = $47,040.

[61] This estimate is based on the following calculations:

$59,640 (estimated savings per application under expedited review) × 50 (estimated number of applications under expedited review) × 0.80 (approximate percentage of applications prepared by outside counsel) = $2,385,600.

120 (estimated hours saved per application under expedited review) × 50 (estimated number of applications under expedited review) × 0.20 (approximate percentage of applications prepared by in-house counsel) = 1,200.

[62] This estimate is based on the following calculations: $2,385,600 (estimated total cost savings utilizing outside counsel) + [1,200 (estimated total hours saved utilizing in-house counsel) × $392 (hourly rate for in-house counsel)] = $2,856,000. This estimate take into account the incremental costs of the expedited review requirements.

time to review an application is how the application has been drafted. Applications for which there is clear precedent often omit standard terms or conditions, or contain significantly different versions of the standard terms or representations, from the relevant precedent. These variances increase the time required for the Staff's review because the Staff must analyze the changes to determine whether they alter the scope or nature or appropriateness of the requested relief. To the extent the new procedure would encourage applicants for expedited review to submit applications that are substantially similar to precedent, we expect the new procedure to reduce the amount of Staff resources required to review such applications.

The anticipated reduction in Staff resources required to review applications could result in indirect effects associated with the proposed actions. In particular, to the extent Staff is able to devote greater resources to more novel applications, the benefits realized by applicants with more novel applications may be realized more quickly than otherwise would be the case. To the extent those benefits are passed along to investors, investors would experience indirect benefits as well. Additionally, to the extent these indirect benefits accrue to applicants with more novel applications, the proposed actions could foster the submission of a greater number of novel applications which could lead to greater innovation in investment products. Further, the proposed actions could benefit investors by enhancing competition among market participants, which we discuss in more detail below.

2. Costs

With respect to applications for expedited review, proposed rule 0–5(e)(1) requires that the cover page of the application include a notation prominently stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d).'' Based on conversations with applicants and Staff experience, we expect the cost of the notation to be $248.50 per application utilizing outside counsel and $196 per application utilizing in-house counsel.[63]

Proposed rule 0–5(e)(2) also requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of the two precedent applications. Based on conversations with applicants and Staff experience, for those applicants relying on outside counsel to prepare two marked copies against two recent precedents, the estimated cost is $2,485 per application.[64] Applicants utilizing in-house counsel to provide two marked copies against two recent precedents would spend 5 hours or $1,960 per application.[65]

We estimate to receive approximately 50 applications[66] per year seeking expedited review under the Act. Therefore, the new mandatory requirements would impose a total estimated annual cost burden by approximately $109,340 utilizing outside counsel and total estimated annual hour burden by approximately 55 hours utilizing in-house counsel.[67] The total estimated annual cost burden for both outside and in-house counsel would be $130,900.[68]

Proposed rule 0–5(e)(3) also requires the accompanying cover letter to certify on behalf of the applicant that applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate. The written certification is similar to the representation required from counsel under rule 485 for post-effective amendments filed by certain registered investment companies. Such a representation would be subject to section 34(b) of the Act.[69] We believe the costs associated with providing this certification for expedited review would be minimal.

The proposed amendment to rule 0–5 would also provide that with respect to expedited reviews, if applicants do not file an amendment responsive to Staff's requests for modification within 30 days of receiving such requests, including a marked PDF copy showing any changes made and a certification that such marked copy is accurate and complete, the application will be deemed withdrawn. We believe the cost of complying with the 30-day requirement would be the same as complying with the current 60-day requirement.[70] We assume that those applicants requesting expedited review would likely bear an opportunity cost the longer the application process is delayed. Applicants for expedited review, then, will benefit from responding to Staff requests for modification in a timely manner.

Finally, proposed rule 0–5(e) creates the opportunity for applicants whose applications meet certain requirements to request expedited review. The proposed amendment to rule 0–5 does not require potential applicants to request expedited review. Potential applicants for expedited review, then, would only bear the costs of requesting expedited review in those circumstances where the applicant believes the benefits justify the costs.

Proposed rule 0–5(g) would provide that, if an applicant has not responded in writing to a request for clarification or modification of an application filed under standard review within 120 days after the request, the application will be deemed withdrawn. As an oral response would not stop an application from being deemed withdrawn, proposed rule 0–5(g), would require applicants to respond ''in writing'' and therefore create an additional cost. We believe the ''in writing'' requirement would increase the burden by 2 hours or $994 per application for applicants relying on outside counsel.[71] Applicants utilizing in-house counsel would spend 2 hours or $784 per application.[72] We estimate to receive approximately 90 applications[73] seeking standard review under the Act and of the 90 applications, we estimate that in approximately 10 percent of those, the applicants would respond ''in writing'' to avoid that the application be deemed withdrawn pursuant to rule 0–5(g). Therefore, the ''in writing'' requirement under rule 0–5(g) would increase the total estimated annual cost burden by approximately $7,157 utilizing outside counsel and total estimated annual hour burden by approximately 3.6 hours utilizing in-house counsel.[74] The total estimated annual cost burden for both outside and in-house counsel would be $8,568.[75]

D. Effects on Efficiency, Competition, and Capital Formation

This section evaluates the impact of proposed rule 0–5(e) on efficiency, competition, and capital formation.

Efficiency. We expect the expedited review process to benefit potential applicants directly by providing them an incentive to seek requested relief more quickly than under the existing process. Further, to the extent the proposed rule encourages applications that are substantially similar to precedent, we expect the proposed rule should reduce the likelihood of applicants needing to file amendments.

[63] *See infra* PRA Table 1.

[64] *See infra* PRA Table 1.

[65] *See infra* discussion in Section IV.A.

[66] *See infra* note 80.

[67] *See infra* note 86.

[68] *See infra* note 87.

[69] *See supra* note 34.

[70] Currently, Staff may place an application on inactive status when an applicant does not respond to comments within 60 days. *See supra* footnote 9.

[71] *See infra* note 88.

[72] *See infra* note 89.

[73] *See infra* note 90.

[74] *See infra* note 91.

[75] *See infra* note 92.

To the extent the expedited review process encourages applicants to realize the benefits of relief more quickly and with fewer filings, we would expect the operating efficiency of applicants to increase more quickly and to do so with a greater net benefit than under the existing application process.

As discussed above, applications for which there is clear precedent often omit standard terms or conditions, or contain significantly different versions of the standard terms or representations, from the relevant precedent. As a result, increased time and resources are required for the Staff to review the changes to determine whether they alter the scope or nature of the requested relief. To the extent the new procedures would encourage applicants for expedited review to submit applications that are substantially similar to precedent, we expect the new procedures to reduce the amount of Staff resources required to review such applications and increase Staff resources available to review more novel applications.

Competition. The proposed rule would likely increase competition in those situations where applicants would meet the requirement for expedited review. The effect on competition would operate through two channels. The first channel would be the speed with which potential competitors could realize the benefits of relief. The expedited review process would allow applicants to compete more quickly with prior applicants who already realized those benefits.[76] Second, to the extent the proposed expedited review process reduces the cost of applying for exemptive relief, the cost reduction would lower barriers to competing with those applicants who have already been granted relief.

Capital Formation. The proposed rule may lead to increased capital formation. As discussed above, to the extent the expedited review process allows applicants to realize the benefits of relief both more quickly and at a lower cost, we would expect the efficiency of application process to increase, allowing more investor money to be used productively. The increased efficiency could also lead to more applications. To the extent investors do not simply substitute one applicant's product for another, an increase in the number of applications could increase demand for intermediated assets as a whole and as a result, facilitate capital formation.

Also, to the extent the new procedures would encourage applicants for expedited review to submit applications that are substantially similar to precedent, we expect the new procedures to reduce the amount of Staff resources required to review such applications and increase Staff resources available to review more novel applications. An increase in Staff resources available to review more novel applications could, in turn, lead to more applicants who would implement innovative features or create new types of products. To the extent investors do not substitute one type of product or feature for another and find new products and features valuable, an increase in the number of applications involving innovative features or new types of products, could increase the overall amount of resources investors are willing to invest and, as a result, facilitate capital formation.

E. Reasonable Alternatives

1. Different Precedent or Timeframe Requirements

Proposed new rule 0–5(d)(1) provides that an applicant may request expedited review if the application is substantially identical to two other applications for which an order granting the requested relief was issued. As alternatives, the proposed rule could require a single precedent or more than two precedents. Our decision to require two precedent applications reflects a balancing of the accessibility to the expedited review process and the likely need for additional consideration by the Staff. Increasing the number of required precedents would decrease the likelihood of additional Staff consideration, but it would likely reduce the number of potential applicants qualifying for expedited review. For example, if we were to require three precedent applications rather than two, the third application, which would qualify for expedited review under the proposed amendment to rule 0–5, would no longer be eligible for expedited review. Increasing the number of required precedents would also likely lengthen the amount of time before applicants could request expedited exemptive relief. For example, if we were to require three precedent applications rather than two, to the extent precedent applications do not occur at the same time, applicants would have to wait for a third precedent application rather than being able to apply for expedited review after the second substantially similar application. Conversely, decreasing the number of required precedents would likely increase the number of potential applicants qualifying for expedited review, but it would increase the likelihood for additional Staff consideration. We believe the requirement of two precedent applications strikes an appropriate balance between those two competing considerations.

Further, the proposed rule requires the two precedent applications to have been filed within the past two years. Our decision to require precedents that have been filed over the past two years reflects a balancing of the accessibility to the expedited review process and the Staff resources required to review whether the terms and conditions of an application are still appropriate. Increasing the timeframe to greater than two years could increase the number applicants qualifying for expedited review, but also increase Staff resources required to review whether the terms and conditions of an application are still appropriate. Conversely, shortening the timeframe to less than two years would reduce the amount of Staff resources required to review whether the terms and conditions of an application are still appropriate, but likely reduce the number of potential applicants who could qualify for expedited review. We believe the two year requirement strikes an appropriate balance between those two competing considerations.

F. Request for Comment

Throughout this release, we have discussed the anticipated benefits and costs of the proposed amendment to rule 0–5 and its potential effect on efficiency, competition, and capital formation. While we do not have comprehensive information on all aspects of the application process, we are using the data currently available in considering the effects of the proposed rule. We request comment on all aspects of this initial economic analysis, including on whether the analysis has (1) identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed new rule. We request and encourage any interested person to

[76] To the extent the proposed expedited review process would allow subsequent applicants to compete more quickly, ''first-movers'' (*i.e.,* the two initial applicants relied on as precedent) may realize some reduction in benefits from innovation. We would expect any resulting effect on innovation to be minimal. In general, we anticipate that the expected loss in benefits associated with earlier competition from subsequent applicants would be limited, and would be justified by the expected gains from innovation. As a result, we believe the proposed rule would not measurably affect innovation.

submit comments regarding the proposed rule, our analysis of the potential effects of the rules and other matters that may have an effect on the proposed rules. We request that commenters identify sources of data and information with respect to applications in general, but also with respect to routine applications in particular, as well as provide data and information to assist us in analyzing the economic consequences of the proposed rules. We are also interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. We urge commenters to be as specific as possible.

Comments on the following questions are of particular interest.

- We have characterized the costs of certain requirements of the proposal as minimal. Have we correctly characterized the cost of those requirements?
- We have characterized the cost of the requirement that the accompanying cover letter certifying that the applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate as minimal. Are these costs minimal? If these costs are not minimal, what would be a more accurate characterization of these costs?

IV. Paperwork Reduction Act

The proposed rule amendments under the Act contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[77] The title for the new collection of information is ''Rule 0–5 under the Investment Company Act, Procedure with Respect to Applications and Other Matters.''[78] The Commission is submitting these collections of information to the OMB for review in accordance with 44 U.S.C. 3507(d) 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 control number. The proposed rules are designed to expedite the review process of routine applications. We discuss below the mandatory collection of information burdens associated with the proposed amendments to rules 0–5(e) and 0–5(g).[79]

A. Rule 0–5(e)

Proposed rule 0–5(e) requires applicants seeking expedited review to include certain information with the application. Proposed rule 0–5(e)(1) requires that the cover page of the application include a notation prominently stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d).'' Proposed rule 0–5(e)(2) requires applicants to submit exhibits with marked copies of the application showing changes from the final versions of two precedent applications identified as substantially identical. Proposed rule 0–5(e)(3) requires an accompanying cover letter, signed, on behalf of the applicant, by the person executing the application (i) identifying two substantially identical applications; and (ii) certifying that that the applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate.

The Commission receives approximately 140 applications per year under the Act, and of the 140 applications, we estimate to receive approximately 50 applications[80] seeking expedited review under the Act.[81] Although each application is typically submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single applicant for purposes of this analysis.

The following table summarizes the estimated effects of the proposed amendments on the paperwork burden associated with the amendments to rule 0–5(e).

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN INCREASE OF THE PROPOSED AMENDMENTS

Proposed amendments to rule 0–5(e)	Estimated burden increase
• Utilize outside counsel to notate on the cover page stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)'' and certify that the application meets the requirements.	• 0.5 hour (0.25 hour to notate the required statement and 0.25 hour to certify). • The estimated additional cost per application would be $248.50.[1]
• Utilize in-house counsel to notate on the cover page stating ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)'' and certify that the application meets the requirements.	• 0.5 hour (0.25 hour to notate the required statement and 0.25 hour to certify). • The estimated additional cost per application would be $196.[2]
• Utilize outside counsel to prepare two marked copies against two recent precedents.	• 5 hours (4 hours to search for applicable precedents and 1 hour to prepare the marked copies) per application. • The estimated additional cost per application would be $2,485.[3]
• Utilize in-house counsel to prepare two marked copies against two recent precedents.	• 5 hours (4 hours to search for applicable precedents and 1 hour to prepare the marked copies) per application. • The estimated additional cost per application would be $1,960.[4]

Notes:

[1] This estimate is based on the following calculation: 0.5 (estimated hour per application to notate and to certify) × $497 (hourly rate for an attorney) = $248.50. The hourly wages data is from the Securities Industry Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission Staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) to account for bonuses, firm size, employee benefits, and overhead, suggests that the cost for outside counsel is $497 per hour.

[2] This estimate is based on the following calculation: 0.5 (estimated hour per application to notate and to certify) × $392 (hourly rate for an in-house counsel) = $196. The hourly wages data is from the Securities Industry Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission Staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) to account for bonuses, firm size, employee benefits, and overhead, suggests that the cost for in-house counsel is $392 per hour.

[3] This estimate is based on the following calculation: 5 (estimated hours to prepare the marked copies) × $497 (hourly rate for an attorney) = $2,485. The hourly wages data is from the Securities Industry Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission Staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) to account for bonuses, firm size, employee benefits, and overhead, suggests that the cost for outside counsel is $497 per hour.

[77] 44 U.S.C. 3501 through 3521.

[78] The collection of information burden within the meaning of the PRA for the general requirements of applications is under rule 0–2.

[79] Responses to this collection of information will not be kept confidential.

[80] This estimate takes into account the recent codification of certain ETF Exemptive Orders. *See supra* note 23.

[81] Like Section III above, this section only relates to applications seeking expedited review.

[4] This estimate is based on the following calculation: 5 (estimated hours per application to prepare the marked copies) × $392 (hourly rate for an in-house counsel) = $1,960. The hourly wages data is from the Securities Industry Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission Staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 (professionals) to account for bonuses, firm size, employee benefits, and overhead, suggests that the cost for in-house counsel is $392 per hour.

Much of the work of preparing an application is performed by outside counsel. Based on conversations with applicants and Staff experience, approximately 80 percent of applications are prepared by outside counsel and approximately 20 percent of applications are prepared by in-house counsel. Therefore, the new mandatory requirements would increase the total estimated annual cost burden by approximately $109,340 utilizing outside counsel and total estimated annual hour burden by approximately 55 hours utilizing in-house counsel.[82] The total estimated annual cost burden for both outside and in-house counsel would be $130,900.[83]

B. Rule 0–5(g)

Proposed rule 0–5(g) would provide that, if an applicant has not responded in writing to a request for clarification or modification of an application filed under standard review within 120 days after the request, the application will be deemed withdrawn. Proposed rule 0–5(g) would provide that, if an applicant has not responded in writing to a request for clarification or modification of an application filed under standard review within 120 days after the request, the application will be deemed withdrawn. As an oral response would not stop an application from being deemed withdrawn, proposed rule 0–5(g), would require applicants to respond ''in writing'' and therefore create an additional cost within the meaning of the PRA.

Applicants would be required to submit a letter or an email in response to a request for clarification or modification of an application from the Staff. We believe the ''in writing'' requirement would increase the burden by 2 hours or $994 per application for applicants relying on outside counsel.[84] Applicants utilizing in-house counsel would spend 2 hours or $784 per application.[85] We estimate to receive approximately 90 applications[86] per year seeking standard review under the Act and of the 90 applications, we estimate that in approximately 10 percent of those, the applicants would respond ''in writing'' to avoid that the application be deemed withdrawn pursuant to rule 0–5(g). Therefore, the ''in writing'' requirement under rule 0–5(g) would increase the total estimated annual cost burden by approximately $7,157 utilizing outside counsel and total estimated annual hour burden by approximately 3.6 hours utilizing in-house counsel.[87] The total estimated annual cost burden for both outside and in-house counsel would be $8,568.[88]

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the function of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Commission has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments 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 send a copy to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–19–19. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–19–19, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street 85 NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3 of the Regulatory Flexibility Act (''RFA'')[89] regarding our proposed amendments to rule 0–5 and new rule 17 CFR 202.13.

A. Reasons for and Objectives of the Proposed Actions

The application process under the Act has become more important as the industry has grown and diversified. Granting appropriate exemptions from the Act can provide important economic benefits to funds and their shareholders, and foster financial innovation. Thus,

[82] This estimate is based on the following calculations:

[$2,485 (estimated cost per application to prepare the marked copies) + $248.50 (estimated cost per application to notate and certify] × 50 (estimated number of applications under expedited review) × 0.80 (approximate percentage of applications prepared by outside counsel) = $109,340.

[5 (estimated hours per application to prepare the marked copies) + 0.5 (estimated hour per application to notate and certify)] × 50 (estimated number of applications under expedited review) × 0.20 (approximate percentage of applications prepared by in-house counsel) = 55.

[83] This estimate is based on the following calculation: $109,340 (estimated total cost utilizing outside counsel) + [55 (estimated total hours utilizing in-house counsel) × $392 (hourly rate for an in-house counsel)] = $130,900.

[84] This estimate is based on the following calculation: 2 (estimated hours to prepare ''in writing'' response) × $497 (hourly rate for outside counsel) = $994.

[85] This estimate is based on the following calculation: 2 (estimated hours to prepare ''in writing'' response) × $392 (hourly rate for an in-house counsel) = $784.

[86] This estimate is based on the following calculation: 140 (estimated number of all applications) − 50 (estimated number of applications under expedited review) = 90.

[87] This estimate is based on the following calculations:

$994 (estimated hours to prepare ''in writing'' response) × 90 (estimated number of applications under standard review) × 0.10 (approximate percentage of application required to respond ''in writing'') × 0.80 (approximate percentage of applications prepared by outside counsel) = $7,157.

2 (estimated hours to prepare ''in writing'' response) × 90 (estimated number of applications under standard review) × 0.10 (approximate percentage of application required to respond ''in writing'') × 0.20 (approximate percentage of applications prepared by in-house counsel) = 3.6.

[88] This estimate is based on the following calculation: $7,157 (estimated total cost utilizing outside counsel) + [3.6 (estimated total hours utilizing in-house counsel) × $392 (hourly rate for an in-house counsel)] = $8,568.

[89] *See* 5 U.S.C. 603.

we have continued to consider ways to improve the applications process as we recognize the importance of obtaining an order in a timely manner. The proposed amendments and new rule reflect our efforts to improve the process and would establish an expedited review procedure for applications that are substantially identical to recent precedent. We believe that the proposed approach balances applicants' desire for a prompt decision on their application with the Commission's need for adequate time to consider requests for relief.

We believe that the new procedure would encourage applicants for expedited review to submit applications that are substantially identical to precedent, which we expect would facilitate Staff review. Accordingly, we should be able to grant relief that meets the applicable standards more quickly, and, in turn, devote additional resources to the review of more novel requests. A faster application process would allow the benefits of relief to be realized by applicants, and ultimately by fund shareholders, more quickly than otherwise would be the case. Further, we expect that the proposed expedited review procedure would make the applications process less expensive for applicants, because we believe that it would reduce the numbers of Staff comments.

B. Legal Basis

The Commission is proposing the rules contained in this document under the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)].

C. Small Entities Subject to the Proposed Amendment

Any registered investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[90] Staff estimates that, as of December 2018, there were 59 open-end funds (including 9 ETFs), 31 closed-end funds, and 16 BDCs that would be considered small entities that may be subject to proposed amendments to rule 0–5.[91]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Proposed new rule 0–5(e) will require applicants seeking expedited review of an application to file with the Commission: (1) A cover page of the application that states prominently, ''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)''; (2) exhibits with marked copies of the application showing changes from the final versions of two precedent applications identified as substantially identical; and (3) requires an accompanying cover letter, signed, on behalf of the applicant, by the person executing the application (i) identifying two substantially identical applications; and (ii) certifying that that the applicant believes the application meets the requirements of rule 0–5(d) and that the marked copies required by rule 0–5(e)(2) are complete and accurate.[92] As discussed in section IV, the estimated cost and administrative burdens for small entities associated with these activities for applicants utilizing outside counsel would be $2,733.50[93] per application and the estimated hour or cost burden for applicants utilizing in-house counsel would be 5.5 hours[94] or $2,156[95] per application.

As discussed in section III, we believe the additional costs and administrative burdens of providing the required statements and certifications on the included cover page and submitting two marked copies against two precedents would not have a substantial impact on the total cost for applications that qualify for the expedited review procedure. Small entities will considerably benefit from the expedited review procedure as the total estimated savings significantly justify the estimated added burden under proposed rule 0–5(e). The estimated savings for an application under expedited review compared to an average application under the standard review process would be approximately $59,640[96] per application utilizing outside counsel or 120 hours[97] or $47,040[98] per application utilizing in-house counsel.

Proposed new rule 0–5(g) will require applicants to respond ''in writing'' to a request for clarification or modification of an application filed under standard review within 120 days after the request from the Staff or the application will be deemed withdrawn. As discussed in section IV, the estimated cost and administrative burdens for small entities associated with these activities for applicants utilizing outside counsel would be $994[99] per application and the estimated hour or cost burden for applicants utilizing in-house counsel would be 2 hours or $784[100] per application. Proposed rule 0–5(g) imposes additional costs and administrative burdens on small entities for standard review applications, but the estimated savings from the expedited review process would justify the added burden of rule 0–5(g).

In addition, compliance with the proposed amendments would require the use of professional legal skills necessary for research and preparation of required documents. We discuss the economic impact, including the estimated costs and burdens, of the proposed amendments to all registrants, including small entities, in sections III and IV above.

We believe there are no reporting, recordkeeping and other compliance requirements for small entities with respect to the proposed new rule 17 CFR 202.13. The rule we propose here is an internal set of deadlines with no costs and administrative burdens incurred by the applicants.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no duplicative, overlapping or conflicting federal rules to the proposed amendments to rule 0–5 and the new rule 17 CFR 202.13.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives: (i) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) clarification, consolidation, or

[90] *See* rule 0–10(a).

[91] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data reported on Form N–SAR filed with the Commission for the period ending December 2018.

[92] The amendments are discussed in detail in section II.A above. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in section III and section IV.

[93] This estimate is based on the following calculation: $2,485 (estimated cost per application to prepare the marked copies) + $248.50 (estimated cost per application to notate and certify) = $2,733.50.

[94] This estimate is based on the following calculation: 5 hours (estimated hours per application to prepare the marked copies) + 0.5 hour (estimated hour per application to notate and certify) = 5.5 hours.

[95] This estimate is based on the following calculation: $1,960 (estimated cost per application to prepare the marked copies) + $196 (estimated cost per application to notate and certify) = $2,156.

[96] *See supra* note 58.

[97] *See supra* note 59.

[98] *See supra* note 60.

[99] *See supra* note 84.

[100] *See supra* note 85.

simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

We do not believe that establishing a different compliance or reporting requirements for small entities would permit us to achieve our stated goals. We believe that the new approach is expected to reduce costs by shortening the time it takes for applicants to obtain orders on certain routine applications. Further clarification, consolidation, or simplification of the compliance and reporting requirements is not necessary to achieve the goals of the proposal and would not be appropriate in the public interest and consistent with the protection of investors. The use of performance rather than design standards is not appropriate, as the new approach is intended to expedite the applications process and the use of a single design standard would make the procedure more efficient. Exemption from coverage of the rule would not be necessary, as the new expedited process would further benefit small entities by making the applications process more cost efficient.

G. Request for Comment

The Commission requests comments regarding this analysis. We request comment on the number of small entities that would be subject to the proposed amendments and whether the proposed amendments would have any effects on small entities that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to the proposed amendments and provide empirical data to support the nature and extent of such effects. We also request comment on the estimated compliance burdens of the proposed amendments and how they would affect small entities.

VI. Consideration of the Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[101] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase 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.

VII. Statutory Authority

The Commission is proposing the rules contained in this document under the authority set forth in sections 6(c) and 38(a) of the Act [15 U.S.C. 80a–6(c) and 80a–37(a)].

List of Subjects

17 CFR Parts 202

Administrative practice and procedure, Securities.

17 CFR Parts 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES.

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d–1, 78u, 78w, 78*ll*(d), 80a–37, 80a–41, 80b–9, 80b–11, 7201 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Add § 202.13 to read as follows:

§ 202.13 Informal procedure with respect to applications under the Investment Company Act of 1940.

(a) On any application subject to 17 CFR 270.0–5, other than an application eligible for and proceeding under expedited review as provided for by 17 CFR 270.0–5(d), (e), and (f), the Division should take action within 90 days of the initial filing or any amendment thereto. Such 90 day period will stop running upon any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in federal appropriations, national emergency, inclement weather, or ad hoc federal holiday, and will resume upon the reopening of the Commission's Washington, DC office to the public for normal business. The Division may grant 90-day extensions and the applicant should be notified of any such extension.

(b) Action on the application or any amendment thereto shall consist of:

(1) Issuing a notice,

(2) Providing the applicant with requests for clarification or modification of the application, or

(3) Informing applicant that the application will be forwarded to the Commission, in which case the application is no longer subject to the provisions set forth in paragraph (a) of this section.

(c) The provisions of this rule, including the time frames provided for herein, are not intended to create enforceable rights by any interested parties and shall not be deemed to do so. Rather, this rule provides informal non-binding guidelines and procedures that the Commission anticipates the Division following.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 3. The authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 4. Section 270.0–5 is amended by adding new paragraphs (d), (e), (f), and (g) to read as follows:

§ 270.0–5 Procedure with respect to applications and other matters.

* * * * *

(d)(1) An applicant may request expedited review of an application if such application is substantially identical to two other applications for which an order granting the requested relief has been issued within two years of the date of the application's initial filing.

(2) For purposes of this section, ''substantially identical'' applications are applications requesting relief from the same sections of the Act and rules thereunder, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested.

(e) An application submitted for expedited review must include:

(1) A notation on the cover page of the application that states prominently,

[101] 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).

''EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0–5(d)'',

(2) Exhibits with marked copies of the application showing changes from the final versions of the two applications identified as substantially identical under paragraph (e)(3) of this section, and

(3) An accompanying cover letter, signed, on behalf of the applicant, by the person executing the application,

(i) Identifying two substantially identical applications; and

(ii) Certifying that that the applicant believes the application meets the requirements of paragraph (d) of this section and that the marked copies required by paragraph (e)(2) of this section are complete and accurate.

(f)(1) No later than 45 days from the date of filing of an application for which expedited review is requested:

(i) Notice of an application will be issued in accordance with paragraph (a) of this section, or

(ii) The applicant will be notified that the application is not eligible for expedited review because it does not meet the criteria set forth in paragraph (d) of this section or because additional time is necessary for appropriate consideration of the application;

(2) For purposes of paragraph (f)(1) of this section:

(i) The 45 day period will restart upon the filing of any unsolicited amendment.

(ii) The 45 day period will stop running upon:

(A) Any request for modification of an application and will resume running on the 14th day after the applicant has filed an amended application responsive to such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate; and

(B) Any irregular closure of the Commission's Washington, DC office to the public for normal business, including, but not limited to, closure due to a lapse in federal appropriations, national emergency, inclement weather, or ad hoc federal holiday, and will resume upon the reopening of the Commission's Washington, DC office to the public for normal business.

(iii) If the applicant does not file an amendment responsive to any request for modification within 30 days of receiving such request, including a marked copy showing any changes made and a certification signed by the person executing the application that such marked copy is complete and accurate, the application will be deemed withdrawn.

(g) If an applicant has not responded in writing to any request for clarification or modification of an application filed under this section, other than an application that is under expedited review under paragraphs (d) through (e) of this section, within 120 days after the request, the application will be deemed withdrawn.

By the Commission.

Dated: October 18, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23082 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–472]

Schedules of Controlled Substances: Placement of FUB-AMB in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule I of the Controlled Substances Act. If finalized, this action would make permanent the existing regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle FUB-AMB.

DATES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). Comments must be submitted electronically or postmarked on or before November 29, 2019. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before November 29, 2019.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–472'' on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for a hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8209.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified as directed above will be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information to this proposed rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. Interested persons may file requests for a hearing or notices of intent to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(a) or (b), and include a statement of interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing together with a written statement regarding the interested person's position on the matters of fact and law involved in any hearing as set forth in 21 CFR 1308.44(c).

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of a hearing held in relation to this rulemaking is restricted to: ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed . . .'' All requests for hearing and waivers of participation must be sent to the DEA using the address information provided above.

Legal Authority

The Controlled Substances Act (CSA) provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS);[1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This proposed action is supported by a recommendation from the Assistant Secretary for Health of the HHS (Assistant Secretary) and an evaluation of all other relevant data by the DEA. If finalized, this action would continue[2] to impose the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle FUB-AMB.

Background

On November 3, 2017, the DEA published an order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA) in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 82 FR 51154. That temporary scheduling order was effective on the date of publication, and was based on findings by the Acting Administrator of the DEA (Acting Administrator) that the temporary scheduling of this synthetic cannabinoid (SC) was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA, 21 U.S.C. 811(h)(2), requires that the temporary control of this substance expire two years from the effective date of the scheduling order, which is November 3, 2019. However, the CSA also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling of that substance could be extended for up to one year. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of HHS,[3] or on the petition of any interested party. An extension of the temporary order is being ordered by the Acting Administrator in a separate action, and is published elsewhere in this issue of the **Federal Register**.

The Acting Administrator, on his own motion pursuant to 21 U.S.C. 811(a), has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule FUB-AMB. The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for this synthetic cannabinoid. On March 9, 2018, the Acting Administrator submitted a request to the Assistant Secretary to provide the DEA with a scientific and medical evaluation of available information and a scheduling recommendation for FUB-AMB, in accordance with 21 U.S.C. 811(b) and (c). Upon evaluating the scientific and medical evidence, on September 19,

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

[2] FUB-AMB is currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 82 FR 51154, Nov. 3, 2017.

[3] Because the Secretary of HHS has delegated to the Assistant Secretary the authority to make domestic drug scheduling recommendations, for purposes of this proposed rulemaking, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

2019, the Assistant Secretary submitted to the Acting Administrator HHS's scientific and medical evaluations for this substance. Upon receipt of the scientific and medical evaluation and scheduling recommendation from the HHS, the DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of FUB-AMB in accordance with 21 U.S.C. 811(c).

Proposed Determination to Schedule FUB-AMB

As discussed in the background section, the Acting Administrator initiated proceedings, pursuant to 21 U.S.C. 811(a)(1), to add FUB-AMB permanently to schedule I. The DEA has reviewed the scientific and medical evaluations and scheduling recommendation, received from HHS, and all other relevant data and conducted its own eight-factor analysis of the abuse potential of FUB-AMB pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in its proposed scheduling action. Please note that both the DEA 8-Factor and HHS 8-Factor analyses and the Assistant Secretary's September 19, 2019, letter, are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *http://www.regulations.gov,* under Docket Number ''DEA–472.''

1. *The Drug's Actual or Relative Potential for Abuse:* The term ''abuse'' is not defined in the CSA. However, the legislative history of the CSA suggests that the DEA consider the following criteria in determining whether a particular drug or substance has a potential for abuse: [4]

(a) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

(b) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

(c) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

(d) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

Epidemiological data reviewed by HHS has concluded that individuals are taking FUB-AMB in sufficient amounts as to create a hazard to the health and safety of both the individual users and others within the community. Adverse effects observed following the ingestion of FUB-AMB include nausea, persistent vomiting, agitation, altered mental status, seizures, convulsions, loss of consciousness and cardiotoxicity. SCs like FUB-AMB are easily accessible and difficult to detect in standard urine drug screens, which contributes to their popularity and high rates of abuse.

The HHS stated in their letter dated June 9, 2017 that there are currently no approved new drug applications or active investigational new drug applications for FUB-AMB. In addition, HHS stated that since FUB-AMB is not a Food and Drug Administration (FDA)-approved drug product for treatment in the United States and there appear to be no legitimate sources for FUB-AMB as a marketed drug or as a subject of scientific investigations, this characteristic of abuse potential is not applicable.

HHS has determined that since FUB-AMB is not approved for medical use and is not formulated or available for clinical use, the human use of this substance is assumed to be on an individual's own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer drugs. Further, published scientific and medical literature and law enforcement reports indicate that individuals are taking FUB-AMB on their own initiative, rather than on the basis of medical advice of a licensed practitioner.

As stated by HHS, in vitro and in vivo data for FUB-AMB indicate that it has a pharmacological profile similar to other schedule I SCs of various structural classes, including tetrahydrocannabinols (such as Δ9-THC), bicyclic cannabinoid analogs (*e.g.,* CP55, 940), aminoalkylindoles (*e.g.,* WIN55, 212-2), and other indole- and pyrol-derived cannabinoids (*e.g.,* JWH-018, schedule I) (see Factor 2 DEA 8-Factor Analysis). In in vitro receptor binding and functional assays, FUB-AMB, similar to JWH-018 and WIN 55,212-2, acts as a CB1 receptor agonist. In drug discrimination studies sponsored by the National Institute on Drug Abuse (NIDA), FUB-AMB, similar to other schedule I SCs (*e.g.,* JWH-018; AM2201; ADB-PINACA, AB-FUBINACA etc.), fully substitutes for THC in animals trained to discriminate THC from vehicle control (see Factor 2 DEA 8-Factor Analysis). Based on these pharmacological similarities, HHS stated that FUB-AMB would present with an abuse potential similar to these and other cannabinoids. HHS further stated that in terms of overall potency, FUB-AMB appears to be more potent than JWH-018 and WIN 55,212-2.

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* As described by HHS, receptor binding and drug discrimination studies with FUB-AMB demonstrate findings that are consistent with findings from the testing of other schedule I SCs. In vitro receptor binding and functional assays and in vivo drug discrimination studies were conducted with FUB-AMB. These results indicate that FUB-AMB, similar to other schedule I SCs, binds to CB1 receptors and acts as an agonist at CB1 receptors. Treatment with FUB-AMB (0.1—1 mg/kg), similar to THC, resulted in time- and dose-dependent depression of locomotor activity. Depressant effects of 0.1 to 0.5 mg/kg FUB-AMB occurred within 10 minutes following intraperitoneal (i.p.) injection and lasted 40 to 100 minutes. Also, tremors were seen 30 minutes following 1 mg/kg FUB-AMB in 3 of 8 mice. The drug discrimination assay is a well-accepted animal model used to predict subjective effects of substances in humans. In the drug discrimination assay, FUB-AMB similar to other schedule I SCs (*e.g.,* JWH-018; AM2201; ADB-PINACA, AB-FUBINACA etc.), substituted fully for the discriminative stimulus effects produced by THC.

Based on data from CB1 receptor binding (Ki), CB1 receptor functional assays, drug discrimination, and locomotor studies, HHS stated that FUB-AMB is a full cannabinoid agonist with no antagonist activity, and is more potent than Δ9-THC, the principal psychoactive constituent in marijuana (schedule I).

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* FUB-AMB is a potent cannabinoid receptor agonist that is pharmacologically similar to THC. Emerging in the early 1980's, SCs were originally designed to investigate structure activity relationships (SAR) based on the potent substance, 9-nor-9β-hydroxyhexahydrocannabinol (HHC).

[4] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.C.A.N. 4566, 4603.

Interest in various structural classes was generated by the mouse vas deferens (MVD) and prostaglandin synthetase activity of pravadoline and subsequent finding of its affinity to the cannabinoid receptor.

Neither the DEA nor HHS is aware of any currently accepted medical use for FUB-AMB. A letter, dated May 19, 2017, was sent from the DEA Acting Administrator to the Assistant Secretary for Health of the HHS as notification of intent to temporarily place FUB-AMB in schedule I and solicited comments, including whether there is an exemption or approval in effect for the substance in question under the Federal Food, Drug and Cosmetic Act. The Assistant Secretary for Health responded on June 9, 2017 that there are currently no approved new drug applications or active investigational new drug applications for FUB-AMB and that HHS has no objection regarding the temporary placement of FUB-AMB in schedule 1 of the CSA. Also, HHS is not aware of any reports of clinical studies or claims of an accepted medical use in the United States. HHS concluded without further consideration that FUB-AMB has no currently accepted medical use in the United States.

HHS stated in its recommendation that information collected by the World Health Organization indicates that FUB-AMB is most commonly ingested following inhalation either via smoking an adulterated plant material or by manipulating the substance into a liquid form for vaporization via an electronic smoking device.

4. *Its History and Current Pattern of Abuse:* As described by HHS, SCs have been developed by researchers over the last 30 years as tools for investigating the endocannabinoid system, (*e.g.* determining CB1 and CB2 receptor activity). The first encounter of SCs within the United States occurred in November 2008 by U.S. Customs and Border Protection. Since then, the popularity of SCs in general and their associated products has increased as evidenced by law enforcement seizures, public health information, and media reports. FUB-AMB was first identified in June 2014, in seized drug evidence. Up until its temporary control in November, 2017, there had been a large increase in its encounters by law enforcement (see Factor 5 DEA 8-Factor Analysis). The misuse of FUB-AMB has been associated with multiple overdoses requiring emergency medical intervention (see Factor 6 DEA 8-Factor Analysis). In recent cases of overdoses, FUB-AMB has been encountered in the form of herbal products, similar to the SCs that have been previously available (see Factor 6 DEA 8-Factor Analysis).

The designer drug products laced with SCs, including FUB-AMB, are often sold under the guise of ''herbal incense'' or ''potpourri,'' use various product names, and are routinely labeled ''not for human consumption.'' Additionally, these products are marketed as a ''legal high'' or ''legal alternative to marijuana'' and are readily available over the internet, in head shops, or in convenience stores.

There are incorrect assumptions that these products are safe, that they are a synthetic form of marijuana, and that labeling these products as ''not for human consumption'' is a legal defense to criminal prosecution under the Controlled Substances Analogue Enforcement Act.

Presentations at emergency departments directly linked to the abuse of FUB-AMB have resulted in similar symptoms, including nausea, persistent vomiting, agitation, altered mental status, seizures, convulsions, loss of consciousness, cardio toxicity and/or death (see Factor 6 DEA 8-Factor Analysis). Law enforcement has had numerous encounters of FUB-AMB and has documented the abuse of this substance (see Factor 5 DEA 8-Factor Analysis). SCs and their associated products are available over the internet and sold in gas stations, convenience stores, and tobacco and head shops. FUB-AMB, similar to the previously scheduled SCs, have been seized alone and/or laced on products that are marketed under the guise of ''herbal incense'' and promoted as a ''legal'' alternative to marijuana.

5. *The Scope, Duration, and Significance of Abuse:* As described by HHS, SCs including FUB-AMB continue to be encountered on the illicit market regardless of scheduling actions that attempt to safeguard the public from the adverse effects and safety issues associated with these substances. Novel SC substances continue to be encountered, differing from controlled SCs only by small chemical structural modifications intended to avoid prosecution while maintaining the pharmacological effects.

HHS stated that based on FUB-AMB's pharmacological properties, it is reasonable to assume that, if uncontrolled, the scope, duration, and significance of FUB-AMB abuse would be similar to Δ9-THC and other SCs that are listed in schedule I. The threat of serious injury to the individual following the ingestion of FUB-AMB and other SCs persists.

From June 2014 to the present, the National Forensic Laboratory Information System (NFLIS) has documented over 21,000 reports involving FUB-AMB across the District of Columbia, Puerto Rico, and the following states: Alabama, Arizona, California, Colorado, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

6. *What, if Any, Risk There is to the Public Health:* As shown by HHS, FUB-AMB has been identified in overdose cases attributed to its abuse. Adverse health effects reported from these incidents involving FUB-AMB have included: Nausea, persistent vomiting, agitation, altered mental status, seizures, convulsions, loss of consciousness, cardiotoxicity and death (see DEA and HHS 8-Factor Analyses in docket folder).

7. *Its Psychic or Physiological Dependence Liability:* As stated by HHS, the pharmacologic and chemical profile of FUB-AMB strongly suggests that it possesses a physiological and psychological dependence liability that is similar to that of Δ9-THC (schedule I) and JWH-018 (schedule I). Although there are no clinical studies evaluating dependence liabilities specific for FUB-AMB, the pharmacological profile of this substance strongly suggests that it possesses dependence liabilities that are qualitatively similar to, and potentially stronger than, THC (schedule I) or marijuana (schedule I).

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* FUB-AMB is not an immediate precursor of any controlled substance of the CSA as defined by 21 U.S.C 802(23).

Conclusion: After considering the scientific and medical evaluation conducted by the HHS, the HHS's scheduling recommendation, and the DEA's own eight-factor analysis, the DEA finds that the facts and all relevant data constitute substantial evidence of the potential for abuse of FUB-AMB. As such, the DEA hereby proposes to permanently schedule FUB-AMB as a schedule I controlled substance under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA

also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all other available data, the Acting Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

1. FUB-AMB has a high potential for abuse;

2. FUB-AMB has no currently accepted medical use in treatment in the United States; [5] and

3. There is a lack of accepted safety for use of FUB-AMB under medical supervision.

Based on these findings, the Acting Administrator of the DEA concludes that methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA) including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrant continued control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling FUB-AMB

If this rule is finalized as proposed, FUB-AMB would continue [6] to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) FUB-AMB, or who desires to handle FUB-AMB, is required to be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Security.* FUB-AMB is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823 and in accordance with 21 CFR 1301.71–1301.93.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of FUB-AMB must be in compliance with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

4. *Quota.* Only registered manufacturers are permitted to manufacture FUB-AMB in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. *Inventory.* Any person registered with the DEA to handle FUB-AMB must have an initial inventory of all stocks of controlled substances (including FUB-AMB) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including FUB-AMB) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant is required to maintain records and submit reports with respect to FUB-AMB, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes FUB-AMB is required to comply with the order form requirements, pursuant to 21 U.S.C. 828, and 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of FUB-AMB must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving FUB-AMB not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and could subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132

This proposed rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This proposed rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects 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.

Executive Order 13771

This proposed rule does not meet the definition of an Executive Order 13771 regulatory action, and the repeal and cost offset requirements of Executive Order 13771 have not been triggered. OMB has previously determined that formal rulemaking actions concerning the scheduling of controlled substances, such as this rule, are not significant regulatory actions under Section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. On November 3, 2017, the DEA published an order to temporarily place FUB-AMB in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The DEA

[5] Although there is no evidence suggesting that FUB-AMB has a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by the FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated:

i. the drug's chemistry must be known and reproducible;

ii. there must be adequate safety studies;

iii. there must be adequate and well-controlled studies proving efficacy;

iv. the drug must be accepted by qualified experts; and

v. the scientific evidence must be widely available.

57 FR 10499 (1992).

[6] FUB-AMB is currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 82 FR 51154, Nov. 3, 2017.

estimates that all entities handling or planning to handle this substance have already established and implemented the systems and processes required to handle FUB-AMB. There are currently 22 registrations authorized to handle FUB-AMB specifically, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. These 22 registrations represent 20 entities, of which 12 are small entities. Therefore, the DEA estimates 12 small entities are affected by this proposed rule.

A review of the 22 registrations indicates that all entities that currently handle FUB-AMB also handle other schedule I controlled substances, and have established and implemented (or maintain) the systems and processes required to handle FUB-AMB. Therefore, the DEA anticipates that this proposed rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any of the 12 affected small entities. Therefore, the DEA has concluded that this proposed rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* the DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year . . .'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:
■ a. Add paragraph (d)(79); and
■ b. Remove and reserve paragraph (h)(18).

The addition reads as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(79) methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate, (FUB-AMB, MMB-FUBINACA, AMB-FUBINACA) ..... (7021)

* * * * *

Dated: October 21, 2019.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2019–23626 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–09–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 19–CRB–0005–WR (2021–2025)]

Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies To Facilitate Those Performances (Web V)

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Proposed rule related to noncommercial educational webcasters.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performance of sound recordings by noncommercial educational webcasters and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing January 1, 2021, and ending on December 31, 2025.

DATES: Comments and objections, if any, are due no later than November 20, 2019.

ADDRESSES: You may submit comments and proposals, identified by docket number 19–CRB–0005–WR (2021–2025), by any of the following methods:

CRB's electronic filing application: Submit comments and proposals online in eCRB at *https://app.crb.gov/.*

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Parties unable to use eCRB must submit an original, two paper copies, and an electronic version on a CD. All submissions must include the Copyright Royalty Board name and docket number (19–CRB–0005–WR (2021–2025)), as well as the **Federal Register** citation for this proposed rule. All submissions received will be posted without change on eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 19–CRB–0005–WR (2021–2025).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On September 23, 2019, the Copyright Royalty Judges (Judges) received a joint motion from SoundExchange, Inc., (''SoundExchange'') and College Broadcasters, Inc., (''CBI'') to adopt a partial settlement of their interests regarding Web V rates and terms for 2021–2025.[1] Joint Motion to Adopt Partial Settlement, Docket No. 19–CRB–0005–WR (2021–2025). Their interests concern the rule setting copyright royalty minimum fees and terms that the Judges will establish for compulsory copyright licenses for certain internet transmissions of sound recordings by college radio stations and other noncommercial educational webcasters for the period from January 1, 2021,

[1] Web V is short for Webcasting V. This proceeding is the fifth since the compulsory license for webcasting was established.

through December 31, 2025. SoundExchange represents the interests of sound recording copyright owners and performers. CBI represents the interests of users of the copyrighted material which users include college, university, and high school radio and television stations and other electronic media organizations. The Judges hereby publish the proposal and request comments from the public.

Section 114 of the Copyright Act, title 17 of the United States Code, provides a statutory license that allows for the public performance of sound recordings by means of a digital audio transmission by, among others, eligible nonsubscription transmission services and new subscription services. 17 U.S.C. 114(f). For purposes of the section 114 license, an ''eligible nonsubscription transmission'' is a noninteractive digital audio transmission that does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or other entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6). A ''new subscription service'' is a ''service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or preexisting satellite digital audio radio service.'' 17 U.S.C. 114(j)(8).

Services using the section 114 license may need to make one or more temporary or ''ephemeral'' copies of a sound recording to facilitate the transmission of that recording. The section 112 statutory license allows for the making of these ephemeral reproductions. 17 U.S.C. 112(e).

Chapter 8 of the Copyright Act requires the Judges to conduct proceedings every five years to determine the rates and terms for the sections 114 and 112 statutory licenses. 17 U.S.C. 801(b)(1), 804(b)(3)(A). The current proceeding commenced in January 2019 for rates and terms that will become effective on January 1, 2021, and end on December 31, 2025. Pursuant to section 804(b)(3)(A), the Judges published in the **Federal Register** a notice commencing the proceeding and requesting that interested parties submit their petitions to participate. 84 FR 359 (Jan. 24, 2019). CBI and SoundExchange each filed Petitions to Participate, as did others.

On September 23, 2019, SoundExchange and CBI submitted to the Judges a joint motion to adopt a partial settlement of their interests in the proceeding. SoundExchange and CBI requested that the Judges ''endeavor to determine before the deadline for the filing of written rebuttal statements in this Proceeding (January 10, 2020) whether or not they will adopt the Settlement.'' Joint Motion at 1.

Statutory Timing of Adoption of Rates and Terms

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. The Judges must provide ''an opportunity to comment on the agreement'' to participants and non-participants in the rate proceeding who ''would be bound by the terms, rates, or other determination set by any agreement. . . .'' 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also ''object to [the agreement's] adoption as a basis for statutory terms and rates.'' *Id.*

The Judges ''may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,'' only ''if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.'' 17 U.S.C. 801(b)(7)(A)(ii).

Any rates and terms adopted pursuant to this provision would be binding on all copyright owners of sound recordings, college radio stations, and other noncommercial educational webcasters performing the sound recordings for the license period 2021–2025.

Proposed Adjustments to Rates and Terms

According to SoundExchange and CBI, the agreement generally continues in effect the current provisions of 37 CFR part 380, subpart C, which were themselves adopted pursuant to 17 U.S.C. 801(b)(7)(A) as part of the Webcasting IV proceeding, with two primary changes: (1) The minimum fee applicable to noncommercial educational webcasters will increase by $50 per year throughout the rate period; and (2) consistent with the preferences previously expressed by the Judges, the generally applicable provisions in subpart A will apply to noncommercial educational webcasters to the extent consistent with subpart C, and the corresponding provisions have been removed from subpart C. Joint Motion at 2.

The public may comment and object to any or all of the proposed regulations contained in this document. Such comments and objections must be submitted no later than November 20, 2019.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings, Webcasters.

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 380 as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Revise subpart C to read as follows:

Subpart C—Noncommercial Educational Webcasters

Sec.
380.20 Definitions.
380.21 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.22 Terms for making payment of royalty fees and statements of account.

§ 380.20 Definitions.

For purposes of this subpart, the following definitions apply:

Educational Transmission means an eligible nonsubscription transmission (as defined in 17 U.S.C. 114(j)(6)) made by a Noncommercial Educational Webcaster over the internet.

Noncommercial Educational Webcaster means a noncommercial webcaster (as defined in 17 U.S.C. 114(f)(4)(E)(i)) that:

(1) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Educational Transmissions and related Ephemeral Recordings;

(2) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations in this part;

(3) Is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are staffed substantially by students enrolled at, a

domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution;

(4) Is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(f)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to its criteria; and

(5) Takes affirmative steps not to make total transmissions in excess of 159,140 Aggregate Tuning Hours (ATH) on any individual channel or station in any month, if in any previous calendar year it has made total transmissions in excess of 159,140 ATH on any individual channel or station in any month.

§ 380.21 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Minimum fee for eligible Noncommercial Educational Webcasters.* Each Noncommercial Educational Webcaster that did not exceed 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and does not expect to make total transmissions in excess of 159,140 ATH on any individual channel or station in any calendar month during the applicable calendar year shall pay an annual, nonrefundable minimum fee in the amount set forth in paragraphs (a)(1) through (5) of this section (the ''Minimum Fee'') for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Educational Transmissions, for each calendar year it makes Educational Transmissions subject to this subpart. For clarity, each individual stream (*e.g.,* HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate Minimum Fee. The Minimum Fee shall constitute the annual per channel or per station royalty for all Educational Transmissions totaling not more than 159,140 ATH in a month on any individual channel or station, and for Ephemeral Recordings to enable such Educational Transmissions. In addition, a Noncommercial Educational Webcaster electing the reporting waiver described in § 380.22(d)(1) shall pay a $100 annual fee (the ''Proxy Fee'') to the Collective (for purposes of this subpart, the term ''Collective'' refers to SoundExchange, Inc.). The Minimum Fee for each year of the royalty period is:

(1) 2021: $550;

(2) 2022: $600;

(3) 2023: $650;

(4) 2024: $700; and

(5) 2025: $750.

(b) *Consequences of unexpectedly exceeding ATH cap.* In the case of a Noncommercial Educational Webcaster eligible to pay royalties under paragraph (a) of this section that unexpectedly makes total transmissions in excess of 159,140 ATH on any individual channel or station in any calendar month during the applicable calendar year:

(1) The Noncommercial Educational Webcaster shall, for such month and the remainder of the calendar year in which such month occurs, pay royalties in accordance, and otherwise comply, with the provisions of subpart B of this part applicable to Noncommercial Webcasters;

(2) The Minimum Fee paid by the Noncommercial Educational Webcaster for such calendar year will be credited to the amounts payable under the provisions of subpart B of this part applicable to Noncommercial Webcasters; and

(3) The Noncommercial Educational Webcaster shall, within 45 days after the end of each month, notify the Collective if it has made total transmissions in excess of 159,140 ATH on a channel or station during that month; pay the Collective any amounts due under the provisions of subpart B of this part applicable to Noncommercial Webcasters; and provide the Collective a statement of account pursuant to subpart A of this part.

(c) *Royalties for other Noncommercial Educational Webcasters.* A Noncommercial Educational Webcaster that is not eligible to pay royalties under paragraph (a) of this section shall pay royalties in accordance, and otherwise comply, with the provisions of subpart B of this part applicable to Noncommercial Webcasters.

(d) *Estimation of performances.* In the case of a Noncommercial Educational Webcaster that is required to pay royalties under paragraph (b) or (c) of this section on a per-Performance basis, that is unable to calculate actual total performances, and that is not required to report actual total performances under § 380.22(d)(3), the Noncommercial Educational Webcaster may pay its applicable royalties on an ATH basis, provided that the Noncommercial Educational Webcaster shall calculate such royalties at the applicable per-Performance rates based on the assumption that the number of sound recordings performed is 12 per hour. The Collective may distribute royalties paid on the basis of ATH hereunder in accordance with its generally applicable methodology for distributing royalties paid on such basis. In addition, and for the avoidance of doubt, a Noncommercial Educational Webcaster offering more than one channel or station shall pay per-Performance royalties on a per-channel or -station basis.

(e) *Allocation between ephemeral recordings and performance royalty fees.* The Collective must credit 5% of all royalty payments as payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making Educational Transmissions are included in the 5%.

§ 380.22 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Noncommercial Educational Webcaster shall make the royalty payments due under § 380.21 to the Collective.

(b) *Minimum fee.* Noncommercial Educational Webcasters shall submit the Minimum Fee, and Proxy Fee if applicable (see paragraph (d) of this section), accompanied by a statement of account, by January 31st of each calendar year, except that payment of the Minimum Fee, and Proxy Fee if applicable, by a Noncommercial Educational Webcaster that was not making Educational Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of January 31st of each calendar year but begins doing so thereafter shall be due by the 45th day after the end of the month in which the Noncommercial Educational Webcaster commences doing so. At the same time the Noncommercial Educational Webcaster must identify all its stations making Educational Transmissions and identify which of the reporting options set forth in paragraph (d) of this section it elects for the relevant year (provided that it must be eligible for the option it elects).

(c) *Statements of account.* Any payment due under paragraph (a) of this section shall be accompanied by a corresponding statement of account on a form provided by the Collective. A statement of account shall contain the following information:

(1) The name of the Noncommercial Educational Webcaster, exactly as it appears on the notice of use, and if the statement of account covers a single station only, the call letters or name of the station;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the

person to be contacted for information or questions concerning the content of the statement of account;

(3) The signature of a duly authorized representative of the applicable educational institution;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) The title or official position held by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned duly authorized representative of the applicable educational institution, have examined this statement of account; hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence; and further certify that the licensee entity named herein qualifies as a Noncommercial Educational Webcaster for the relevant year, and did not exceed 159,140 total ATH in any month of the prior year for which the Noncommercial Educational Webcaster did not submit a statement of account and pay any required additional royalties.

(d) *Reporting by Noncommercial Educational Webcasters in general*—(1) *Reporting waiver.* In light of the unique business and operational circumstances with respect to Noncommercial Educational Webcasters, and for the purposes of this subpart only, a Noncommercial Educational Webcaster that did not exceed 80,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 80,000 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to pay to the Collective a nonrefundable, annual Proxy Fee of $100 in lieu of providing reports of use for the calendar year pursuant to the regulations at § 370.4 of this chapter. In addition, a Noncommercial Educational Webcaster that unexpectedly exceeded 80,000 total ATH on one or more channels or stations for more than one month during the immediately preceding calendar year may elect to pay the Proxy Fee and receive the reporting waiver described in this paragraph (d)(1) during a calendar year, if it implements measures reasonably calculated to ensure that it will not make Educational Transmissions exceeding 80,000 total ATH during any month of that calendar year. The Proxy Fee is intended to defray the Collective's costs associated with the reporting waiver in this paragraph (d)(1), including development of proxy usage data. The Proxy Fee shall be paid by the date specified in paragraph (b) of this section for paying the Minimum Fee for the applicable calendar year and shall be accompanied by a certification on a form provided by the Collective, signed by a duly authorized representative of the applicable educational institution, stating that the Noncommercial Educational Webcaster is eligible for the Proxy Fee option because of its past and expected future usage and, if applicable, has implemented measures to ensure that it will not make excess Educational Transmissions in the future.

(2) *Sample-basis reports.* A Noncommercial Educational Webcaster that did not exceed 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 159,140 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to provide reports of use on a sample basis (two weeks per calendar quarter) in accordance with the regulations at § 370.4 of this chapter, except that, notwithstanding § 370.4(d)(2)(vi), such an electing Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances and may in lieu thereof provide channel or station name and play frequency. Notwithstanding the preceding sentence, a Noncommercial Educational Webcaster that is able to report ATH or actual total performances is encouraged to do so. These reports of use shall be submitted to the Collective no later than January 31st of the year immediately following the year to which they pertain.

(3) *Census-basis reports.* (i) If any of the conditions in paragraphs (d)(3)(i)(A) through (C) of this section is satisfied, a Noncommercial Educational Webcaster must report pursuant to paragraph (d)(3) of this section:

(A) The Noncommercial Educational Webcaster exceeded 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year;

(B) The Noncommercial Educational Webcaster expects to exceed 159,140 total ATH for any individual channel or station for any calendar month in the applicable calendar year; or

(C) The Noncommercial Educational Webcaster otherwise does not elect to be subject to paragraph (d)(1) or (2) of this section.

(ii) A Noncommercial Educational Webcaster required to report pursuant to paragraph (d)(3)(i) of this section shall provide reports of use to the Collective quarterly on a census reporting basis in accordance with § 370.4 of this chapter, except that, notwithstanding § 370.4(d)(2), such a Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances, and may in lieu thereof provide channel or station name and play frequency, during the first calendar year it reports in accordance with paragraph (d)(3) of this section. For the avoidance of doubt, after a Noncommercial Educational Webcaster has been required to report in accordance with paragraph (d)(3)(i) of this section for a full calendar year, it must thereafter include ATH or actual total performances in its reports of use. All reports of use under paragraph (d)(3)(i) of this section shall be submitted to the Collective no later than the 45th day after the end of each calendar quarter.

(e) *Server logs.* Noncommercial Educational Webcasters shall retain for a period of no less than three full calendar years server logs sufficient to substantiate all information relevant to eligibility, rate calculation and reporting under this subpart. To the extent that a third-party Web hosting or service provider maintains equipment or software for a Noncommercial Educational Webcaster and/or such third party creates, maintains, or can reasonably create such server logs, the Noncommercial Educational Webcaster shall direct that such server logs be created and maintained by said third party for a period of no less than three full calendar years and/or that such server logs be provided to, and maintained by, the Noncommercial Educational Webcaster.

(f) *Terms in general.* Subject to the provisions of this subpart, terms governing late fees, distribution of royalties by the Collective, unclaimed funds, record retention requirements, treatment of Licensees' confidential information, audit of royalty payments and distributions, and any definitions for applicable terms not defined in this subpart shall be those set forth in subpart A of this part.

Dated: October 23, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2019–23485 Filed 10–29–19; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401, 403, and 404

[USCG–2019–0736]

RIN 1625–AC56

Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the Great Lakes Pilotage Act of 1960, the Coast Guard is proposing new base pilotage rates for the 2020 shipping season. This proposed rule would adjust the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. The net result of decreased operating expenses for the associations compared to the previous year, inflation of pilot compensation, and the addition of one working pilot at the beginning of the 2020 shipping season is a 3 percent increase in pilotage rates. In addition, the Coast Guard is not proposing any surcharges for the 2020 shipping season, which would result in a 1 percent net decrease in pilotage costs compared to the 2019 season, when combined with the changes above. The Coast Guard is also proposing to clarify the rules related to the working capital fund.

DATES: Comments and related material must be received by the Coast Guard on or before November 29, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0736 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Brian Rogers, Commandant (CG–WWM–2), Coast Guard; telephone 202–372–1535, email *Brian.Rogers@uscg.mil,* or fax 202–372–1914.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments
II. Abbreviations
III. Executive Summary
IV. Basis and Purpose
V. Background
VI. Discussion of Proposed Methodological and Other Changes
VII. Discussion of Proposed Rate Adjustment
District One:
A. Step 1: Recognize Previous Operating Expenses
B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation
C. Step 3: Estimate Number of Working Pilots
D. Step 4: Determine Target Pilot Compensation Benchmark
E. Step 5: Project Working Capital Fxund
F. Step 6: Project Needed Revenue
G. Step 7: Calculate Initial Base Rates
H. Step 8: Calculate Average Weighting Factors by Area
I. Step 9: Calculate Revised Base Rates
J. Step 10: Review and Finalize Rates
District Two:
A. Step 1: Recognize Previous Operating Expenses
B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation
C. Step 3: Estimate Number of Working Pilots
D. Step 4: Determine Target Pilot Compensation Benchmark
E. Step 5: Project Working Capital Fund
F. Step 6: Project Needed Revenue
G. Step 7: Calculate Initial Base Rates
H. Step 8: Calculate Average Weighting Factors by Area
I. Step 9: Calculate Revised Base Rates
J. Step 10: Review and Finalize Rates
District Three:
A. Step 1: Recognize Previous Operating Expenses
B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation
C. Step 3: Estimate Number of Working Pilots
D. Step 4: Determine Target Pilot Compensation Benchmark
E. Step 5: Project Working Capital Fund
F. Step 6: Project Needed Revenue
G. Step 7: Calculate Initial Base Rates
H. Step 8: Calculate Average Weighting Factors by Area
I. Step 9: Calculate Revised Base Rates
J. Step 10: Review and Finalize Rates
K. Surcharges
VIII. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. Documents mentioned in this proposed rule, and all public comments, will be available in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you visit the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018)..

We do not plan to hold a public meeting, but we will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

AMOU American Maritime Officers Union
APA American Pilots Association
BLS Bureau of Labor Statistics
CAD Canadian dollars
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPAC Great Lakes Pilotage Advisory Committee
GLPMS Great Lakes Pilotage Management System
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
NTSB National Transportation Safety Board
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
RA Regulatory analysis
SBA Small Business Administration
§ Section symbol
SLSMC Saint Lawrence Seaway Management Corporation
U.S.C. United States Code
USD United States dollars

III. Executive Summary

Pursuant to the Great Lakes Pilotage Act of 1960 (''the Act''),[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway — including setting the rates for pilotage services and adjusting them on an annual basis. The rates, which currently range from $306 to $733 per pilot hour (depending on which of the specific six areas pilotage service is provided), are paid by shippers to pilot associations. The three pilot associations, which are the exclusive U.S. source of registered pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate working pilots, and train new pilots. We use a ratemaking methodology that we have developed since 2016 in accordance with our statutory requirements and regulations. Our ratemaking methodology calculates the revenue needed for each pilotage association (including operating expenses, compensation, and infrastructure needs), and then divides that amount by the expected shipping traffic over the course of the coming year to produce an hourly rate. This process is currently effected through a 10-step methodology which is explained in detail in this notice of proposed rulemaking (NPRM).

In this NPRM, as part of our annual review, we are proposing new pilotage rates for 2020 based on the existing methodology. The result is an increase in rates for four areas, and a decrease in rates for the remaining two areas. These changes are due to a combination of four factors: (1) Decreased total operating expenses for the associations compared to the previous year,[2] (2) an increase in the amount of money needed for the working capital fund, (3) inflation of pilot compensation by 2 percent, and (4) the net addition of one working pilot at the beginning of the 2020 shipping season in District Two. Based on the ratemaking model discussed in this NPRM, we are proposing the rates shown in Table 1.

TABLE 1—CURRENT AND PROPOSED PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate
District One: Designated	St. Lawrence River	$733	$757
District One: Undesignated	Lake Ontario	493	462
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	603	602
District Two: Undesignated	Lake Erie	531	573
District Three: Designated	St. Mary's River	594	621
District Three: Undesignated	Lakes Huron, Michigan, and Superior	306	327

This proposed rule would impact 52 U.S. Great Lakes pilots, 3 pilot associations, and the owners and operators of an average of 266 oceangoing vessels that transit the Great Lakes annually. This proposed rule is not economically significant under Executive Order 12866 and would not affect the Coast Guard's budget or increase Federal spending. The estimated overall annual regulatory economic impact of this rate change is a net decrease of $225,658 in estimated payments made by shippers from the 2019 shipping season. Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section VIII of this preamble provides the regulatory impact analyses of this proposed rule.

IV. Basis and Purpose

The legal basis of this rulemaking is the Great Lakes Pilotage Act of 1960 (''the Act''),[3] which requires foreign vessels and U.S. vessels operating ''on register, meaning '' those U.S. vessels engaged in foreign trade, to use U.S. or Canadian registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system.[4] For the U.S. registered Great Lakes pilots (''pilots''), the Act requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' [5] The Act requires that rates be established or reviewed and adjusted each year, not later than March 1.[6] The Act requires that base rates be established by a full ratemaking at least once every 5 years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted.[7] The Secretary's duties and authority under the Act have been delegated to the Coast Guard.[8]

The purpose of this NPRM is to propose new pilotage rates for the 2020 shipping season. The Coast Guard believes that the new rates would continue to promote pilot retention, ensure safe, efficient, and reliable pilotage services on the Great Lakes, and provide adequate funds to upgrade and maintain infrastructure.

V. Background

Pursuant to the Act, the Coast Guard, in conjunction with the Canadian Great Lakes Pilotage Authority (GLPA), regulates shipping practices and rates on the Great Lakes. Under Coast Guard regulations, all vessels engaged in foreign trade (often referred to as ''salties'') are required to engage U.S. or Canadian pilots during their transit through the regulated waters.[9] U.S. and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not affected.[10] Generally, vessels are assigned a U.S. or Canadian pilot depending on the order in which they transit a particular area of the Great Lakes and do not choose the pilot they receive. If a vessel is assigned a U.S. pilot, that pilot will be assigned by the pilotage association responsible for the particular district in which the vessel is operating, and the vessel operator will pay the pilotage association for the pilotage services. The Canadian GLPA

[1] Title 46 of the United States Code (U.S.C.) Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

[2] Operating expenses decreased for the District One: Undesignated area and all of District Two. They increased for the District One: Designated area and all of District Three.

[3] 46 U.S.C. Chapter 93; Public Law 86–555, 74 Stat. 259, as amended.

[4] 46 U.S.C. 9302(a)(1).

[5] 46 U.S.C. 9303(f).

[6] *Id.*

[7] *Id.*

[8] Department of Homeland Security (DHS) Delegation No. 0170.1, para. II (92.f).

[9] See title 46 of the Code of Federal Regulations (CFR) part 401.

[10] 46 U.S.C. 9302(f). A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes.

establishes the rates for Canadian registered pilots.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard's Director of the Great Lakes Pilotage (''the Director'') to operate a pilotage pool. The Saint Lawrence Seaway Pilotage Association provides pilotage services in District One, which includes all U.S. waters of the St. Lawrence River and Lake Ontario. The Lakes Pilotage Association provides pilotage services in District Two, which includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. Finally, the Western Great Lakes Pilotage Association provides pilotage services in District Three, which includes all U.S. waters of the St. Mary's River; Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior.

Each pilotage district is further divided into ''designated'' and ''undesignated'' areas, which is depicted in Table 2 below. Designated areas, classified as such by Presidential Proclamation, are waters in which pilots must, at all times, be fully engaged in the navigation of vessels in their charge.[11] Undesignated areas, on the other hand, are open bodies of water not subject to the same pilotage requirements. While working in undesignated areas, pilots must ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' [12] For these reasons, pilotage rates in designated areas can be significantly higher than those in undesignated areas.

TABLE 2—AREAS OF THE GREAT LAKES AND ST. LAWRENCE SEAWAY

District	Pilotage association	Designation	Area No.[13]	Area name[14]
One	Saint Lawrence Seaway Pilotage Association	Designated	1	St. Lawrence River.
		Undesignated	2	Lake Ontario.
Two	Lake Pilotage Association	Designated	5	Navigable waters from Southeast Shoal to Port Huron, MI.
		Undesignated	4	Lake Erie.
Three	Western Great Lakes Pilotage Association	Designated	7	St. Mary's River.
		Undesignated	6	Lakes Huron and Michigan.
		Undesignated	8	Lake Superior.

Each pilot association is an independent business and is the sole provider of pilotage services in the district in which it operates. Each pilot association is responsible for funding its own operating expenses, maintaining infrastructure, acquiring and implementing technological advances, training personnel/partners and pilot compensation. The Coast Guard developed a 10-step ratemaking methodology to derive a pilotage rate that covers these expenses based on the estimated amount of traffic. The methodology is designed to measure how much revenue each pilotage association would need to cover expenses and provide competitive compensation to working pilots. We then divide that amount by the historic 10-year average for pilotage demand. We recognize that in years where traffic is above average, pilot associations will accrue more revenue than projected, while in years where traffic is below average, they will take in less. We believe that over the long term, however, this system ensures that infrastructure would be maintained and that pilots will receive adequate compensation and work a reasonable number of hours, with adequate rest between assignments, to ensure retention of highly trained personnel.

Over the past 4 years, the Coast Guard has made adjustments to the Great Lakes pilotage ratemaking methodology. In 2016, we made significant changes to the methodology, moving to an hourly billing rate for pilotage services and changing the compensation benchmark to a more transparent model. In 2017, we added additional steps to the ratemaking methodology, including new steps that accurately account for the additional revenue produced by the application of weighting factors (discussed in detail in Steps 7 through 9 of this preamble). In 2018, we revised the methodology by which we develop the compensation benchmark, based upon U.S. mariners rather than Canadian registered pilots. The current methodology, which was finalized in the Great Lakes Pilotage Rates—2019 Annual Review and Revisions to Methodology final rule (84 FR 20551), published May 10, 2019, is designed to accurately capture all of the costs and revenues associated with Great Lakes pilotage requirements and produce an hourly rate that adequately and accurately compensates pilots and covers expenses. The current methodology is summarized in the section below.

Summary of Ratemaking Methodology

As stated above, the ratemaking methodology, outlined in 46 CFR 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic expected in each district. The result is an hourly rate, determined separately for each of the areas administered by the Coast Guard.

In Step 1, ''Recognize previous operating expenses,'' (§ 404.101) the Director reviews audited operating expenses from each of the three pilotage associations. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. So in calculating the 2020 rates in this proposal, we are beginning with the audited expenses from the 2017 shipping season.

While each pilotage association operates in an entire district, the Coast Guard tries to determine costs by area. Thus, with regard to operating expenses, we allocate certain operating expenses to undesignated areas, and certain expenses to designated areas. In some cases (*e.g.,* insurance for applicant pilots who operate in undesignated areas

[11] Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960,* December 22, 1960.

[12] 46 U.S.C. 9302(a)(1)(B).

[13] Area 3 is the Welland Canal, which is serviced exclusively by the Canadian GLPA and, accordingly, is not included in the United States pilotage rate structure.

[14] The areas are listed by name in the Code of Federal Regulations, see 46 CFR 401.405.

only), we can allocate the costs based on where they are actually accrued. In other situations (*e.g.,* general legal expenses), expenses are distributed between designated and undesignated waters on a *pro rata* basis, based upon the proportion of income forecasted from the respective portions of the district.

In Step 2, ''Project operating expenses, adjusting for inflation or deflation,'' (§ 404.102) the Director develops the 2020 projected operating expenses. To do this, we apply inflation adjustors for 3 years to the operating expense baseline received in Step 1. The inflation factors used are from the Bureau of Labor Statistics' (BLS) Consumer Price Index (CPI) for the Midwest Region, or, if not available, the Federal Open Market Committee (FOMC) median economic projections for Personal Consumption Expenditures (PCE) inflation. This step produces the total operating expenses for each area and district.

In Step 3, ''Estimate number of working pilots,'' (§ 404.103) the Director calculates how many pilots are needed for each district. To do this, we employ a ''staffing model,'' described in § 401.220, paragraphs (a)(1) through (a)(3), to estimate how many pilots would be needed to handle shipping during the beginning and close of the season. This number is helpful in providing guidance to the Director in approving an appropriate number of credentials for pilots.

For the purpose of the ratemaking calculation, we determine the number of working pilots provided by the pilotage associations (see § 404.103), which is what we use to determine how many pilots need to be compensated via the pilotage fees collected.

In Step 4, ''Determine target pilot compensation benchmark,'' (§ 404.104) the Director determines the revenue needed for pilot compensation in each area and district. This step contains two processes. In previous years, in the first process, we calculated the total compensation for each pilot using a ''compensation benchmark.'' Next, we multiplied the individual pilot compensation by the number of working pilots for each area and district (from Step 3), producing a figure for total pilot compensation. Because pilots are paid by the associations, but the costs of pilotage is divided by area for accounting purposes, we assigned a certain number of pilots for the designated areas and a certain number of pilots for the undesignated areas to determine the revenues needed for each area. To make the determination of how many pilots to assign, we used the staffing model designed to determine the total number of pilots, described in Step 3, above.

For the 2020 ratemaking, the Coast Guard is proposing to update the benchmark compensation model in accordance with § 404.104(b), switching from using the American Maritime Officers Union (AMOU) 2015 aggregated wage and benefit information, to using the 2019 compensation benchmark. Prior to 2016, the Coast Guard based the compensation benchmark on data provided by the AMOU regarding its contract for first mates on the Great Lakes. However, in 2016 the AMOU elected to no longer provide this data to the Coast Guard, and thus, in the 2016 ratemaking, we used average compensation for a Canadian pilot plus a 10 percent adjustment. As a result of a legal challenge filed by the shipping industry, the court found that the Coast Guard did not adequately support the 10 percent addition to the Canadian GLPA benchmark, and thus its use was deemed arbitrary and capricious. The Coast Guard then based the 2018 benchmark on data provided by the AMOU regarding its contract for first mates on the Great Lakes in the 2011 to 2015 period, and adjusted it for inflation using FOMC median economic projections for PCE inflation. We used the information provided by the AMOU because it was the most recent publicly available information to which we had access. This benchmark has successfully achieved the Coast Guard's goals of safety through rate and compensation stability while also promoting recruitment and retention of qualified United States registered pilots. Therefore, the Coast Guard proposes to use this as the compensation benchmark for future rates.

In the second process of Step 4, set forth in § 404.104(c), the Director determines the total compensation figure for each District. To do this, the Director multiplies the compensation benchmark by the number of working pilots for each area and district (from Step 3), producing a figure for total pilot compensation.

In Step 5, ''Project working capital fund,'' (§ 404.105) the Director calculates a value that is added to pay for needed capital improvements. This value is calculated by adding the total operating expenses (derived in Step 2) to the total pilot compensation (derived in Step 4), and multiplying that figure by the preceding year's average annual rate of return for new issues of high-grade corporate securities. This figure constitutes the ''working capital fund'' for each area and district.

In Step 6, ''Project needed revenue,'' (§ 404.106) the Director simply adds up the totals produced by the preceding steps. The projected operating expense for each area and district (from Step 2) is added to the total pilot compensation (from Step 4) and the working capital fund contribution (from Step 5). The total figure, calculated separately for each area and district, is the ''needed revenue.''

In Step 7, ''Calculate initial base rates,'' (§ 404.107) the Director calculates an hourly pilotage rate to cover the needed revenue as calculated in Step 6. This step consists of first calculating the 10-year hours of traffic average for each area. Next, the revenue needed in each area (calculated in Step 6) is divided by the 10-year hours of traffic average to produce an initial base rate.

An additional element, the ''weighting factor,'' is required under § 401.400. Pursuant to that section, ships pay a multiple of the ''base rate'' as calculated in Step 7 by a number ranging from 1.0 (for the smallest ships, or ''Class I'' vessels) to 1.45 (for the largest ships, or ''Class IV'' vessels). As this significantly increases the revenue collected, we need to account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services.

In Step 8, ''Calculate average weighting factors by area,'' (§ 404.108) the Director calculates how much extra revenue, as a percentage of total revenue, has historically been produced by the weighting factors in each area. We do this by using a historical average of the applied weighting factors for each year since 2014 (the first year the current weighting factors were applied).

In Step 9, ''Calculate revised base rates,'' (§ 404.109) the Director modifies the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from Step 7) by the corresponding average weighting factor (from Step 8), to produce a revised rate.

In Step 10, ''Review and finalize rates,'' (§ 404.110) often referred to informally as ''director's discretion,'' the Director reviews the revised base rates (from Step 9) to ensure that they meet the goals set forth in the Act and 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested pilots fairly; and providing appropriate profit for improvements. Because it is our goal

to be as transparent as possible in our ratemaking procedure, we use this step sparingly to adjust rates.

After the base rates are set, § 401.401 permits the Coast Guard to apply surcharges. We previously used surcharges to pay for the training of new pilots, rather than incorporating training costs into the overall ''needed revenue'' used in the calculation of the base rates. The surcharge accelerates the reimbursement of certain necessary and reasonable expense. Last year, we applied a surcharge to account for the associations' expenses for the Applicant Trainee and Apprentice Pilots, which included providing a stipend, lodging, training, and per diem. We implemented these surcharges because of a large number of pending pilot retirements, and a large amount of recruitment at the pilot associations. Without the surcharge, the associations would have been reimbursed for expenses associated with training new pilots 3 years later via the rate. However, any pilot who retired prior to that 3-year date would not have been reimbursed. Therefore, we applied a surcharge to ensure that these pilots would not have to incur the costs of training their replacements. As the vast majority of registered pilots are not anticipated to reach the regulatory required retirement age of 70 in the next 20 years, we believe that pilot associations are now able to plan for the costs associated with retirements without relying on the Coast Guard to impose surcharges.

VI. Discussion of Proposed Methodological and Other Changes

For 2020, the Coast Guard is proposing no new methodological changes to the ratemaking model. We believe that the methodology laid out in the 2019 Annual Review would produce rates for the 2020 shipping season that would ensure safe and reliable pilotage services are available on the Great Lakes.

In previous years, several commenters have raised issues regarding the working capital fund. The purpose of the working capital fund is to ensure that associations have a way to set aside money to pay for high cost items and infrastructure improvements. The Coast Guard is proposing changes in this proposed rule to codify the procedures related to the use of funds and accounting requirements related to the working capital fund.

The Coast Guard is proposing two changes to the regulatory text related to the working capital fund, formerly called ''return on investment.'' In 46 CFR 404.106, the Coast Guard proposes to change the words ''return on investment'' to ''working capital fund,'' as that is the current name for that fund. This change was made in the Great Lakes Pilotage Rates 2017 Annual Review final rule (82 FR 41466, August 31, 2017), but the entry was overlooked in that rule. Prior to 2017, the working capital fund described in 46 CFR 404.105 was called ''return on investment.'' In the Great Lakes Pilotage Rates 2017 Annual Review final rule (82 FR 41466, August 31, 2017), the Coast Guard changed the name of that fund to the ''working capital fund.'' However, the 2017 final rule did not change a reference to ''return on investment'' in 46 CFR 404.106. This proposed change corrects that oversight so that 46 CFR 404.105 and 46 CFR 404.106 will use consistent terminology. In addition, the Coast Guard proposes to incorporate into regulations the policy currently being followed by the pilots associations regarding these funds. The Coast Guard proposes to add text to 46 CFR 403.110 requiring each pilot association set aside, in a separate account, an amount at least equal to the amount calculated in Step 5 of the ratemaking, and place restrictions on how those funds are expended. Under the proposed rule, pilot associations can only apply these funds in the working capital fund account to capital projects, infrastructure improvements, infrastructure maintenance, and non-recurring technology purchases that are necessary for providing pilotage services. The pilot associations may grow the working capital fund over successive shipping seasons for a future significant purchase, including for a down payment on a purchase that would also be financed in part. If needed, pilot associations could request a waiver from the requirements from the Director. We invite interested parties to provide their input and recommendations on this issue.

VII. Discussion of Proposed Rate Adjustments

In this NPRM, based on the current methodology described in the previous section, we are proposing new pilotage rates for 2020. We propose to conduct the 2020 ratemaking as an ''interim year,'' as was done in 2019, rather than a full ratemaking as was conducted in 2018. Thus, the Coast Guard proposes to adjust the compensation benchmark pursuant to § 404.104(b) for this purpose, rather than § 404.104(a).

This section discusses the proposed rate changes using the ratemaking steps provided in 46 CFR part 404. We will detail all ten steps of the ratemaking procedure for each of the three districts to show how we arrived at the proposed new rates.

District One

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2017 expenses and revenues.[15] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, costs are applied to the designated or undesignated area based on where they were actually accrued. For example, costs for ''Applicant pilot license insurance'' in District One are assigned entirely to the undesignated areas, as applicant pilots work exclusively in those areas. For costs accrued by the pilot associations generally, for example, such as employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District One is shown in Table 3.

As noted above, in 2016, the Coast Guard began authorizing surcharges to cover the training costs of applicant pilots. The surcharges were intended to reimburse pilot associations for training applicants in a more timely fashion than if those costs were listed as operating expenses, which would have required 3 years to reimburse. The rationale for using surcharges to cover these expenses, rather than including the costs as operating expenses, was so these non-recurring costs could be recovered in a more timely fashion, and so that retiring pilots would not have to cover the costs of training their replacements. Because operating expenses incurred are not actually recouped for a period of 3 years, the Coast Guard added a $150,000 surcharge per applicant pilot, beginning in 2016, to recoup those costs in the year incurred. Now that these issues are no longer a concern, we are not proposing any surcharges for the 2020 shipping season.

We also propose to deduct 3 percent of the ''shared counsel'' expenses, as stated in the auditor's reports for each district to account for lobbying expenditures. Pursuant to 46 CFR 404.2(c)(3), lobbying expenses are not permitted to be recouped as operating expenses.

[15] These reports are available in the docket for this rulemaking (see Docket #USCG–2019–0736).

For District One, we do not propose any Director's adjustments, other than the surcharge adjustment and lobbying expenses described above. Other adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking where indicated under the **ADDRESSES** portion of the preamble.

TABLE 3—2017 RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported expenses for 2017	District One		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Operating Expenses:			
Other Pilotage Costs:			
Subsistence/Travel—Pilot	$440,456	$293,637	$734,093
Certified Public Accountant (CPA) Deduction	−189	−126	−315
Subsistence/Travel—Trainee	22,008	14,672	36,680
License Insurance—Pilots	48,620	32,413	81,033
License Insurance—Trainee	0	0	0
Payroll Taxes—Pilots	137,788	91,858	229,646
Payroll Taxes—Trainee	705	470	1,175
Training—Full Pilots Continuing Education	32,197	21,464	53,661
Cell and Internet Allowance—Pilots	24,312	16,208	40,520
Cell and Internet Allowance—Applicants	2,210	1,474	3,684
Other	675	450	1,125
Total Other Pilotage Costs	708,782	472,520	1,181,302
Pilot Boat and Dispatch Costs:			
Pilot Boat Expense	297,942	198,628	496,570
Dispatch Expense	50,100	33,400	83,500
Payroll Taxes	19,706	13,137	32,843
Total Pilot and Dispatch Costs	367,748	245,165	612,913
Administrative Expenses:			
Legal—General Counsel	2,098	1,399	3,497
Legal—Shared Counsel (K&L Gates)	26,835	17,890	44,725
CPA Adjustment	−5,020	−3,347	−8,367
Office Rent	0	0	0
Insurance	21,593	14,395	35,988
Employee Benefits	7,720	5,146	12,866
Payroll Taxes	6,665	4,444	11,109
Other Taxes	70,942	47,294	118,236
Travel	4,091	2,728	6,819
Depreciation/Auto Leasing/other	94,944	63,296	158,240
Interest	35,143	23,428	58,571
Dues and Subscriptions	19,471	12,981	32,452
Utilities	18,479	12,320	30,799
Salaries	69,953	46,636	116,589
Accounting/Professional Fees	6,111	4,074	10,185
Pilot Training	0	0	0
Applicant Pilot Training	0	0	0
Other	26,338	17,559	43,897
Total Administrative Expenses	405,363	270,243	675,606
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,481,893	987,928	2,469,821
Proposed Adjustments (Director):			
Total Director's Adjustments	0	0	0
Total Operating Expenses (OpEx + Adjustments)	1,481,893	987,928	2,469,821

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2017 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2018 inflation rate.[16] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020 inflation modification.[17] Based on that information, the calculations for Step 2 are as follows:

[16] The 2018 inflation rate is available at *https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_midwest_table.pdf.* Specifically the CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100''. Downloaded June 12, 2019.

[17] The 2019 and 2020 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf.* We used the PCE median inflation value found in table 1, Downloaded June 12, 2019.

TABLE 4—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	$1,481,893	$987,928	$2,469,821
2018 Inflation Modification (@1.9%)	28,156	18,771	46,927
2019 Inflation Modification (@1.8%)	27,181	18,121	45,302
2020 Inflation Modification (@2%)	30,745	20,496	51,241
Adjusted 2020 Operating Expenses	1,567,975	1,045,316	2,613,291

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of working pilots based on data provided by the Saint Lawrence Seaway Pilots Association. Using these numbers, we estimate that there will be 17 working pilots in 2020 in District One. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in Table 5. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 5—AUTHORIZED PILOTS

Item	District One
Maximum number of pilots (per § 401.220(a)) [18]	17
2020 Authorized pilots (total)	17
Pilots assigned to designated areas	10
Pilots assigned to undesignated areas	7

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. Because we do not have a value for the employment cost index for 2020, we multiply the 2019 compensation benchmark of $359,887 by the Median PCE Inflation value of 2.0 percent.[19] Based on the projected 2020 inflation estimate, the proposed compensation benchmark for 2020 is $367,085 per pilot.

Next, we certify that the number of pilots estimated for 2020 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 17 pilots for District One, which is more than or equal to the numbers of working pilots provided by the pilot associations. In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of working pilots for District One, as shown in Table 6.

TABLE 6—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$367,085	$367,085	$367,085
Number of Pilots	10	7	17
Total Target Pilot Compensation	$3,670,850	$2,569,595	$6,240,445

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add together the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.93 percent.[20] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in Table 7.

[18] For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[19] *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf.*

[20] Moody's Seasoned Aaa Corporate Bond Yield, average of 2018 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA.* (June 12, 2019)

TABLE 7—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$1,567,975	$1,045,316	$2,613,291
Total Target Pilot Compensation (Step 4)	3,670,850	2,569,595	6,240,445
Total 2018 Expenses	5,238,825	3,614,911	8,853,736
Working Capital Fund (3.93%)	205,886	142,066	347,952

F. Step 6: Project Needed Revenue

In this step, we add together all of the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in Table 8.

TABLE 8—REVENUE NEEDED FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2, See Table 4)	$1,567,975	$1,045,316	$2,613,291
Total Target Pilot Compensation (Step 4, See Table 6)	3,670,850	2,569,595	6,240,445
Working Capital Fund (Step 5, See Table 7)	205,886	142,066	347,952
Total Revenue Needed	5,444,711	3,756,977	9,201,688

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District One, using the total time on task or pilot bridge hours.[21] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in Table 9.

TABLE 9—TIME ON TASK FOR DISTRICT ONE

[Hours]

Year	District One	
	Designated	Undesignated
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217
2015	5,743	6,667
2014	6,810	6,853
2013	5,864	5,529
2012	4,771	5,121
2011	5,045	5,377
2010	4,839	5,649
2009	3,511	3,947
Average	5,657	6,248

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. We present the calculations for each area in Table 10.

TABLE 10—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	Designated	Undesignated
Needed revenue (Step 6)	$5,444,711	$3,756,977

[21] To calculate the time on task for each district, the Coast Guard uses billing data from the Great Lakes Pilotage Management System (GLPMS). We pull the data from the system filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). After we have downloaded the data, we remove any overland transfers from the dataset, if necessary, and sum the total bridge hours, by area. We then subtract any non-billable delay hours from the total.

TABLE 10—INITIAL RATE CALCULATIONS FOR DISTRICT ONE—Continued

	Designated	Undesignated
Average time on task (hours)	5,657	6,248
Initial rate	$962	$601

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in Tables 11 and 12.[22]

TABLE 11—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	41	1	41
Class 1 (2016)	31	1	31
Class 1 (2017)	28	1	28
Class 1 (2018)	54	1	54
Class 2 (2014)	285	1.15	327.75
Class 2 (2015)	295	1.15	339.25
Class 2 (2016)	185	1.15	212.75
Class 2 (2017)	352	1.15	404.8
Class 2 (2018)	559	1.15	642.85
Class 3 (2014)	50	1.3	65
Class 3 (2015)	28	1.3	36.4
Class 3 (2016)	50	1.3	65
Class 3 (2017)	67	1.3	87.1
Class 3 (2018)	86	1.3	111.8
Class 4 (2014)	271	1.45	392.95
Class 4 (2015)	251	1.45	363.95
Class 4 (2016)	214	1.45	310.3
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	393	1.45	569.85
Total	3,556		4,528
Average weighting factor (weighted transits/number of transits)		1.27	

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	25	1	25
Class 1 (2015)	28	1	28
Class 1 (2016)	18	1	18
Class 1 (2017)	19	1	19
Class 1 (2018)	22	1	22
Class 2 (2014)	238	1.15	273.7
Class 2 (2015)	263	1.15	302.45
Class 2 (2016)	169	1.15	194.35
Class 2 (2017)	290	1.15	333.5
Class 2 (2018)	352	1.15	404.8
Class 3 (2014)	60	1.3	78
Class 3 (2015)	42	1.3	54.6
Class 3 (2016)	28	1.3	36.4
Class 3 (2017)	45	1.3	58.5
Class 3 (2018)	63	1.3	81.9
Class 4 (2014)	289	1.45	419.05
Class 4 (2015)	269	1.45	390.05
Class 4 (2016)	222	1.45	321.9
Class 4 (2017)	285	1.45	413.25
Class 4 (2018)	382	1.45	553.9
Total	3,109		4,028

[22] To calculate the number of transits by vessel class, we use the billing data from GLPMS, filtering by district, year, job status (we only include closed jobs), and flagging code (we only include U.S. jobs). We then count the number of jobs by vessel class and area.

TABLE 12—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Average weighting factor (weighted transits/number of transits)		1.30	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that once the impact of the weighting factors are considered; the total cost of pilotage would be equal to the revenue needed. To do this, we divide the initial base rates, calculated in Step 7, by the average weighting factors calculated in Step 8, as shown in Table 13.

TABLE 13—REVISED BASE RATES FOR DISTRICT ONE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate/ average weighting factor)
District One: Designated	$962	1.27	$757
District One: Undesignated	601	1.30	462

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish that the proposed rates do meet the goal of ensuring safe, efficient and reliable pilotage, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in Table 14.

TABLE 14—PROPOSED FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate
District One: Designated	St. Lawrence River	$733	$757
District One: Undesignated	Lake Ontario	493	462

District Two

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2017 expenses and revenues.[23] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, costs are applied to the designated or undesignated area based on where they were actually incurred. For example, costs for ''Applicant pilot license insurance'' in District One are assigned entirely to the undesignated areas, as applicant pilots work exclusively in those areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Two are shown in Table 15.

In addition to the surcharge adjustment and lobbying expenses described for District One in Section VII A. *Step 1: Recognize previous operating expenses,* and the adjustments made by the auditors, as explained in the auditors' reports (available in the docket where indicated in the **ADDRESSES** portion of this document), the Director is proposing one adjustment to District Two's operating expenses. The Director proposes an adjustment to disallow $120,350 in ''housing allowance'' expenses. The Coast Guard agrees with the Internal Revenue Service (IRS) that an employer-provided housing allowance is a fringe benefit, and we consider it to be employee compensation. In addition, we expect those appointed as registered pilots to live in the region in which they are employed. We expect that if a pilot chooses to live outside their region of employment, they should have to pay for their accommodations, and this cost should not be passed on to the shippers via the rate. Therefore, we propose not including any housing allowance the district chooses to provide their pilots in the ratemaking calculation.

[23] These reports are available in the docket for this rulemaking (see Docket No. USCG–2019–0736).

TABLE 15—2017 RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported expenses for 2017	District Two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Operating Expenses:			
Other Pilotage Costs:			
Subsistence/Travel—Pilots	$116,402	$174,602	$291,004
Subsistence/Travel—Applicants	52,212	78,317	130,529
Housing Allowance—Pilots	30,212	45,318	75,530
Housing Allowance—Applicants	17,928	26,892	44,820
Winter Meeting Allowance	8,280	12,420	20,700
Telecommunication Allowance	11,662	17,493	29,155
Payroll taxes—Pilots	57,126	85,688	142,814
Payroll taxes—Applicants	26,025	39,038	65,063
License Insurance	8,326	12,490	20,816
Training	2,079	3,119	5,198
Total Other Pilotage Costs	330,252	495,377	825,629
Pilot Boat and Dispatch Costs:			
Pilot Boat Cost	217,514	326,272	543,786
CPA Adjustment	−34,860	−52,291	−87,151
Dispatch Expense	0	0	0
Employee Benefits	78,680	118,020	196,700
Payroll Taxes	12,230	18,344	30,574
Total Pilot and Dispatch Costs	273,564	410,345	683,909
Cost Affiliated Entity Expenses:			
Office Rent	26,275	39,413	65,688
CPA Adjustment	−4,742	−7,113	−11,855
Total Affiliated Entity Expense	21,533	32,300	53,833
Administrative Expenses:			
Legal—General Counsel	3,505	5,258	8,763
Legal—Shared Counsel (K&L Gates)	15,604	23,405	39,009
CPA Adjustment	−7,086	−10,630	−17,716
Employee benefits—Admin employees	79,534	119,301	198,835
Workman's Compensation—Pilots	48,663	72,994	121,657
Payroll taxes—Admin Employees	6,872	10,308	17,180
Insurance	10,844	16,265	27,109
Other Taxes	12,065	18,097	30,162
Admin Travel	6,316	9,475	15,791
Depreciation/Auto Lease/Other	24,168	36,251	60,419
Interest	21,526	32,288	53,814
CPA Adjustment	−20,920	−31,379	−52,299
Dues and subscriptions	10,760	16,140	26,900
CPA Adjustment	−581	−871	−1,452
Utilities	6,277	9,415	15,692
Salaries—Admin employees	60,568	90,852	151,420
Accounting	14,507	21,761	36,268
Other	13,936	20,904	34,840
Total Administrative Expenses	306,558	459,834	766,392
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	931,907	1,397,856	2,329,763
Proposed Adjustments (Director):			
Housing allowance for Pilots	−30,212	−45,318	−75,530
Housing allowance for Applicants	−17,928	−26,892	−44,820
Total Director's Adjustments	−48,140	−72,210	−120,350
Total Operating Expenses (OpEx + Adjustments)	883,767	1,325,646	2,209,413

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2017 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2018 inflation rate. [24] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020

[24] See footnote 13.

inflation modification.[25] Based on that information, the calculations for Step 1 are as follows:

TABLE 16—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

Item	District Two		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$883,767	$1,325,646	$2,209,413
2018 Inflation Modification (@1.9%)	16,792	25,187	41,979
2019 Inflation Modification (@1.8%)	16,210	24,315	40,525
2020 Inflation Modification (@2%)	18,335	27,503	45,838
Adjusted 2020 Operating Expenses	935,104	1,402,651	2,337,755

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of working pilots based on input from the Lakes Pilots Association. Using these numbers, we estimate that there will be 15 working pilots in 2020 in District Two. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in Table 17. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 17—AUTHORIZED PILOTS

Item	District Two
Maximum number of pilots (per § 401.220(a)) [26]	15
2020 Authorized pilots (total)	15
Pilots assigned to designated areas	7
Pilots assigned to undesignated areas	8

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. Because we do not have a value for the employment cost index for 2020, we multiply the 2019 compensation benchmark of $359,887 by the Median PCE Inflation value of 2.0 percent.[27] Based on the projected 2020 inflation estimate, the proposed compensation benchmark for 2020 is $367,085 per pilot.

Next, we certify that the number of pilots estimated for 2020 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 15 pilots for District Two, which is more than or equal to the numbers of working pilots provided by the pilot associations.[28]

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of working pilots for District Two, as shown in Table 18.

TABLE 18—TARGET COMPENSATION FOR DISTRICT TWO

	Undesignated	Designated	Total
Target Pilot Compensation	$367,085	$367,085	$367,085
Number of Pilots	8	7	15
Total Target Pilot Compensation	$2,936,680	$2,569,595	$5,506,275

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add together the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 3.93 percent.[29] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in Table 19.

[25] See footnote 14.

[26] For a detailed calculation refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[27] *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf.*

[28] See Table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

[29] See footnote 17.

TABLE 19—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

Item	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$935,104	$1,402,651	$2,337,755
Total Target Pilot Compensation (Step 4)	2,936,680	2,569,595	5,506,275
Total 2018 Expenses	3,871,784	3,972,246	7,844,030
Working Capital Fund (3.93%)	152,161	156,109	308,270

F. Step 6: Project Needed Revenue

In this step, we add together all of the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). We show these calculations in Table 20.

TABLE 20—REVENUE NEEDED FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, See Table 16)	$935,104	$1,402,651	$2,337,755
Total Target Pilot Compensation (Step 4, See Table 18)	2,936,680	2,569,595	5,506,275
Working Capital Fund (Step 5, See Table 19)	152,161	156,109	308,270
Total Revenue Needed	4,023,945	4,128,355	8,152,300

G. Step 7: Calculate Initial Base Rates

Having determined the needed revenue for each area in the previous six steps, to develop an hourly rate, we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Two, using the total time on task or pilot bridge hours.[30] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in Table 21.

TABLE 21—TIME ON TASK FOR DISTRICT TWO

[Hours]

Year	Undesignated	Designated
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
2014	7,856	7,001
2013	4,603	4,750
2012	3,848	3,922
2011	3,708	3,680
2010	5,565	5,235
2009	3,386	3,017
Average	5,322	5,192

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in Table 22.

TABLE 22—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

Item	Undesignated	Designated
Needed revenue (Step 6)	$4,023,945	$4,128,355
Average time on task (hours)	5,322	5,192
Initial rate	$756	$795

[30] See footnote 18 for more information.

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculated the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in Tables 23 and 24.[31]

TABLE 23—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	35	1	35
Class 1 (2016)	32	1	32
Class 1 (2017)	21	1	21
Class 1 (2018)	37	1	37
Class 2 (2014)	356	1.15	409.4
Class 2 (2015)	354	1.15	407.1
Class 2 (2016)	380	1.15	437
Class 2 (2017)	222	1.15	255.3
Class 2 (2018)	123	1.15	141.45
Class 3 (2014)	20	1.3	26
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	11.7
Class 3 (2017)	12	1.3	15.6
Class 3 (2018)	3	1.3	3.9
Class 4 (2014)	636	1.45	922.2
Class 4 (2015)	560	1.45	812
Class 4 (2016)	468	1.45	678.6
Class 4 (2017)	319	1.45	462.55
Class 4 (2018)	196	1.45	284.20
Total	3,814		5,023
Average weighting factor (weighted transits/number of transits)		1.32	

TABLE 24—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	20	1	20
Class 1 (2015)	15	1	15
Class 1 (2016)	28	1	28
Class 1 (2017)	15	1	15
Class 1 (2018)	42	1	42
Class 2 (2014)	237	1.15	272.55
Class 2 (2015)	217	1.15	249.55
Class 2 (2016)	224	1.15	257.6
Class 2 (2017)	127	1.15	146.05
Class 2 (2018)	153	1.15	175.95
Class 3 (2014)	8	1.3	10.4
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	4	1.3	5.2
Class 3 (2017)	4	1.3	5.2
Class 3 (2018)	14	1.3	18.2
Class 4 (2014)	359	1.45	520.55
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407.45
Class 4 (2017)	185	1.45	268.25
Class 4 (2018)	379	1.45	549.55
Total	2,660		3,510
Average weighting factor (weighted transits/number of transits)		1.32	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that once the impact of the weighting factors are considered, the total cost of pilotage would be equal to the revenue needed. To do this, we divide the initial base rates, calculated in Step 7, by the average weighting factors calculated in Step 8, as shown in Table 25.

[31] See footnote 19 for more information.

TABLE 25—REVISED BASE RATES FOR DISTRICT TWO

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate/ average weighting factor)
District Two: Designated	$795	1.32	$602
District Two: Undesignated	756	1.32	573

J. Step 10: Review and Finalize Rates.

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish that the proposed rates do meet the goal of ensuring safe, efficient and reliable pilotage, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in Table 26.

TABLE 26—PROPOSED FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate
District Two: Undesignated	Lake Erie	$531	$573
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	603	602

District Three

A. Step 1: Recognize Previous Operating Expenses

Step 1 in our ratemaking methodology requires that the Coast Guard review and recognize the previous year's operating expenses (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2017 expenses and revenues.[32] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. In certain instances, costs are applied to the undesignated or designated area based on where they were actually accrued. For example, costs for ''Applicant pilot license insurance'' in District One are assigned entirely to the undesignated areas, as applicant pilots work exclusively in those areas. For costs accrued by the pilot associations generally, for example, employee benefits, the cost is divided between the designated and undesignated areas on a *pro rata* basis. The recognized operating expenses for District Three is laid out in Table 27.

In addition to the surcharge adjustment and lobbying expenses described for District One in Section VII A. *Step 1: Recognize previous operating expenses* and the adjustments made by the auditors, as explained in the auditors' reports, which are available in the docket for this rulemaking where indicated in the **ADDRESSES** portion of this document, the Director is proposing one adjustment to District Three's operating expenses. The Director proposes an adjustment to disallow $32,800 in ''housing allowance'' expenses. The Coast Guard agrees with the IRS that an employer-provided housing allowance is a fringe benefit, and we consider it to be employee compensation. In addition, we expect those appointed as registered pilots pilot to live in the region in which they are employed. We expect that if a pilot chooses to live outside their region of employment, they should have to pay for their accommodations, and this cost should not be passed on to the shippers via the rate. Therefore, we propose not including any housing allowance the district chooses to provide their pilots in the ratemaking calculation.

TABLE 27—2017 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2017	District Three			Total
	Undesignated[33] (Area 6)	Designated (Area 7)	Undesignated[34] (Area 8)	
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Operating Expenses:				
Other Pilotage Costs:				
Subsistence/Travel—Pilot	$237,036	$93,461	$92,458	$422,955
CPA Adjustment	−11,178	−4,407	−4,360	−19,945
Subsistence/Travel—Applicant	90,123	35,535	35,154	160,812
Payroll Taxes—Pilots	124,088	48,927	48,402	221,417

[32] These reports are available in the docket for this rulemaking (see Docket #USCG–2019–0736).

TABLE 27—2017 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported expenses for 2017	District Three			
	Undesignated [33] (Area 6)	Designated (Area 7)	Undesignated [34] (Area 8)	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Payroll Taxes—Applicants	25,553	10,075	9,967	45,595
License Insurance—Pilots	15,631	6,163	6,097	27,891
Training—Pilots	25,830	10,185	10,075	46,090
Training—Applicants	16,325	6,437	6,368	29,130
Housing Allowance	18,382	7,248	7,170	32,800
Winter Meeting	14,795	5,834	5,771	26,400
Cell Phone Allowance	26,186	10,325	10,214	46,725
Other Pilotage Costs	49,252	19,420	19,211	87,883
CPA Adjustment	−3,699	−1,446	−1,431	−6,576
Total Other Pilotage Costs	628,324	247,757	245,096	1,121,177
Pilot Boat and Dispatch Costs:				
Pilot boat costs	397,610	156,774	155,092	709,476
CPA Adjustment	−27,756	−10,944	−10,826	−49,526
Dispatch costs	99,705	39,313	38,891	177,909
Payroll taxes	9,351	3,687	3,648	16,686
Dispatch Employee Benefits	3,927	1,548	1,532	7,007
Total Pilot and Dispatch Costs	482,837	190,378	188,337	861,552
Administrative Expenses:				
Legal—General Counsel	32,149	12,676	12,540	57,365
Legal—Shared Counsel (K&L Gates)	18,730	7,385	7,306	33,421
CPA Adjustment	−5,595	−2,206	−2,183	−9,984
Office Rent	4,733	1,866	1,846	8,445
Insurance	3,715	1,465	1,449	6,629
Employee benefits	76,093	30,003	29,681	135,777
Workers Compensation	1,513	597	590	2,700
Payroll Taxes	6,408	2,527	2,500	11,435
Other Taxes	1,034	408	403	1,845
Admin Travel	676	267	264	1,207
Depreciation/Auto Leasing/Other	50,959	20,093	19,877	90,929
Interest	2,262	892	882	4,036
APA Dues	20,544	8,100	8,013	36,657
Utilities	5,335	2,103	2,081	9,519
Admin Salaries	64,004	25,236	24,966	114,206
Accounting/Professional Fees	34,390	13,560	13,414	61,364
Other	6,170	2,433	2,407	11,010
Total Administrative Expenses	323,120	127,405	126,036	576,561
Total Operating Expenses (Other Costs + Pilot Boats + Admin)	1,434,281	565,540	559,469	2,559,290
Proposed Adjustments (Director):				
Housing Allowance	−18,382	−7,248	−7,170	−32,800
Total Director's Adjustments	−18,382	−7,248	−7,170	−32,800
Total Operating Expenses (OpEx + Adjustments)	1,415,899	558,292	552,299	2,526,490

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

Having identified the recognized 2017 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2018 inflation rate.[35] Because the BLS does not provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2019 and 2020 inflation modification.[36] Based on that information, the calculations for Step 1 are as follows:

[33] The undesignated areas in District Three (areas 6 and 8) are treated separately in Table 27. In Table 28 and subsequent tables, both undesignated areas are combined and analyzed as a single undesignated area.

[34] See footnote 31.

[35] See footnote 13.

[36] See footnote 14.

TABLE 28—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,968,198	$558,292	$2,526,490
2018 Inflation Modification (@1.9%)	37,396	10,608	48,004
2019 Inflation Modification (@1.8%)	36,101	10,240	46,341
2020 Inflation Modification (@2%)	40,834	11,583	52,417
Adjusted 2020 Operating Expenses	2,082,529	590,723	2,673,252

C. Step 3: Estimate Number of Working Pilots

In accordance with the text in § 404.103, we estimate the number of working pilots in each district. We determine the number of working pilots based on input from the Western Great Lakes Pilots Association. Using these number, we estimate that there will be 20 working pilots in 2020 in District Three. Furthermore, based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), we assign a certain number of pilots to designated waters and a certain number to undesignated waters, as shown in Table 29. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 29—AUTHORIZED PILOTS

	District Three
Maximum number of pilots (per § 401.220(a)) [37]	22
2020 Authorized pilots (total)	20
Pilots assigned to designated areas	4
Pilots assigned to undesignated areas	16

D. Step 4: Determine Target Pilot Compensation Benchmark

In this step, we determine the total pilot compensation for each area. As we are proposing an ''interim'' ratemaking this year, we propose to follow the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark by inflation. Because we do not have a value for the employment cost index for 2020, we multiply the 2019 compensation benchmark of $359,887 by the Median PCE Inflation value of 2.0 percent.[38] Based on the projected 2020 inflation estimate, the proposed compensation benchmark for 2020 is $367,085 per pilot.

Next, we certify that the number of pilots estimated for 2020 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed for District Three is 22 pilots,[39] which is more than or equal to the numbers of working pilots provided by the pilot associations.

Thus, in accordance with § 404.104(c), we use the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of working pilots for District Three, as shown in Table 30.

TABLE 30—TARGET COMPENSATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Target Pilot Compensation	$367,085	$367,085	$367,085
Number of Pilots	16	4	20
Total Target Pilot Compensation	$5,873,360	$1,468,340	$7,341,700

E. Step 5: Project Working Capital Fund

Next, we calculate the working capital fund revenues needed for each area. First, we add together the figures for projected operating expenses and total pilot compensation for each area. Next, we find the preceding year's average annual rate of return for new issues of high grade corporate securities. Using Moody's data, the number is 3.93 percent.[40] By multiplying the two figures, we obtain the working capital fund contribution for each area, as shown in Table 31.

[37] For a detailed calculation refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[38] *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20190320.pdf.*

[39] See Table 6 of the Great Lakes Pilotage Rates—2017 Annual Review final rule, 82 FR 41466 at 41480 (August 31, 2017). The methodology of the staffing model is discussed at length in the final rule (see pages 41476–41480 for a detailed analysis of the calculations).

[40] Moody's Seasoned Aaa Corporate Bond Yield, average of 2018 monthly data. The Coast Guard uses the most recent complete year of data. See *https://fred.stlouisfed.org/series/AAA. (June 12, 2019)*

TABLE 31—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$2,082,529	$590,723	$2,673,252
Total Target Pilot Compensation (Step 4)	5,873,360	1,468,340	7,341,700
Total 2018 Expenses	7,955,889	2,059,063	10,014,952
Working Capital Fund (3.93%)	312,666	80,921	393,587

F. Step 6: Project Needed Revenue

In this step, we add together all of the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). The calculations is shown in Table 32.

TABLE 32—REVENUE NEEDED FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2, See Table 28)	$2,082,529	$590,723	$2,673,252
Total Target Pilot Compensation (Step 4, See Table 30)	5,873,360	1,468,340	7,341,700
Working Capital Fund (Step 5, See Table 31)	312,666	80,921	393,587
Total Revenue Needed	8,268,555	2,139,984	10,408,539

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate, we divide that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Three, using the total time on task or pilot bridge hours.[41] Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in Table 33.

TABLE 33—TIME ON TASK FOR DISTRICT THREE

[Hours]

Year	District Three	
	Undesignated	Designated
2018	19,967	3,455
2017	20,955	2,997
2016	23,421	2,769
2015	22,824	2,696
2014	25,833	3,835
2013	17,115	2,631
2012	15,906	2,163
2011	16,012	1,678
2010	20,211	2,461
2009	12,520	1,820
Average	19,476	2,651

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for each area are set forth in Table 34.

TABLE 34—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 6)	$8,268,555	$2,139,984
Average time on task (hours)	19,476	2,651
Initial rate	$425	$807

[41] See footnote 18 for more information.

H. Step 8: Calculate Average Weighting Factors by Area

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, we calculate the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in Tables 35 and 36.[42]

TABLE 35—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 6			
Class 1 (2014)	45	1	45
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148
Class 1 (2018)	103	1	103
Class 2 (2014)	274	1.15	315.1
Class 2 (2015)	207	1.15	238.05
Class 2 (2016)	236	1.15	271.4
Class 2 (2017)	264	1.15	303.6
Class 2 (2018)	169	1.15	194.35
Class 3 (2014)	15	1.3	19.5
Class 3 (2015)	8	1.3	10.4
Class 3 (2016)	10	1.3	13
Class 3 (2017)	19	1.3	24.7
Class 3 (2018)	9	1.3	11.7
Class 4 (2014)	394	1.45	571.3
Class 4 (2015)	375	1.45	543.75
Class 4 (2016)	332	1.45	481.4
Class 4 (2017)	367	1.45	532.15
Class 4 (2018)	337	1.45	488.65
Total for Area 6	3,504	.....	4,507.05
Area 8			
Class 1 (2014)	3	1	3
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 2 (2014)	177	1.15	203.55
Class 2 (2015)	169	1.15	194.35
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	151	1.15	173.65
Class 2 (2018)	102	1.15	117.3
Class 3 (2014)	3	1.3	3.9
Class 3 (2015)	0	1.3	0
Class 3 (2016)	7	1.3	9.1
Class 3 (2017)	18	1.3	23.4
Class 3 (2018)	7	1.3	9.1
Class 4 (2014)	243	1.45	352.35
Class 4 (2015)	253	1.45	366.85
Class 4 (2016)	204	1.45	295.8
Class 4 (2017)	269	1.45	390.05
Class 4 (2018)	188	1.45	272.6
Total for Area 8	1,976	.....	2623.1
Combined total	5,480	.....	7,130.15
Average weighting factor (weighted transits/number of transits)	.....	1.30	.....

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

Vessel class per year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	27	1	27
Class 1 (2015)	23	1	23
Class 1 (2016)	55	1	55
Class 1 (2017)	62	1	62

[42] See footnote 19 for more information

TABLE 36—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS—Continued

Vessel class per year	Number of transits	Weighting factor	Weighted transits
Class 1 (2018)	47	1	47
Class 2 (2014)	221	1.15	254.15
Class 2 (2015)	145	1.15	166.75
Class 2 (2016)	174	1.15	200.1
Class 2 (2017)	170	1.15	195.5
Class 2 (2018)	126	1.15	144.9
Class 3 (2014)	4	1.3	5.2
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	7.8
Class 3 (2017)	14	1.3	18.2
Class 3 (2018)	6	1.3	7.8
Class 4 (2014)	321	1.45	465.45
Class 4 (2015)	245	1.45	355.25
Class 4 (2016)	191	1.45	276.95
Class 4 (2017)	234	1.45	339.3
Class 4 (2018)	225	1.45	326.25
Total	2,296		2,977
Average weighting factor (weighted transits per number of transits)		1.30	

I. Step 9: Calculate Revised Base Rates

In this step, we revise the base rates so that once the impact of the weighting factors are considered, the total cost of pilotage would be equal to the revenue needed. To do this, we divide the initial base rates, calculated in Step 7, by the average weighting factors calculated in Step 8, as shown in Table 37.

TABLE 37—REVISED BASE RATES FOR DISTRICT THREE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate/ average weighting factor)
District Three: Designated	$807	1.30	$621
District Three: Undesignated	425	1.30	327

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish that the proposed rates do meet the goal of ensuring safe, efficient and reliable pilotage, the Director considers whether the proposed rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating expenses and infrastructure costs, and takes average traffic and weighting factors into consideration. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify the text in § 401.405(a) to reflect the final rates shown in Table 38.

TABLE 38—PROPOSED FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2019 pilotage rate	Proposed 2020 pilotage rate
District Three: Designated	St. Mary's River	$594	$621
District Three: Undesignated	Lakes Huron, Michigan, and Superior	306	327

K. Surcharges

The Coast Guard is not proposing any surcharges in this ratemaking. As stated earlier, we previously used surcharges to pay for the training of new pilots, rather than incorporating training costs into the overall ''needed revenue'' that is used in the calculation of the base rate, because the surcharge accelerates the reimbursement of certain necessary and reasonable expense. For the 2019 ratemaking, this reimbursement needed to be accelerated because of the large number of registered pilots retiring, and the large number of new pilots being trained to replace them. As the vast majority of registered pilots are not anticipated to retire in the next 20 years, we believe that pilot associations are now able to plan for the costs associated with retirements without relying on the Coast Guard to impose surcharges.

VIII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this proposed rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* the OMB Memorandum titled ''Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017). A regulatory analysis (RA) follows.

The purpose of this proposed rule is to establish new base pilotage rates. The Great Lakes Pilotage Act of 1960 requires that rates be established or reviewed and adjusted each year. The Act requires that base rates be established by a full ratemaking at least once every five years, and in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The last full ratemaking was concluded in June of 2018.[43] Table 39 summarizes proposed changes with no cost impacts or where the cost impacts are captured in the proposed rate change. Table 40 summarizes the affected population, costs, and benefits of the proposed rate change. The Coast Guard estimates a decrease in cost of approximately $0.23 million to industry as a result of the change in revenue needed in 2020 compared to the revenue needed in 2019.

TABLE 39—PROPOSED CHANGES WITH NO COSTS OR COST CAPTURED IN THE PROPOSED RATE CHANGE

Change	Description	Affected population	Basis for no cost	Benefits
Working capital fund requirements.	The Coast Guard is proposing to add regulatory text to § 403.110 requiring the pilotage associations keep money allocated to the working capital fund in a separate account and limit the use of the funds to infrastructure expenses.	The 3 pilotage associations	All three districts opened accounts for the working capital fund in response to a policy letter sent by the Coast Guard in November, 2018; therefore, there is no additional cost as a result of this rulemaking. In addition, based on discussion with the associations, we believe the cost to open these accounts was negligible, as each association was able to open a bank account online with their existing financial institutions with minimal effort. We estimate that any recordkeeping or reporting requirements associated with the working capital fund would also be minimal. The associations must already report and keep records on their infrastructure expense as part of their reporting requirements under § 403.105. We believe any recordkeeping associated with the new bank accounts may be conducted simultaneously with the recordkeeping for the existing accounts, as all accounts are with the same financial institution.	Provides increased transparency and oversight of how the money in the working capital fund is spent and how much each association has allocated for infrastructure expenses.
Address inconsistent terms.	The Coast Guard is proposing to replace the text in § 404.106, ''return on investment'' with ''working capital fund''.	The 3 pilotage associations	The Coast Guard previously renamed ''return on investment'' as the ''working capital fund'' in the Great Lakes Pilotage Rates 2017 Annual Review final rule (82 FR 41466); however, this text was not modified in that rulemaking.	Creates consistency across the CFR and reduces confusion.
Target pilot compensation.	The Coast Guard is proposing to change the base pilot compensation benchmark in § 401.405(a) to the 2019 compensation benchmark after adjusting for inflation.	Owners and operators of 266 vessels journeying the Great Lakes system annually, 52 U.S. Great Lakes pilots, and 3 pilotage associations.	Pilot compensation costs are accounted for in the base pilotage rates.	This compensation target achieves the Coast Guard's goals of safety through rate and compensation stability, while promoting recruitment and retention of qualified U.S. registered pilots.

[43] Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology (83 FR 26162), published June 5, 2018.

TABLE 40—ECONOMIC IMPACTS DUE TO PROPOSED CHANGES

Change	Description	Affected population	Costs	Benefits
Rate and surcharge changes.	Under the Great Lakes Pilotage Act of 1960, the Coast Guard is required to review and adjust base pilotage rates annually.	Owners and operators of 266 vessels transiting the Great Lakes system annually, 52 U.S. Great Lakes pilots, and 3 pilotage associations.	Decrease of $225,658 due to change in revenue needed for 2020 ($27,762,527) from revenue needed for 2019 ($27,988,185) as shown in Table 41 below.	New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. Ensures the association receives sufficient revenues to fund future improvements.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Sections IV and V of this preamble for detailed discussions of the legal basis and purpose for this rulemaking and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this rulemaking, we are proposing to adjust the pilotage rates for the 2020 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The rate changes in this proposed rule would increase the rates for four areas (District One: Designated, District Two: Undesignated, and all of District Three), and decrease the rates for the remaining two areas (District One: Undesignated, and District Two: Designated). In addition, the proposed rule would not implement a surcharge. These changes lead to a net decrease in the cost of service to shippers. However, because the proposed rates would increase for some areas and decrease for others, the change in per unit cost to each individual shipper would be dependent on their area of operation, and if they previously paid a surcharge.

A detailed discussion of our economic impact analysis follows.

Affected Population

This rule would impact U.S. Great Lakes pilots, the three pilot associations, and the owners and operators of oceangoing vessels that transit the Great Lakes annually. We estimate that there would be 52 pilots working during the 2020 shipping season. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (engaged in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. U.S.-flagged vessels not operating on register and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these U.S.- and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2016 through 2018 from the Great Lakes Pilotage Management System (GLPMS) to estimate the average annual number of vessels affected by the rate adjustment. The GLPMS tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the methodology, we use a 10-year average to estimate the traffic. We used 3 years of the most recent billing data to estimate the affected population. When we reviewed 10 years of the most recent billing data, we found the data included vessels that have not used pilotage services in recent years. We believe using 3 years of billing data is a better representation of the vessel population that is currently using pilotage services and would be impacted by this rulemaking. We found that 457 unique vessels used pilotage services during the years 2016 through 2018. That is, these vessels had a pilot dispatched to the vessel, and billing information was recorded in the GLPMS. Of these vessels, 420 were foreign-flagged vessels and 37 were U.S.-flagged vessels. As previously stated, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, we took an average of the unique vessels using pilotage services from the years 2016 through 2018 as the best representation of vessels estimated to be affected by the rates in this rulemaking. From 2016 through 2018, an average of 266 vessels used pilotage services annually.[44] On average, 248 of these vessels were foreign-flagged vessels and 18 were U.S.-flagged vessels that voluntarily opted into the pilotage service.

Total Cost to Shippers

The proposed rate changes resulting from this adjustment to the rates would result in a net decrease in the cost of service to shippers. However, because the rates would increase for some areas and decrease for others, the proposed change in per unit cost to each individual shipper would be dependent on their area of operation, and if they previously paid a surcharge.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2019 with the total projected revenues to cover costs in 2020, including any temporary surcharges we have authorized.[45] We set pilotage rates so that pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they have a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage

[44] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels utilizing pilotage services in any given year.

[45] While the Coast Guard implemented a surcharge in 2019, we are not proposing any surcharges for 2020.

services. The change in revenue from the previous year is the additional cost to shippers discussed in this rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in Tables 8, 20, and 32 of this preamble). The Coast Guard estimates that for the 2020 shipping season, the projected revenue needed for all three districts is $27,762,527.

To estimate the change in cost to shippers from this rule, the Coast Guard compared the 2020 total projected revenues to the 2019 projected revenues. Because we review and prescribe rates for the Great Lakes Pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2019 rulemaking, we estimated the total projected revenue needed for 2019, including surcharges, as $27,988,185.[46] This is the best approximation of 2019 revenues as, at the time of this publication, we do not have enough audited data available for the 2019 shipping season to revise these projections. Table 41 shows the revenue projections for 2019 and 2020 and details the additional cost increases to shippers by area and district as a result of the rate changes on traffic in Districts One, Two, and Three.

TABLE 41—EFFECT OF THE RULE BY AREA AND DISTRICT

[$U.S.; Non-discounted]

Area	Revenue needed in 2019	2019 Temporary surcharge	Total 2019 projected revenue	Revenue needed in 2020	2020 Temporary surcharge	Total 2020 projected revenue	Change in costs of this proposed rule
Total, district one	$9,271,852	$300,000	$9,571,852	$9,201,688	$0	$9,201,688	−$370,164
Total, district two	7,864,224	150,000	8,014,224	8,152,300	0	8,152,300	138,076
Total, district three	9,802,109	600,000	10,402,109	10,408,539	0	10,408,539	6,430
System total	26,938,185	1,050,000	27,988,185	27,762,527	0	27,762,527	−$225,658

The resulting difference between the projected revenue in 2019 and the projected revenue in 2020 is the annual change in payments from shippers to pilots as a result of the rate change imposed by this proposed rule. The effect of the rate change to shippers varies by area and district. The rate changes, after taking into account the change in pilotage rates, would lead to affected shippers operating in District One experiencing a decrease in payments of $370,164, over the previous year. District Two and District Three would experience an increase in payments of $138,076 and, $6,430 respectively, when compared with 2019. The overall adjustment in payments would be a decrease in payments by shippers of $225,658 across all three districts (a 1-percent decrease when compared with 2019). Again, because the Coast Guard reviews and sets rates for Great Lakes Pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 42 shows the difference in revenue by revenue-component from 2019 to 2020, and presents each revenue-component as a percentage of the total revenue needed. In both 2019 and 2020, the largest revenue-component was pilotage compensation (66% of total revenue needed in 2019 and 69% of total revenue needed in 2020), followed by operating expenses (27% of total revenue needed in 2019 and 2020).

TABLE 42—DIFFERENCE IN REVENUE BY COMPONENT

Revenue-component	Revenue needed in 2019	Percentage of total revenue needed in 2019	Revenue needed in 2020	Percentage of total revenue needed in 2020	Difference (2020 revenue–2019 revenue)	Percentage change from previous year
Adjusted Operating Expenses	$7,565,310	27	$7,624,298	27	$58,988	1
Total Target Pilot Compensation	18,354,237	66	19,088,420	69	734,183	4
Working Capital Fund	1,018,638	4	1,049,809	4	31,171	3
Total Revenue Needed, without Surcharge	26,938,185	96	27,762,527	100	824,342	3
Surcharge	1,050,000	4	0	0	−1,050,000	−100
Total Revenue Needed, with Surcharge	27,988,185	100	27,762,527	100	−225,658	−1

Note: Totals may not sum due to rounding.

Table 43 presents the percentage change in revenue by area and revenue-component, excluding surcharges as they are applied at the district level.[47] The majority of the decrease in revenue is due to the removal of surcharges to cover the cost of applicant pilot training expenses and decreased operating expenses. The change in revenue also accounts for the inflation of pilotage compensation and the net addition of one additional pilot. The target compensation for these pilots is $367,085 per pilot. The addition of this pilot to full working status accounts for $367,085 of the increase ($734,183 is the difference between the revenues needed in 2019 to the revenues needed in 2020, which takes into account the effect of increasing compensation for the other 51 pilots). The remaining amount is attributed to increases in the working capital fund.

[46] 84 FR 20551, see table 36.

[47] The 2019 projected revenues are from the Great Lakes Pilotage Rates—2019 Annual Review and Revisions to Methodology final rule (84 FR 20551) Tables 15–17. The 2020 projected revenues are from tables 8, 20, and 32 of this proposed rule.

TABLE 43—DIFFERENCE IN REVENUE BY COMPONENT AND AREA

Area	Adjusted operating expenses			Total target pilot compensation			Working capital fund			Total revenue needed		
	2019	2020	Percentage change	2019	2020	Percentage change	2019	2020	Percentage change	2019	2020	Percentage change
District One: Designated	$1,467,171	$1,567,975	6	$3,598,870	$3,670,850	2	$199,095	$205,886	3	$5,265,136	$5,444,711	3
District One: Undesignated	1,335,997	1,045,316	−28	2,519,209	2,569,595	2	151,510	142,066	−7	4,006,716	3,756,977	−7
District Two: Undesignated	1,072,441	935,104	−15	2,519,209	2,936,680	14	141,152	152,161	7	3,732,802	4,023,945	7
District Two: Designated	1,455,988	1,402,651	−4	2,519,209	2,569,595	2	156,225	156,109	0	4,131,422	4,128,355	0
District Three: Undesignated	1,703,896	2,082,529	18	5,758,192	5,873,360	2	293,260	312,666	6	7,755,348	8,268,555	6
District Three: Designated	529,817	590,723	10	1,439,548	1,468,340	2	77,396	80,921	4	2,046,761	2,139,984	4

Benefits

This proposed rule would allow the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes would promote safe, efficient, and reliable pilotage service on the Great Lakes by: (1) Ensuring that rates cover an association's operating expenses; (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots; and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes would also help recruit and retain pilots, which would ensure a sufficient number of pilots to meet peak shipping demand, helping to reduce delays caused by pilot shortages.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed business revenue and size data provided by publicly available sources such as Manta [48] and ReferenceUSA.[49] As described in Section VIII.A of this preamble, Regulatory Planning and Review, we found that a total of 457 unique vessels used pilotage services from 2016 through 2018. These vessels are owned by 55 entities. We found that of the 55 entities that own or operate vessels engaged in trade on the Great Lakes that would be affected by this rule, 43 are foreign entities that operate primarily outside the United States. The remaining 12 entities are U.S. entities. We compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold as defined in the SBA's ''Table of Size Standards'' for small businesses to determine how many of these companies are small entities.[50] Table 44 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

TABLE 44—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small entity size standard
211120	Crude Petroleum Extraction	1,250 employees.
238910	Site Preparation Contractors	$15.0 million.
488330	Navigational Services to Shipping	$38.5 million.
523910	Miscellaneous Intermediation	$38.5 million.
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$32.5 million.
551111	Offices of Bank Holding Companies	$20.5 million.
561510	Travel Agencies	$20.5 million.
928110	National Security.	Population of 50,000 people.

Of the 12 U.S. entities, 10 exceed the SBA's small business standards for small entities. To estimate the potential impact on the 2 small entities, the Coast Guard used their 2018 invoice data to estimate their pilotage costs in 2020. We increased their 2018 costs to account for the changes in pilotage rates resulting from this rule and the Great Lakes Pilotage Rates—2019 Annual Review and Revisions to Methodology final rule (84 FR 20551). We estimated the change in cost to these entities resulting from this rule by subtracting their estimated 2019 costs from their estimated 2020 costs. We then compared the estimated change in pilotage costs between 2019 and 2020 with each firm's annual revenue and compared their total estimated 2020 pilotage costs to their annual revenue. In both cases, their estimated pilotage expenses were below 1 percent of their annual revenue. Table 44 presents the calculation of these cost estimates for both entities.

[48] See *https://www.manta.com/.*

[49] See *http://resource.referenceusa.com/.*

[50] See: *https://www.sba.gov/document/support-table-size-standards.* SBA has established a ''Table of Size Standards'' for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs.

TABLE 44—ESTIMATED 2020 PILOTAGE COSTS FOR SMALL ENTITIES
[Thousands of dollars]

Entity	2018 pilotage expenses (a)	Estimated change in pilotage costs between 2018 and 2019 [51] (b)	Estimated 2019 pilotage expenses (c) = (a) × (1 + (b))	Estimated change in pilotage cost between 2018 and 2019 (d)	Estimated 2020 pilotage expenses (e) = (c) × (1 + (d))	Estimated change in pilotage expenses from 2019 to 2020 (f) = (e) − (c)
Small Entity A	$4.75	11	5.27	−1	5.22	−$0.05
Small Entity B	148.39	11	164.71	−1	163.06	−1.65

In addition to the owners and operators discussed above, three U.S. entities that receive revenue from pilotage services would be affected by this proposed rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships, and one operates as a corporation. These associations are designated with the same NAICS code and small-entity size standards described above, but have fewer than 500 employees. Combined, they have approximately 65 employees in total and, therefore, are designated as small entities. The Coast Guard expects no adverse effect on these entities from this rule because the three pilot associations would receive enough revenue to balance the projected expenses associated with the projected number of bridge hours (time on task) and pilots.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that would be impacted by this rule. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people that would be impacted by this rule. Based on this analysis, we conclude this rulemaking would not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Based on our analysis, this proposed rule would have a less than 1 percent annual impact on 2 small entities; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION** section of this proposed rule. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This proposed rule would not change the burden in the collection currently approved by OMB under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. Federalism

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 Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements as described in Executive Order 13132. Our analysis follows.

Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates

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 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such

[51] 84 FR 20551, see table 37.

an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. If you disagree with our analysis or are aware of voluntary consensus standards that might apply, please send a comment explaining your disagreement or identifying appropriate standards to the docket using the method listed in the **ADDRESSES** section of this preamble.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01–001–01, Revision 1 (DHS Directive 023–01), Commandant Instruction 5090.1 (COMDTINST 5090.1), and U.S. Coast Guard Environmental Planning Policy (April 2019), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** portion of this preamble. This proposed rule appears to meet the criteria for categorical exclusion (CATEX) under paragraphs A3 and L54 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures, which is available in the docket at *www.regulations.gov.* Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) Those that implement, without substantive change, statutory or regulatory requirements; or (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; and (d) Those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations which are editorial or procedural.

This proposed rule involves: (1) Clarifying the rules related to the working capital fund, (2) adjusting the base pilotage rates, and (3) eliminating surcharges for administering the 2020 shipping season in accordance with applicable statutory and regulatory mandates pursuant to the Great Lakes Pilotage Act of 1960. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 403

Great Lakes, Navigation (water), Reporting and recordkeeping requirements, Seamen, Uniform System of Accounts.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 401, 403, and 404 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.d), (92.e), (92.f).

■ 2. Revise § 401.405(a) to read as follows:

§ 401.405 Pilotage rates and charges.

(a) The hourly rate for pilotage service on—

(1) The St. Lawrence River is $757;

(2) Lake Ontario is $462;

(3) Lake Erie is $573;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $602;

(5) Lakes Huron, Michigan, and Superior is $302; and

(6) The St. Mary's River is $621.

* * * * *

PART 403—GREAT LAKES PILOTAGE UNIFORM ACCOUNTING SYSTEM

■ 3. The authority citation for part 403 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.f).

■ 4. Amend § 403.110 by:

■ (a) Designating the text as paragraph (a); and

■ (b) Adding paragraph (b).

The addition to read as follows:

§ 403.110 Accounting entities

(a) * * *

(b) Each Association will maintain a separate account called the ''Working Capital Fund.'' Each Association will deposit into the working capital fund an amount each year at least equal to the amount calculated in Step 5, 46 CFR 404.105. Working capital funds may only be used for infrastructure improvements and infrastructure maintenance necessary to provide safe, efficient, and reliable pilot service such as pilot boat replacements, major repairs to pilot boats, non-recurring technology purchases necessary for providing pilot services, or for the acquisition of real property for use as a dispatch center, office space, or pilot lodging. The Director may grant exceptions to the requirements of this paragraph (403.110(b)) upon request by an Association.

PART 404—GREAT LAKES PILOTAGE RATEMAKING

■ 5. The authority citation for part 404 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; Department of Homeland Security Delegation No. 0170.1(II)(92.a), (92.f).

§ 404.106 [Amended]

■ 6. In § 404.106, remove the words ''return on investment'' and add in their place ''working capital fund''.

Dated: October 23, 2019.

R.V. Timme,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2019–23510 Filed 10–29–19; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 84, No. 210

Wednesday, October 30, 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

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) 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; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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 November 29, 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.

Office of Partnerships and Public Engagement

Title: USDA/1994 Tribal Scholars Program.

OMB Control Number: 0503–0016.

Summary of Collection: The purpose of the U.S. Department of Agriculture 1994 Tribal Scholars Program is to strengthen the long-term partnership between USDA and the 1994 Land-Grant Institutions to increase the number of students studying and graduating in food, agricultural, natural resources, and other related fields of study, and to develop a pool of scientists and professionals to annually fill 50,000 jobs in the food, agricultural, and natural resources system. The USDA/1994 Tribal Scholars Program, within the Office of the Partnerships and Public Engagement, is an annual joint human capital initiative between USDA and the Nation's 1994 Land-Grant Institutions, also known as 1994 Tribal Colleges and Universities. This program offers a combination of paid work experience with a USDA sponsoring agency through an appointment under the Fellowship Experience Program. USDA Tribal Scholarship recipients are required to study in the food, and agricultural, and related sciences, as defined by the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103 (8)).

Need and Use of the Information: Information will be collected to determine the eligibility of applicants to the USDA Tribal Scholars Program. Each applicant to the program will be required to apply to announcements of the USDA Tribal Scholars Program and submit an application with required documentation. The required documentation will include: (1) A resume; (2) Proof of acceptance or enrollment in school, a letter of acceptance, or proof of registration, or letter from school official on official letterhead; (3) A copy of the last high school or college transcript; and (4) Two letters of recommendation. The collected information is needed for identifying and tracking capital needs of USDA agencies from 1994 Land-Grant Institutions through an internship and an award of an annually reviewed and renewal scholarship with the objective of preparing the student to complete for placement into USDA's workforce.

Description of Respondents: Individuals or households.

Number of Respondents: 340.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,326.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–23613 Filed 10–29–19; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

RIN 0691–XC105

Request for Comments on Developing State-Level Statistics for the Outdoor Recreation Satellite Account

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Economic Analysis (BEA) is soliciting comments from the public about new prototype statistics on the economic activity generated by outdoor recreation in each U.S. state and the District of Columbia. Following the public comment period, BEA will evaluate feedback, finalize the methodology and related materials, and begin publishing this data series annually in the Outdoor Recreation Satellite Account (ORSA).

DATES: Comments must be received no later than March 31, 2020.

ADDRESSES: You may submit written comments to Christian Awuku-Budu, Chief, Regional Research and Methodology Branch, Bureau of Economic Analysis, Department of Commerce, 4600 Silver Hill Road (BE–61), or via email at *OutdoorRecreation@bea.gov.* Comments sent by any other method or after March 31, 2020, may not be considered. All comments are a part of the public record.

FOR FURTHER INFORMATION CONTACT: Christian Awuku-Budu, Chief, Regional Research and Methodology Branch, Bureau of Economic Analysis, Department of Commerce, 4600 Silver

Hill Road (BE–61), Washington, DC 20233; email *Christian.Awuku-Budu@bea.gov; or* phone (301) 278–9235.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of the Outdoor Recreation Jobs and Economic Impact Act of 2016, Public Law 114–249, the Bureau of Economic Analysis (BEA) developed the Outdoor Recreation Satellite Account (ORSA). The ORSA measures the size of the U.S. outdoor recreation economy and its link to the broader national economy. Like other BEA accounts, the ORSA incorporates a variety of private and public data sources to create comprehensive measures of the spending and production activities that are the focus of the account. BEA produced the first, national prototype ORSA statistics on February 14, 2018, and released updated national statistics on September 20, 2018. After an additional year of development, BEA released state-level prototype statistics on September 20, 2019.

The state-level prototype statistics are an extension of the national industry ORSA statistics. State ORSA statistics isolate the economic activity associated with outdoor recreation spending and production in a state's economy. The concepts, definitions, and methodology used to produce state-level prototype statistics are consistent with the national industry concepts, definitions, and methodology. However, the additional geographic detail introduces added complexity to the estimation methodology. ORSA spending and production measures must be allocated to the correct geographic region by place of production, not by residence of consumer. In the state-level statistics, outdoor recreation activity is allocated as follows:

- The value of manufactured goods is assigned to the state where they are produced, even if the goods are not ultimately used in that state.
- The value of services is assigned to the location where they are consumed.
- The value of production of imported goods is excluded from ORSA measures, but the value of the services of retailers selling imported goods is included and assigned to the location of the sale.

BEA is seeking feedback on the prototype statistics and will continue to refine its methodology and presentation before official state ORSA statistics are released in the fall of 2020.

BEA invites comments from the public, private industry, state and local governments, non-profit organizations, and other interested parties to assist in improving the prototype statistics' quality, reliability, and usefulness. In particular, BEA is interested in feedback regarding the following:

1. What are some useful applications of state ORSA statistics?
2. BEA plans to release the state ORSA statistics annually in September. Will the statistics be useful if released on this schedule? What time of year should the release be scheduled to maximize the usefulness of the statistics?
3. Are the prototype statistics consistent with the data and information about outdoor recreation available from other sources? If not, what are some differences?
4. Are the methodology documents available at *bea.gov* helpful in understanding the process followed to create the state-level prototype ORSA statistics? Are there ways the methodology could be improved?
5. Are there additional source data that could be used to generate and corroborate these statistics beyond those described in the methodology documents available at *bea.gov*?

Dated: October 7, 2019.

Christian Awuku-Budu,

Chief, Regional Research and Methodology Branch, Bureau of Economic Analysis.

[FR Doc. 2019–23677 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Alexis Vlachos, 160 Rue Sainte Anne De-Bellevue, Montreal, Quebec H9X3Z6.

On September 4, 2018, in the U.S. District Court for the District of Vermont, Alexis Vlachos (''Vlachos'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''). Vlachos was convicted of violating Section 38 of the AECA by knowingly and willfully exporting and causing to be exported from the United States to Canada firearms that were designated as defense articles on the United States Munitions List, without the required U.S. Department of State licenses. Vlachos was sentenced to fifty-one (51) months in prison and an assessment of $200.

The Export Administration Regulations (''EAR'' or ''Regulations'') are administered and enforced by the U.S. Department of Commerce's Bureau of Industry and Security (''BIS'').[1] Section 766.25 of the Regulations provides, in pertinent part, that the ''Director of [BIS's] Office of Exporter Services, in consultation with the Director of [BIS's] Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of . . . section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d).[2] In addition, pursuant to Section 750.8 of the Regulations, BIS's Office of Exporter Services may revoke any BIS-issued licenses in which the person had an interest at the time of his/her conviction.[3]

BIS has received notice of Vlachos's conviction for violating Section 38 of the AECA, and pursuant to Section 766.25 of the Regulations, has provided notice and an ooportunity for Vlachos to make a written submission to BIS.[4] To date, BIS has not received a submission from Vlachos.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Vlachos's export privileges under the Regulations for a period of seven years from the date of Vlachos's conviction. I have also decided to revoke any BIS-issued license in which Vlachos had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

---

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2019). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which was extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[2] *See also* Section 11(h) of the EAA, 50 U.S.C. 4610(h) (Supp. III 2015); Sections 1760(e) and 1768 of ECRA, 50 U.S.C. 4819 and 4826; and note 1, *supra.*

[3] *See* notes 1 and 2, *supra.*

[4] Notice was provided by registered mail, return receipt requested, for which Vlachos signed on August 12, 2019.

First, from the date of this Order until September 4, 2025, Alexis Vlachos, with a last known address at: 160 Rue Sainte Anne De Bellevue, Montreal, Quebec H9X3Z6, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Vlachos by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Vlachos may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Vlachos and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until September 4, 2025.

Issued this 23rd day of October 2019.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2019–23678 Filed 10–29–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 13, 2019, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.

2. Status reports by working group chairs.

3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 6, 2019.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 19, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2019–23653 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–911]

Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the

administrative review of the countervailing duty order on circular welded carbon-quality steel pipe (CWP) from the People's Republic of China (China) for the period January 1, 2018, through December 31, 2018, based on the timely withdrawal of the request for review.

DATES: Applicable October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1791.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the countervailing duty order on CWP from China for the period January 1, 2018, through December 31, 2018.[1] In July 2019, Commerce received a timely request, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), to conduct an administrative review of this countervailing duty order from Independence Tube Corporation, a Nucor Company, and Southland Tube, Incorporated, a Nucor Company (collectively, the petitioner).[2] We received no other requests for review. Based upon the petitioner's request, on September 9, 2019, in accordance with section 751(a) of the Act, Commerce published in the **Federal Register** a notice of initiation listing 147 companies for which Commerce received a timely request for review.[3]

In October 2019, the petitioner timely withdrew its request for an administrative review for all 147 companies.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. As noted above, the petitioner withdrew its request for review by the 90-day deadline, and we received no other requests for review. Accordingly, we are rescinding the administrative review of the countervailing duty order on CWP from China covering the period January 1, 2018, through December 31, 2018, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Administrative Protective Order

This notice 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. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with section 751(a)(1) and 751(i)(1) of the Act.

Dated: October 24, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23683 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 31295 (July 1, 2019).

[2] *See* Petitioner's Letter, ''Circular Welded Carbon Quality Steel Pipe from The People's Republic of China: Request for Administrative Review,'' dated July 31, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019).

[4] *See* Petitioner's Letter, ''Circular Welded Carbon Quality Steel Pipe from The People's Republic of China: Withdrawal of Request for Administrative Review,'' dated October 17, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–845]

Sugar From Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 18, 2019, the United States Court of International Trade (CIT) issued a final judgment in *CSC Sugar LLC* v. *United States*, Ct. No. 17–00215, Slip Op. 19–132 (CIT October 18, 2019) (*CSC Sugar II*). Commerce is notifying the public of the CIT's ruling that Commerce's 2017 amendment to the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement) must be vacated. Commerce intends to take action to implement the CIT ruling by November 18, 2019.

DATES: October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon, Bilateral Agreements Unit, Office of Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2014, Commerce and the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signed the AD Agreement.[1] Between June 2016 and June 2017, Commerce and the signatory producers/exporters accounting for substantially all imports of sugar from Mexico held consultations to address concerns raised by the domestic industry and to ensure that the AD Agreement met the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation was in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring was practicable. The consultations resulted in Commerce and the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signing an amendment to the AD Agreement on June 30, 2017, which was subsequently published in the **Federal Register**.[2]

CSC Sugar LLC (CSC Sugar) challenged Commerce's determination to amend the AD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.[3] Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications

[1] *See Sugar From Mexico: Suspension of Antidumping Duty Investigation*, 79 FR 78039 (December 29, 2014).

[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Antidumping Duty Investigation,* 82 FR 31945 (July 11, 2017) (*AD Amendment*).

[3] *See CSC Sugar II* at 4.

between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico) as required by section 777(a)(3) of the Tariff Act of 1930, as amended (the Act).[4]

The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the *AD Amendment*.[5] CSC Sugar subsequently filed a motion for judgment on the agency record arguing that Commerce's failure, during the consultations period, to maintain contemporaneous *ex parte* communication memoranda, in accordance with section 777(a)(3) of the Act, could not be adequately remedied by Commerce's delayed and incomplete supplementation of the record.[6]

The CIT found that Commerce's failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as ''harmless.''[7] The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.[8] On that basis, the CIT stated that the *AD Amendment* must be vacated.[9]

The *AD Amendment* remains in force until Commerce takes action to implement the CIT's ruling. The CIT's rules establish an automatic 30-day stay of proceedings to enforce a judgment.[10] Accordingly, Commerce intends to implement the CIT's ruling by November 18, 2019.[11]

Dated: October 25, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–23769 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–DS–P

[4] *Id.*

[5] *Id.* (citing *CSC Sugar* LLC v. *United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

[6] *See CSC Sugar II* at 4.

[7] *Id.* at 11–12.

[8] *Id.* at 12.

[9] *Id.*

[10] *See* CIT Rule 62(a) (''Except as stated in this rule or as otherwise ordered by the court, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after its entry.'').

[11] *See* CIT Rule 6(a)(1). In this case, the 30th day after October 18 is Sunday, November 17.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Affirmative Determination of Circumvention

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Protech Diamond Tools Inc. (Protech) is circumventing the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China).

DATES: Applicable October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2019, in response to a request from the Diamond Sawblades Manufacturers' Coalition (the petitioner), Commerce published the initiation of the anti-circumvention inquiry to determine whether certain imports of diamond sawblades comprised of cores and segments produced in China and joined into diamond sawblades in, and exported from, Canada by Protech are circumventing the antidumping duty order on diamond sawblades from China.[1]

Scope of the Order

The products subject to the order are diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under subheading 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[2] The written description is dispositive.

Scope of the Anti-Circumvention Inquiry

We initiated this anti-circumvention inquiry to cover diamond sawblades produced in Canada by Protech with cores and segments produced in China and subsequently exported from Canada by Protech to the United States.[3]

Methodology

Commerce is conducting this anti-circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h). Because Protech did not respond to our request for information, we made the affirmative preliminary determination based on adverse facts available in accordance with section 776(a)–(b) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that diamond sawblades produced by Protech in Canada using cores and segments from China and exported from Canada by Protech to the United States are circumventing the antidumping duty order on diamond sawblades from China. We therefore preliminarily determine that it is appropriate to include this merchandise within the antidumping duty order on diamond sawblades from China and to instruct U.S. Customs and Border Protection (CBP) to suspend entries of merchandise produced using Chinese cores and Chinese segments by Protech in Canada

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation of Anti-Circumvention Inquiry,* 84 FR 19043 (May 3, 2019) (*Initiation Notice*).

[2] *See* Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Decision Memorandum for Preliminary Affirmative Determination of Circumvention,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum) at 2–3.

[3] *See Initiation Notice,* 84 FR at 19043 (''This anti-circumvention inquiry covers diamond sawblades produced in Canada using cores and segments of Chinese origin and exported from Canada to the United States by Protech.'').

and exported by Protech to the United States.

Suspension of Liquidation

As stated above, Commerce has made a preliminary affirmative finding of circumvention of the antidumping duty order on diamond sawblades from China for diamond sawblades assembled or completed using Chinese cores and Chinese segments as inputs by Protech in Canada and exported from Canada by Protech to the United States. This preliminary determination of circumvention applies to diamond sawblades assembled or completed using Chinese cores and Chinese segments as inputs by Protech in Canada. In accordance with section 19 CFR 351.225(l)(2), Commerce will direct CBP to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of diamond sawblades produced (*i.e.,* assembled or completed) using Chinese cores and Chinese segments by Protech in Canada that were entered, or withdrawn from warehouse, for consumption on or after April 29, 2019, the date of initiation of this anti-circumvention inquiry. The suspension of liquidation instructions will remain in effect until further notice. Commerce will instruct CBP to require antidumping duty cash deposits equal to the rate established for the China-wide entity, *i.e.,* 82.05 percent,[4] for entries of such merchandise produced and exported by Protech, given that there is no information on the record regarding the sources of its Chinese-origin cores and segments.

Diamond sawblades assembled or completed in Canada using non-Chinese origin cores and/or non-Chinese origin segments are not subject to this anti-circumvention inquiry. However, because Protech failed to cooperate with Commerce's request for information, Commerce finds that Protech is not currently able to identify diamond sawblades produced with non-Chinese origin cores and/or non-Chinese origin segments. Therefore, Commerce will not implement a certification process at this preliminary stage, and Commerce will require cash deposits on all entries of diamond sawblades produced and exported by Protech in Canada. Commerce will reconsider Protech's eligibility to participate in the certification process if Protech demonstrates in a future segment of the proceeding (*i.e.,* a changed circumstances review) that diamond sawblades being entered into the United States that it produces are no longer sourced from Chinese cores and/or Chinese segments.[5] We invite parties to comment on this issue in their case briefs.

Public Comment

Interested parties are invited to comment on the preliminary determination of this anti-circumvention inquiry. Pursuant to 19 CFR 351.309(b)(2), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this anti-circumvention inquiry are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Any interested party who wishes to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the day of publication of this notice pursuant to 19 CFR 351.310(c). A request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. If a request for a hearing is made, then Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs.

International Trade Commission Notification

Consistent with section 781(e) of the Act, Commerce will notify the International Trade Commission (ITC) of this preliminary determination to include the merchandise subject to this anti-circumvention inquiry within the antidumping duty order on diamond sawblades from China. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

Final Determination

According to section 781(f) of the Act, Commerce shall, to the maximum extent practicable, make its anti-circumvention determination within 300 days from the date of the initiation of the inquiry.[7] Therefore, Commerce intends to issue the final determination in this anti-circumvention inquiry by February 24, 2020.[8]

This preliminary affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: October 23, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Scope of the Anti-Circumvention Inquiry
V. The Period of Inquiry
VI. Statutory Framework
VII. Use of Adverse Facts Available
VIII. Statutory Analysis
IX. Other Statutory Criteria
X. Summary of Statutory Analysis
XI. Recommendation

[FR Doc. 2019–23682 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 17527, 17528 (April 20, 2018).

[5] *See Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order,* 83 FR 35205 (July 25, 2018), and accompanying Preliminary Decision Memorandum at 15, unchanged in *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 84 FR 29164 (June 21, 2019).

[6] *See* 19 CFR 351.309(d)(1)–(2).

[7] *See* 19 CFR 351.225(f)(iii)(5) (explaining that Commerce will issue a final anticircumvention ruling ''normally within 300 days from the date of the initiation of the . . . inquiry'').

[8] The statutory due date of the final determination is Sunday, February 23, 2020. The next business day is Monday, February 24, 2020. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Rebar Trade Action Coalition (RTAC), the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether otherwise straight rebar bent at one or both ends produced and/or exported to the United States by Deacero S.A.P.I de C.V. (Deacero) is circumventing the antidumping duty (AD) order on rebar from Mexico.

DATES: Applicable October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1468.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2019, RTAC, a domestic interested party in the above-mentioned proceeding recommended that Commerce issue a scope ruling or initiate an anti-circumvention inquiry with regard to certain hooked or bent rebar that is produced and/or exported to the United States by Deacero.[1] RTAC alleges that the hooked or bent rebar at issue constitutes merchandise altered in such minor respects that it should be included within the scope of the order on rebar from Mexico pursuant to section 781(c) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(i) and, thus, falls within the scope of the *Order*.[2]

In its September 25, 2019 submission, Deacero opposed RTAC's request for a scope ruling or initiation of an anti-circumvention proceeding.[3] On October 9, 2019, RTAC submitted a surrebuttal to Deacero's Rebuttal Comments.[4]

Scope of the Order

The merchandise subject to this *Order* is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.,* non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.,* mill mark, size or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

Merchandise Subject to the Anti-Circumvention Inquiry

This minor alternation anti-circumvention inquiry covers otherwise straight rebar bent at one or both ends produced and/or exported to the United States by Deacero. In this circumvention proceeding, Commerce intends to consider whether any affirmative finding of circumvention through minor alterations to otherwise straight rebar should be applied to imports of similarly situated otherwise straight rebar bent at one or both ends rebar from Mexico, regardless of producer or exporter.

Initiation of Anti-Circumvention Inquiry

Section 781(c) of the Act provides that Commerce may find circumvention of an AD order when products which are of the class or kind of merchandise subject to an AD order have been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that ''{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the AD order.''

While the statute is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.''[5] Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) Overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.[6]

Analysis

After analyzing the information in the Circumvention Allegation, we determine that RTAC has satisfied the criteria listed above to warrant an initiation of a formal anti-circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), to determine whether otherwise straight rebar bent at one or both ends produced and/or exported to the United States by Deacero constitutes merchandise altered in form or appearance in such minor respects that should be included within the scope of the *Order.* For a summary of the proprietary comments received from interested parties and further discussion of Commerce's basis for initiating this minor alteration inquiry,

[1] *See* RTAC's Letter, ''Steel Concrete Reinforcing Bar from Mexico: Request for Scope Ruling or, Alternatively, an Anti-Circumvention Ruling,'' dated September 3, 2019 (Circumvention Allegation). The rebar product described in the Circumvention Allegation is 31 feet and 1 inch in length, 1 foot and 1 inch of which is curved or hooked on one end.

[2] *See Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order,* 79 FR 65925 (November 6, 2014) (*Order*).

[3] *See* Deacero's Letter, ''Steel Concrete Reinforcing Bar from Mexico—*Response to Petitioner's Scope Inquiry Request,*'' dated September 25, 2019 (Deacero's Rebuttal Comments).

[4] *See* RTAC's Letter, ''Steel Concrete Reinforcing Bar from Mexico: Comments on Deacero's September 25, 2019 Response to Petitioner's Scope Inquiry,'' dated October 9, 2019 (RTAC's Surrebuttal Comments).

[5] *See* S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) (''In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.'').

[6] *See, e.g., Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China,* 74 FR 33991, 33992 (July 14, 2009), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 74 FR 40565 (August 12, 2009).

see the Initiation Decision Memorandum dated concurrently with this notice and hereby adopted by this notice.[7] The Initiation Decision Memorandum is a business proprietary document, of which a public version 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. The signed Initiation Decision Memorandum and the electronic version of the Initiation Decision Memorandum are identical in content.

Commerce will not order the suspension of liquidation of entries of any additional merchandise at this time. However, in accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry. Following consultation with interested parties, Commerce will establish a schedule for questionnaires and comments on the issues related to the *Order.* Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 781(c) of the Act and 19 CFR 351.225(i) and (j).

Dated: October 18, 2019.

Carole Showers,

Executive Director, Office of Policy, Policy & Negotiations, Enforcement & Compliance.

[FR Doc. 2019–23610 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* Memorandum, ''Initiation of Minor Alteration Circumvention Inquiry on Hooked or Bent Steel Concrete Reinforcing Bar,'' dated concurrently with this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–818]

Certain Steel Nails From the Socialist Republic of Vietnam: Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the antidumping duty order on certain steel nails from the Socialist Republic of Vietnam (Vietnam) for the period of review (POR) July 1, 2018, through June 30, 2019.

DATES: Applicable October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, 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) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order[1] on certain steel nails from Vietnam for the POR.[2] Commerce received a timely request from Mid Continent Steel & Wire, Inc. (the petitioner), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of this antidumping duty order for 16 companies.[3] No other party requested an administrative review.

On September 9, 2019, Commerce published in the **Federal Register** a notice of initiation with respect to the 16 companies: (1) Atlantic Manufacure[4] Inc.; (2) Chia Pao Metal Co., Ltd.; (3) CS Song Thuy; (4) Easylink Industrial Co., Ltd.; (5) Expeditors Vietnam Company Limited; (6) lnmax Industries SDN. BHD; (7) Jinhai Hardware Co., Ltd.; (8) Le Phuong Trading Import Export; (9) Long Nguyen Trading & Service Co., Ltd.; (10) Region Industries Co., Ltd.; (11) Rich State Inc.; (12) Sam Hwan Vina Co., Ltd.; (13) Thai Bao Im-Ex Corporation Company; (14) Truong Vinh Ltd.; (15) United Nail Products Co. Ltd.; and (16) Vinalink O B Lu Yen Linh.[5] On September 26, 2019, the petitioner timely withdrew its request for an administrative review for all 16 companies.[6]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner withdrew its request for review for all companies by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding the administrative review of the antidumping duty order on certain steel nails from the Vietnam covering the period July 1, 2018, through June 30, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[1] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultinate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 31295 (July 1, 2019).

[3] *See* Petitioner's Letter, ''Certain Steel Nails from Vietnam: Request for Administrative Reviews,'' dated July 31, 2019.

[4] *Sic.*

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242 (September 9, 2019).

[6] *See* Petitioner's Letter, ''Certain Steel Nails from Vietnam: Withdrawal of Request for Administrative Reviews,'' dated November 5, 2018.

Notification Regarding Administrative Protective Orders

This notice 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). 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.

This notice is published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 24, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23684 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–095]

Aluminum Wire and Cable From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that aluminum wire and cable from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV).

DATES: Applicable October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Kathryn Turlo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–3870, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are Encore Wire Corporation (Encore) and Southwire Company, LLC (Southwire) (collectively, the petitioners). The mandatory respondents in this investigation are Hebei Huatong Wires and Cables Group Co., Ltd. (Huatong) and Shanghai Silin Special Equipment Co., Ltd. (Silin). On June 5, 2019, Commerce published its *Preliminary Determination* for this investigation and invited interested parties to comment.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2] 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 *http://access.trade.gov* and it 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 at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation is January 1, 2018 through June 30, 2018.

Scope of the Investigation

The products covered by this investigation are aluminum wire and cable from China. For a full description of the scope of this investigation, *see* ''Scope of the Investigation,'' at Appendix I.

Scope Comments

During the course of this investigation and the concurrent countervailing duty (CVD) investigation, Commerce received scope comments from interested parties. In our *Preliminary Determination,* we explained that certain interested parties had commented on the scope of the investigation and that Commerce had preliminarily modified the scope.[3] We received no additional scope comments; therefore, the scope remains unchanged from that which appeared in the *Preliminary Determination.*

Verification

Because the mandatory respondents in this investigation did not provide information requested by Commerce, and Commerce found in the *Preliminary Determination* that each of the mandatory respondents have been uncooperative, verification was not conducted.

Analysis of Comments Received

In response to our invitation to comment on the *Preliminary Determination,* interested parties submitted case and rebuttal briefs to Commerce. All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we made no changes to the *Preliminary Determination.* For a discussion of the comments received, *see* the Issues and Decision Memorandum.

China-Wide Entity

For the reasons explained in the Issues and Decision Memorandum, we are continuing to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), is appropriate, and we are determining an estimated weighted-average dumping margin based entirely on AFA for the China-wide entity. Further, Commerce continues to consider the mandatory respondents, Huatong and Silin, to be a part of the China-wide entity. We continue to find that the China-wide entity, which also includes companies that failed to establish their eligibility for separate rate status as well as other Chinese exporters or producers that did not respond to Commerce's quantity and value questionnaire, withheld requested information, significantly impeded the proceeding, and failed to cooperate to the best of their abilities, and thus we are continuing to base the final determination for the China-wide entity on AFA. *See* the Issues and Decision Memorandum for a full discussion of this issue.

Adverse Facts Available

In selecting the estimated weighted-average dumping margin based on AFA for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully

[1] *See Aluminum Wire and Cable from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 84 FR 26069 (June 5, 2019) (*Preliminary Determination*), and accompany Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Less Than Fair Value Investigation of Aluminum Wire and Cable from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Preliminary Determination* PDM at 5–7.

cooperated.[4] Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) the highest dumping margin alleged in the petition; or, (b) the highest calculated dumping margin of any respondent in the investigation. As AFA, Commerce has determined an estimated weighted-average dumping margin for the China-wide entity of 63.47 percent. *See* the Issues and Decision Memorandum for a full discussion of this issue.

Separate Rates

Certain parties commented on our decision in the *Preliminary Determination* to deny separate rate status to Huatong; however, we are continuing to deny separate rate status in this final determination. *See* the Issues and Decision Memorandum for a full discussion of this issue. Commerce also continues to find that Silin has not established its eligibility for a separate rate. No parties commented on our decision in the *Preliminary Determination* to grant separate rate status to Changfeng Wire & Cable Co., Ltd. (Changfeng) and Wuxi Jiangnan Cable Co. Ltd. (Wuxi Jiangnan). We therefore continue to grant separate rate status to these companies.

Combination Rates

We have continued to calculate producer/exporter combination rates for the respondents that are eligible for a separate rate. Policy Bulletin 05.1 describes this practice.[5]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Estimated weighted-average dumping margin adjusted for export subsidies (percent)
Changfeng Wire & Cable Co., Ltd	Changfeng Wire & Cable Co., Ltd	58.51	47.83
Wuxi Jiangnan Cable Co., Ltd	Wuxi Jiangnan Cable Co., Ltd	58.51	47.83
China-wide entity *		63.47	52.79

* Includes the mandatory respondents, Huatong and Silin.

Disclosure

We will disclose the calculations performed within five days of public announcement of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of aluminum wire and cable from China, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after June 5, 2019, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.* Further, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) for the exporter/producer combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin, adjusted for export and/or domestic subsidies as appropriate, listed for that combination in the table; (2) for all combinations of Chinese exporters/producers not listed in the above table, the cash deposit rate is equal to the estimated weighted-average dumping margin, adjusted for export and/or domestic subsidies as appropriate, listed in the table for the China-wide entity; and (3) for all non-Chinese exporters not listed in the table above, the cash deposit rate is equal to the cash deposit rate applicable to the Chinese exporter/producer combination (or the China-wide entity) that supplied that non-Chinese exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). We have made an affirmative final determination for export subsidies in the companion CVD investigation. However, suspension of liquidation for provisional measures in the companion CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those subsidies at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of aluminum wire and cable from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

[4] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethyl cellulose from Finland,* 69 FR 77216, 77219 (December 27, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethyl Cellulose from Finland,* 70 FR 28279, 28279 (May 17, 2005).

[5] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an 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). 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 violation subject to sanction.

Notification to Importers

This notice also serves as an initial reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: October 18, 2019.

Carole Showers,

Executive Director, Office of Policy, Policy & Negotiations, Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of the investigation covers aluminum wire and cable, which is defined as an assembly of one or more electrical conductors made from 8000 Series Aluminum Alloys (defined in accordance with ASTM B800), Aluminum Alloy 1350 (defined in accordance with ASTM B230/B230M or B609/B609M), and/or Aluminum Alloy 6201 (defined in accordance with ASTM B398/B398M), provided that: (1) At least one of the electrical conductors is insulated; (2) each insulated electrical conductor has a voltage rating greater than 80 volts and not exceeding 1,000 volts; and (3) at least one electrical conductor is stranded and has a size not less than 16.5 thousand circular mil (kcmil) and not greater than 1,000 kcmil. The assembly may: (1) Include a grounding or neutral conductor; (2) be clad with aluminum, steel, or other base metal; or (3) include a steel support center wire, one or more connectors, a tape shield, a jacket or other covering, and/or filler materials.

Most aluminum wire and cable products conform to National Electrical Code (NEC) types THHN, THWN, THWN–2, XHHW–2, USE, USE–2, RHH, RHW, or RHW–2, and also conform to Underwriters Laboratories (UL) standards UL–44, UL–83, UL–758, UL–854, UL–1063, UL–1277, UL–1569, UL–1581, or UL–4703, but such conformity is not required for the merchandise to be included within the scope.

The scope of the investigation specifically excludes aluminum wire and cable products in lengths less than six feet, whether or not included in equipment already assembled at the time of importation.

The merchandise covered by the investigation is currently classifiable under subheading 8544.49.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheading 8544.42.9090. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Changes Since the Preliminary Determination
VI. Adjustments to Cash Deposit Rates for Export Subsidies
VII. Adjustment Under Section 777A(f) of the Act
VIII. China-Wide Entity and Use of Facts Otherwise Available and Adverse Inferences
IX. Discussion of the Issues
  Comment 1: Selection of the AFA Rate
  Comment 2: Application of Total AFA to Huatong
  Comment 3: Huatong's Eligibility for a Separate Rate
  Comment 4: Application of Total AFA to Silin
  Comment 5: Offset of Countervailable Benefits for Aluminum Rod
X. Recommendation

[FR Doc. 2019–23612 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–846]

Sugar From Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 18, 2019, the United States Court of International Trade (CIT) issued a final judgment in *CSC Sugar LLC* v. *United States*, Ct. No. 17–00214, Slip Op. 19–131 (CIT October 18, 2019) (*CSC Sugar II*). Commerce is notifying the public of the CIT's ruling that Commerce's 2017 amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement) must be vacated. Commerce intends to take action to implement the CIT ruling by November 18, 2019.

DATES: November 29, 2019.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon, Bilateral Agreements Unit, Office of Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2014, Commerce and the Government of Mexico (GOM) signed the CVD Agreement.[1] Between June 2016 and June 2017, Commerce and the GOM held consultations to address concerns raised by the domestic industry and to ensure that the CVD Agreement met the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation was in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring was practicable. The consultations resulted in Commerce and the GOM signing an amendment to the CVD Agreement on June 30, 2017, which was subsequently published in the **Federal Register**.[2]

CSC Sugar LLC (CSC Sugar) challenged Commerce's determination to amend the CVD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.[3] Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico) as required by section 777(a)(3) of the Tariff Act of 1930, as amended (the Act).[4]

The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the *CVD Amendment*.[5] CSC Sugar subsequently filed a motion for judgment on the agency record arguing that Commerce's

[1] *See Sugar From Mexico: Suspension of Countervailing Investigation*, 79 FR 78044 (December 29, 2014).

[2] *See Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 FR 31942 (July 11, 2017) (*CVD Amendment*).

[3] *See CSC Sugar II* at 4.

[4] *Id.*

[5] *Id.* (citing *CSC Sugar LLC* v. *United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

failure, during the consultations period, to maintain contemporaneous *ex parte* communication memoranda, in accordance with section 777(a)(3) of the Act, could not be adequately remedied by Commerce's delayed and incomplete supplementation of the record.[6]

The CIT found that Commerce's failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as ''harmless.''[7] The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.[8] On that basis, the CIT stated that the *CVD Amendment* must be vacated.[9]

The *CVD Amendment* remains in force until Commerce takes action to implement the CIT's ruling. The CIT's rules establish an automatic 30-day stay of proceedings to enforce a judgment.[10] Accordingly, Commerce intends to implement the CIT's ruling by November 18, 2019.[11]

Dated: October 25, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–23770 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See CSC Sugar II* at 4.

[7] *Id.* at 11–12.

[8] *Id.* at 12.

[9] *Id.*

[10] *See* CIT Rule 62(a) (''Except as stated in this rule or as otherwise ordered by the court, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after its entry.'').

[11] *See* CIT Rule 6(a)(1). In this case, the 30th day after October 18 is Sunday, November 17.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–096]

Aluminum Wire and Cable From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of aluminum wire and cable from the People's Republic of China (China).

DATES: Applicable October 30, 2019.

FOR FURTHER INFORMATION CONTACT: Caitlin Monks or Nancy Decker, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–2670 or 202–482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioners in this investigation are Encore Wire Corporation (Encore) and Southwire Company, LLC (Southwire) (the petitioners). In addition to the Government of China (GOC), the mandatory respondents in this investigation are Shanghai Silin Special Equipment Co., Ltd. (Silin), Changfeng Wire & Cable Co., Ltd. (Changfeng), and Shanghai Yang Pu Qu Gong (Qu Gong). Qu Gong did not respond to our requests for information.

On April 8, 2019, Commerce published in the **Federal Register** the *Preliminary Determination* of this investigation.[1] On September 11, 2019, Commerce issued its Post-Preliminary Analysis.[2]

A summary of events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of comments from interested parties for this final determination, is provided in the Issues and Decision Memorandum.[3] 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 at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are aluminum wire and cable. For a complete description of the scope of this investigation, *see* Appendix I.

Period of Investigation

The period of investigation is January 1, 2017 through December 31, 2017.

Use of Adverse Facts Available

In making this final determination, Commerce is relying on facts otherwise available, including adverse facts available (AFA), pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act). For a full discussion of our application of AFA, *see* the *Preliminary Determination* and the Issues and Decision Memorandum.[4]

Analysis of Comments Received

In the Issues and Decision Memorandum, we address all issues raised in parties' case and rebuttal briefs. A list of the issues that parties raised, and to which we responded, is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, minor corrections presented at verification, and our verification findings, we made changes to Changfeng's subsidy rate calculation, and we have now assigned Silin a rate based entirely on AFA. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Tariff Act of 1930, as amended (the Act), we calculated an individual estimated subsidy rate for Changfeng and assigned to Qu Gong and Silin rates based entirely on AFA pursuant to section 776 of the Act.

Section 705(c)(5)(A) of the Act provides that in the final determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Changfeng is the only respondent for which we calculated an estimated weighted-average subsidy rate that is not zero, *de minimis,* or based entirely on facts otherwise available. Therefore,

[1] *See Aluminum Wire and Cable from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 84 FR 13886 (April 8, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Post-Preliminary Analysis of Countervailing Duty Investigation: Aluminum Wire and Cable from the People's Republic of China,'' dated September 11, 2019.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Aluminum Wire and Cable from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Preliminary Determination* PDM at ''Use of Facts Otherwise Available and Adverse Inferences;'' *see also* Issues and Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences.''

for purposes of determining the all-others rate, and pursuant to section 705(c)(5)(A) of the Act, we are using the subsidy rate calculated for Changfeng.

Commerce determines the total estimated net countervailable subsidy rates to be the following:

Producer/exporter	Subsidy rate (percent)
Shanghai Silin Special Equipment Co., Ltd.[5]	165.63
Changfeng Wire & Cable Co., Ltd	33.44
Shanghai Yang Pu Qu Gong	165.63
All-Others	33.44

Disclosure

We intend to disclose to interested parties under Administrative Protective Order (APO), the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from China that were entered or withdrawn from warehouse, for consumption, on or after April 8, 2019, *i.e.,* the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered, or withdrawn from warehouse, on or after August 6, 2019, but to continue the suspension of liquidation of all entries from April 8, 2019 through August 5, 2019.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited as a result of the suspension of the suspension of liquidation will be refunded.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because Commerce's final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of aluminum wire and cable from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to the parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or, alternatively, conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: October 18, 2019.

Carole Showers,

Executive Director, Office Policy, Policy & Negotiations, Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of the investigation covers aluminum wire and cable, which is defined as an assembly of one or more electrical conductors made from 8000 Series Aluminum Alloys (defined in accordance with ASTM B800), Aluminum Alloy 1350 (defined in accordance with ASTM B230/B230M or B609/B609M), and/or Aluminum Alloy 6201 (defined in accordance with ASTM B398/B398M), provided that: (1) At least one of the electrical conductors is insulated; (2) each insulated electrical conductor has a voltage rating greater than 80 volts and not exceeding 1,000 volts; and (3) at least one electrical conductor is stranded and has a size not less than 16.5 thousand circular mil (kcmil) and not greater than 1,000 kcmil. The assembly may: (1) Include a grounding or neutral conductor; (2) be clad with aluminum, steel, or other base metal; or (3) include a steel support center wire, one or more connectors, a tape shield, a jacket or other covering, and/or filler materials.

Most aluminum wire and cable products conform to National Electrical Code (NEC) types THHN, THWN, THWN–2, XHHW–2, USE, USE–2, RHH, RHW, or RHW–2, and also conform to Underwriters Laboratories (UL) standards UL–44, UL–83, UL–758, UL–854, UL–1063, UL–1277, UL–1569, UL–1581, or UL–4703, but such conformity is not required for the merchandise to be included within the scope.

The scope of the investigation specifically excludes aluminum wire and cable products in lengths less than six feet, whether or not included in equipment already assembled at the time of importation.

The merchandise covered by the investigation is currently classifiable under subheading 8544.49.9000 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheading 8544.42.9090. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Use of Facts Otherwise Available and Adverse Inferences
VI. Subsidies Valuation
VII. Analysis of Programs
VIII. Analysis of Comments
- General Issues
- Comment 1: Export Buyer's Credits
- Comment 2: Other Subsidies
- Comment 3: Benchmark for Aluminum Rod
- Comment 4: Double Remedies for Aluminum Rod
- Comment 5: Loan Calculations
- Issues Related to Silin and its Suppliers/Producers
- Comment 6: Whether to Apply AFA to Silin
- Comment 7: Whether to Apply Partial AFA to Qingdao Cable
- Comment 8: Xinqi Cable's Electricity Benefit Calculation
- Issues Related to Changfeng

[5] As discussed in the *Preliminary Determination* PDM, Commerce has assigned Silin's rate to the entity named as cross-owned in its affiliation questionnaire response: Jiangxi Silin International Cable Co., Ltd.

Comment 9: Whether to Apply AFA to Changfeng
Comment 10: Whether to Apply Partial AFA to Changfeng's Policy Loans
IX. Recommendation

[FR Doc. 2019–23611 Filed 10–29–19; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT022

Atlantic Highly Migratory Species; Advisory Panel

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

ACTION: Notice; solicitation of nominations.

SUMMARY: NMFS solicits nominations for the Atlantic Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the HMS AP when preparing and implementing Fishery Management Plans (FMPs) or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill approximately one-third (10) of the seats on the HMS AP for 3-year appointments. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations are considered for membership on the HMS AP.

DATES: Nominations must be received on or before November 29, 2019.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by any of the following methods:

- *Email: HMSAP.Nominations@noaa.gov.* Include in the subject line the following identifier: ''HMS AP Nominations.''
- *Mail:* Peter Cooper, Highly Migratory Species Management Division, NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Peter Cooper at (301) 427–8503.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided that the Secretary may establish Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for any highly migratory species fishery that is under the Secretary's authority. NMFS has consulted with the HMS AP on: Amendment 1 to the Billfish FMP (1999); the HMS FMP (1999); Amendment 1 to the HMS FMP (2003); the 2006 Consolidated HMS FMP (2006); and Amendments 1 (2009), 2 (2008), 3 (2010), 4 (2012), 5a (2013), 5b (2017), 6 (2015), 7 (2014), 8 (2013), 9 (2015), 10 (2017), and 11 (2018) to the 2006 Consolidated HMS FMP; among other relevant fishery management issues.

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the nominee and a description of his/her interest in HMS or HMS fisheries, or in particular species of sharks, swordfish, tunas, or billfish;
2. Contact information, including mailing address, phone, and email of the nominee;
3. A statement of background and/or qualifications;
4. A written commitment that the nominee shall actively participate in good faith, and consistent with ethics obligations, in the meetings and tasks of the HMS AP; and
5. A list of outreach resources that the nominee has at his/her disposal to communicate Qualifications for HMS AP Membership.

Qualification for membership includes one or more of the following: (1) Experience in HMS recreational fisheries; (2) experience in HMS commercial fisheries; (3) experience in fishery-related industries (*e.g.,* marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private, non-governmental, regional, national, or international organization representing marine fisheries, or environmental, governmental, or academic interests dealing with HMS.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one-third of the members' terms expiring on December 31 of each year. Nominations are sought for terms beginning January 2020 and expiring December 2022.

B. Participants

Nominations for the HMS AP will be accepted to allow representation from commercial and recreational fishing interests, academic/scientific interests, and the environmental/non-governmental organization community, who are knowledgeable about Atlantic HMS and/or Atlantic HMS fisheries. Current representation on the HMS AP, as shown in Table 1, consists of 12 members representing commercial interests, 12 members representing recreational interests, 4 members representing environmental interests, 4 academic representatives, and the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Chairperson. Each HMS AP member serves a 3-year term with approximately one-third of the total number of seats (33) expiring on December 31 of each year. NMFS seeks to fill 3 commercial, 5 recreational, and 2 environmental organization vacancies by December 31, 2019. NMFS will seek to fill vacancies based primarily on maintaining the current representation from each of the sectors. NMFS also considers species expertise and representation from the fishing regions (Northeast, Mid-Atlantic, Southeast, Gulf of Mexico, and Caribbean) to ensure the diversity and balance of the AP. Table 1 includes the current representation on the HMS AP by sector, region, and species with terms that are expiring identified in bold. It is not meant to indicate that NMFS will only consider persons who have expertise in the species or fishing regions that are listed. Rather, NMFS will aim toward having as diverse and balanced an AP as possible.

BILLING CODE 3510–22–P

Table 1 -- Current Representation on the HMS AP by Sector, Region, and Species

Sector	Fishing Region	Species	Date Appointed	Date Term Expires	Member Status
Academic	All	Swordfish/Tuna	1/1/2018	12/31/2020	Active
Academic	All	Tuna	1/1/2019	12/31/2021	Active
Academic	Gulf of Mexico/Southeast	Shark	1/1/2019	12/31/2021	Active
Academic	Southeast	Swordfish/HMS	1/1/2019	12/31/2021	Active
Commercial	**Mid-Atlantic**	**HMS/Shark**	**1/1/2017**	**12/31/2019**	**Expiring**
Commercial	**Mid-Atlantic**	**Swordfish/Tuna**	**1/1/2017**	**12/31/2019**	**Expiring**
Commercial	**Gulf of Mexico**	**Shark**	**1/1/2017**	**12/31/2019**	**Expiring**
Commercial	Southeast	Shark	1/1/2018	12/31/2020	Active
Commercial	All	HMS	1/1/2018	12/31/2020	Active
Commercial	Northeast	Tuna	1/1/2018	12/31/2020	Active
Commercial	Gulf of Mexico/Southeast	Swordfish/Tuna	1/1/2018	12/31/2020	Active
Commercial	Northeast	Tuna	1/1/2018	12/31/2020	Active
Commercial	Northeast	Tuna	1/1/2018	12/31/2020	Active
Commercial	Southeast	Shark	1/1/2019	12/31/2021	Active
Commercial	Southeast	Swordfish/Tuna	1/1/2019	12/31/2021	Active
Commercial	Northeast	Swordfish/Tuna	1/1/2019	12/31/2021	Active
Environmental	**All**	**Tuna**	**1/1/2017**	**12/31/2019**	**Expiring**
Environmental	**All**	**HMS**	**1/1/2017**	**12/31/2019**	**Expiring**
Environmental	All	Shark	1/1/2018	12/31/2020	Active
Environmental	Caribbean	HMS	1/1/2019	12/31/2021	Active
Recreational	**Northeast**	**HMS**	**1/1/2017**	**12/31/2019**	**Expiring**
Recreational	**Mid-Atlantic**	**Tuna**	**1/1/2017**	**12/31/2019**	**Expiring**
Recreational	**Mid-Atlantic**	**HMS**	**1/1/2017**	**12/31/2019**	**Expiring**
Recreational	**Southeast**	**Billfish**	**1/1/2017**	**12/31/2019**	**Expiring**
Recreational	**Gulf of Mexico**	**HMS**	**1/1/2017**	**12/31/2019**	**Expiring**
Recreational	All	Billfish	1/1/2018	12/31/2020	Active
Recreational	Mid-Atlantic	Shark	1/1/2018	12/31/2020	Active
Recreational	Mid-Atlantic	Tuna/Billfish	1/1/2018	12/31/2020	Active
Recreational	Northeast	Tuna/Shark	1/1/2019	12/31/2021	Active
Recreational	Gulf of Mexico/Southeast	HMS	1/1/2019	12/31/2021	Active
Recreational	Mid-Atlantic	HMS	1/1/2019	12/31/2021	Active
Recreational	Southeast	Billfish/HMS	1/1/2019	12/31/2021	Active

Note: Terms that are expiring or for whom current members are stepping down are identified in bold and marked as "Expiring". NMFS tries to maintain diversity and balance in representation among fishing regions and species.

The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the HMS AP.

Five additional members on the HMS AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The HMS AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the HMS AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the HMS AP meetings.

C. Meeting Schedule

Meetings of the HMS AP will be held as frequently as necessary but are routinely held twice each year—once in the spring, and once in the fall. The meetings may be held in conjunction with public hearings.

Dated: October 25, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–23689 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV113

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a webinar-based meeting with the public to provide information on options available to commercial fishing operators for electronically submitting required Vessel Trip Reports (VTRs) in the Greater Atlantic Region. This is in support of the Council's joint action with the New England Fishery Management Council that could require electronic reporting of VTRs by operators holding commercial fishing permits for species managed by either council that require the submission of VTRs.

DATES: The meeting will be held Wednesday, November 20, 2019, from 5:30 p.m. to 7:30 p.m., EST.

ADDRESSES: The meeting will be held via webinar (*http://mafmc.adobeconnect.com/evtr_publicmtg/*) with a telephone audio connection (provided when connecting). Audio only access via conference phone number: 1–800–832–0736; Room Number: 5765379.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: The Council is considering requiring electronic reporting of commercial fishery VTRs in a joint action with the New England Fishery Management Council. This action would change the method of transmitting VTRs—the required data elements would not change. Existing regulations requiring that VTRs be completed before arriving at the dock would not change, but the timeline for submitting electronic reports may change. This meeting will provide a review of approved electronic VTR applications, initial steps that would be necessary for commercial operators to begin reporting electronically, and a demonstration of two of the most popular electronic reporting applications (with limited time for questions) to convey information on the process involved for commercial operators to report VTRs electronically.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: October 24, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–23609 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2019–0038]

Request for Comments on Intellectual Property Protection for Artificial Intelligence Innovation

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') is gathering information about the impact of artificial intelligence (''AI'') technologies on intellectual property law and policy. To assist in gathering this information, on August 27, 2019, the USPTO published questions related to the impact of artificial intelligence inventions on patent law and policy and asked the public for written comments. Those questions cover a variety of topics, including whether revisions to intellectual property protection are needed. The present notice extends this inquiry to copyright, trademark, and other intellectual property rights impacted by AI.

DATES: Written comments must be received on or before December 16, 2019.

ADDRESSES: Written comments should be sent by email to *AIPartnership@uspto.gov.* Comments may also be submitted by postal mail addressed to the Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email.

Because written comments and testimony will be made available for public inspection, information that a respondent does not desire to be made public, such as a phone number, should not be included in the testimony or written comments.

FOR FURTHER INFORMATION CONTACT: Coke Stewart, Office of the Under Secretary and Director of the USPTO, (571) 272–8600.

SUPPLEMENTARY INFORMATION: Artificial Intelligence (AI) technologies are increasingly becoming important across a diverse spectrum of technologies and businesses. AI poses unique challenges in the sphere of intellectual property law. At a January 31, 2019 conference on ''Artificial Intelligence: Intellectual Property Policy Considerations,'' USPTO explored a number of those challenges.[1] On August 27, 2019, the USPTO published a request for comment regarding AI's impacts on patent law and policy. As a continuation of this work, the USPTO is also considering the impact of AI on other intellectual property rights.

Issues for Comment: The USPTO seeks comments on the copyright, trademark, and other intellectual property rights issues that may be impacted by AI. The questions enumerated below are a preliminary guide to aid the USPTO in collecting relevant information to evaluate whether further guidance is needed and to assist in the development of any such guidance with respect to intellectual property policy and its relationship with AI. The questions should not be taken as an indication that the USPTO has taken a position, or is predisposed to any particular views. The USPTO welcomes comments from the public on any issues that they believe are relevant to this topic, and is particularly interested in answers to the following questions:

1. Should a work produced by an AI algorithm or process, without the involvement of a natural person contributing expression to the resulting work, qualify as a work of authorship protectable under U.S. copyright law? Why or why not?

2. Assuming involvement by a natural person is or should be required, what kind of involvement would or should be sufficient so that the work qualifies for copyright protection? For example, should it be sufficient if a person (i) designed the AI algorithm or process that created the work; (ii) contributed to the design of the algorithm or process; (iii) chose data used by the algorithm for training or otherwise; (iv) caused the AI algorithm or process to be used to yield the work; or (v) engaged in some specific combination of the foregoing

[1] A videotape of the entire conference, along with the agenda and an overview of the conference, are available at *https://www.uspto.gov/about-us/events/artificial-intelligence-intellectual-property-policy-considerations.*

activities? Are there other contributions a person could make in a potentially copyrightable AI-generated work in order to be considered an ''author''?

3. To the extent an AI algorithm or process learns its function(s) by ingesting large volumes of copyrighted material, does the existing statutory language (*e.g.,* the fair use doctrine) and related case law adequately address the legality of making such use? Should authors be recognized for this type of use of their works? If so, how?

4. Are current laws for assigning liability for copyright infringement adequate to address a situation in which an AI process creates a work that infringes a copyrighted work?

5. Should an entity or entities other than a natural person, or company to which a natural person assigns a copyrighted work, be able to own the copyright on the AI work? For example: Should a company who trains the artificial intelligence process that creates the work be able to be an owner?

6. Are there other copyright issues that need to be addressed to promote the goals of copyright law in connection with the use of AI?

7. Would the use of AI in trademark searching impact the registrablity of trademarks? If so, how?

8. How, if at all, does AI impact trademark law? Is the existing statutory language in the Lanham Act adequate to address the use of AI in the marketplace?

9. How, if at all, does AI impact the need to protect databases and data sets? Are existing laws adequate to protect such data?

10. How, if at all, does AI impact trade secret law? Is the Defend Trade Secrets Act (DTSA), 18 U.S.C. 1836 *et seq.,* adequate to address the use of AI in the marketplace?

11. Do any laws, policies, or practices need to change in order to ensure an appropriate balance between maintaining trade secrets on the one hand and obtaining patents, copyrights, or other forms of intellectual property protection related to AI on the other?

12. Are there any other AI-related issues pertinent to intellectual property rights (other than those related to patent rights) that the USPTO should examine?

13. Are there any relevant policies or practices from intellectual property agencies or legal systems in other countries that may help inform USPTO's policies and practices regarding intellectual property rights (other than those related to patent rights)?

Dated: October 23, 2019.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2019–23638 Filed 10–29–19; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Tuesday, November 5, 2019.

PLACE: CFTC Headquarters, Lobby-Level Hearing Room, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- Proposed Rule—Correcting Amendment to Commission Regulation 160.30 (Privacy of Consumer Financial Information);
- Foreign Board of Trade (FBOT) Applications of Euronext Amsterdam, Euronext Paris, and European Energy Exchange; and
- Other Commission business.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: October 28, 2019.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2019–23810 Filed 10–28–19; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0093]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 29, 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–0093. 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 Carmen Gordon, 202–453–7311.

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: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.

OMB Control Number: 1840–0640.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 187.

Total Estimated Number of Annual Burden Hours: 2,057.

Abstract: Ronald E. McNair Postbaccalaureate Achievement (McNair) Program grantees must submit the Annual Performance Report each year. The reports are used to evaluate grantees' performance for substantial progress, respond to the Government Performance and Results Act (GPRA), and award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the McNair Program on the academic progress of participating students.

Dated: October 25, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–23672 Filed 10–29–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0110]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Program for International Student Assessment 2021 (PISA 2021) Main Study Recruitment and Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 29, 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–0110. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–502–7411 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for International Student Assessment 2021 (PISA 2021) Main Study Recruitment and Field Test.

OMB Control Number: 1850–0755.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 11,733.

Total Estimated Number of Annual Burden Hours: 5,461.

Abstract: The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds which focuses on assessing students' reading, mathematics, and science literacy. PISA was first administered in 2000 and is conducted every three years. The United States has participated in all of the previous cycles and is participating in 2021 in order to track trends and to compare the performance of U.S. students with that of students in other education systems. PISA 2021 is sponsored by the Organization for Economic Cooperation and Development (OECD). In the United States, PISA is conducted by the National Center for Education Statistics (NCES), within the U.S. Department of Education. In each administration of PISA, one of the subject areas (reading, mathematics, or science literacy) is the major domain and has the broadest content coverage, while the other two subjects are the minor domains. PISA emphasizes functional skills that students have acquired as they near the end of mandatory schooling (aged 15 years), and students' knowledge and skills gained both in and out of school

environments. PISA 2021 will focus on mathematics literacy as the major domain. Reading and science literacy will also be assessed as minor domains, with additional assessment of financial literacy. In addition to the cognitive assessments described above, PISA 2021 will include questionnaires administered to school principals and assessed students. To prepare for the main study in 2021, PISA countries will conduct a field test in the spring of 2020, primarily to evaluate newly developed assessment and questionnaire items but also to test the assessment operations. The PISA 2021 field test data collection will occur in the U.S.A. from March–April 2020 and the main study data collection from September–November 2021. This submission requests approval for: All recruitment and data collection activities related to the 2020 field test, and the overarching plan and recruitment of schools for the PISA 2021 main study.

Dated: October 25, 2019.

Stephanie Valentine,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–23665 Filed 10–29–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, November 18, 2019; 1:00 p.m.–5:00 p.m. Tuesday, November 19, 2019; 9:00 a.m.–5:00 p.m.

ADDRESSES: Hyatt House, 1268 Broad Street, Augusta, GA 30901.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120; email: *amy.boyette@srs.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

Monday, November 18, 2019

Opening, Chair Update, and Agenda Review
Agency Updates
Administrative & Outreach Committee Update
Facilities Disposition & Site Remediation Committee Update
Nuclear Materials Committee Update
Strategic & Legacy Management Committee Update
Waste Management Committee Update
Break
Presentation: *Annual Site Environmental Report*
Draft Recommendations
Public Comments
Recess

Tuesday, November 19, 2019

Reconvene
Agenda Review
Presentations:
- *Land Use*
- *Radiological Education, Monitoring and Outreach Project Summary Report*

Lunch Break
Presentations:
- *EM Performance Metrics*
- *Liquid Waste Tank Farm Permitting*
- *Mixed Waste/Polychlorinated Biphenyl (PCB)*
- *Remote Handled Transuranic (TRU) Waste to the Waste Isolation Pilot Plant (WIPP)*

Public Comments
Voting
Elections: Chair, Vice Chair and Committee Chairs
Outgoing Member Recognition
Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Savannah River Site, 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 Amy Boyette at least seven days in advance of the meeting at the telephone 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 Amy Boyette's office at the address or telephone 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 Amy Boyette at the address or telephone number listed above. Minutes will also be available at the following website: *http://cab.srs.gov/srs-cab.html.*

Signed in Washington, DC, on October 24, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–23642 Filed 10–29–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 22, 2020; 1:00 p.m.–5:15 p.m.

ADDRESSES: Ohkay Conference Center, 68 New Mexico 291, San Juan, New Mexico 87566.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.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
- Welcome and Introductions
- Approval of Agenda
- Approval of November 13, 2019 Meeting Minutes
- Old Business

- Report from NNMCAB Chair
- Other Items
- New Business
- Presentation on EM Cleanup
- Break
- Presentation on Installing Groundwater Wells at the Los Alamos National Laboratory
- Public Comment Period
- Update from New Mexico Environment Department
- Update from EM Los Alamos Field Office
- Update from NNMCAB Deputy Designated Federal Officer and Executive Director
- Wrap-Up Comments from NNMCAB Members
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Northern New Mexico, 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 Menice Santistevan at least seven days in advance of the meeting at the telephone 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 Menice Santistevan 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 Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: *https://www.energy.gov/em/nnmcab/meeting-materials.*

Signed in Washington, DC, on October 24, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–23651 Filed 10–29–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 21, 2019; 6:00 p.m.

ADDRESSES: West Kentucky Community and Technical College, Emerging Technology Center, 5100 Alben Barkley Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Jennifer Woodard, Deputy Designated Federal Officer, U.S. Department of Energy, Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825; *email: Jennifer.woodard@pppo.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
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken as Appropriate

Public Participation: The meeting is open to the public. The EM SSAB, Paducah, 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 Jennifer Woodard as soon as possible in advance of the meeting at the telephone 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 Jennifer Woodard at the telephone number listed above. Requests must be received as soon as possible 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. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope of the Board may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Jennifer Woodard at the address and phone number listed above. Minutes will also be available at the following website: *https://www.energy.gov/pppo/pgdp-cab/listings/meeting-materials.*

Signed in Washington, DC, on October 24, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–23652 Filed 10–29–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology Meeting

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for an open meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: November 18, 2019; 9:15 a.m. to 6:00 p.m.

ADDRESSES: The meeting will be held at the National Academy of Sciences (in the Lecture Room), 2101 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: This PCAST meeting will occur on Monday, November 18, 2019, from 9:15 a.m.–6:00 p.m., at the National Academies of Science. Individuals from the public who wish to attend must register using the following email address: *PCAST@ostp.eop.gov.* Questions about the meeting should be directed to Edward McGinnis, Executive Director, PCAST,

(202) 456–6076, or *PCAST@ostp.eop.gov.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *whitehouse.gov.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is chaired by Dr. Kelvin Droegemeier, Director, Office of Science and Technology Policy, Executive Office of the President, The White House.

Type of Meeting: Open.

Tentative Schedule and Agenda: During this open meeting, PCAST is scheduled to discuss the identification of science and technology issues that PCAST members will address and also discuss setting priorities.

Public Comments: It is the policy of the PCAST to accept written public comments no longer than 20 pages and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

The public comment period for this meeting will take place on November 18, 2019, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov,* no later than 9:00 a.m. Eastern Time on November 12, 2019. Phone reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12:00 p.m. Eastern Time on November 12, 2019, so that the comments may be made available to the PCAST members prior to this meeting for their consideration.

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should email *PCAST@ostp.eop.gov* at least ten business days prior to the meeting so that appropriate arrangements can be made.

Minutes: Minutes will be available within 45 days by emailing *PCAST@ostp.eop.gov.*

Signed in Washington, DC, on October 24, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–23624 Filed 10–29–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee. The Federal Advisory Committee Act requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: November 19, 2019; 8:00 a.m.–5:00 p.m.

November 20, 2019; 8:00 a.m.–1:30 p.m.

ADDRESSES: Capitol Skyline Hotel, 10 I St. SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Ian Rowe, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; telephone at (202) 586–7720, or email: *Ian.Rowe@EE.Doe.Gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: Advise the points-of-contact (Secretaries of Energy and Agriculture) with respect to the Biomass Initiative (The Initiative) and evaluate and make recommendations in writing to the Biomass Research and Development Board.

Purpose of Meeting: To develop advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Presentations from government and industry that provide insights on the intersection of forest health and bioenergy growth.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Dr. Ian Rowe at (202) 586–7720, or Email: *Ian.Rowe@ee.doe.gov at least 5 business days* prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The summary of the meeting will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html.*

Signed in Washington, DC, on October 24, 2019.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2019–23649 Filed 10–29–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15007–000]

Lock+™ Hydro Friends Fund XXXI, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 12, 2019, Lock+™ Hydro Friends Fund XXXI, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Beltzville Dam Hydropower Project to be located at the U.S. Army Corps of Engineers' (Corps) Beltzville Dam on Pohopoco Creek in Carbon County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 30-foot-wide, 30-foot-deep, 160-foot-tall modular frame structure to be installed at the intake for the outlet pipe adjacent to the outlet tower, containing two turbine-generator units with a rated capacity of 475 kilowatts each; (2) a new switchgear and control room located in the modular structure; and (3) a new 13-kilovolt transmission line connecting the modular structure with a nearby existing electrical grid. The proposed project would have an annual generation of 4,150 megawatt-hours.

Applicant Contact: Wayne Crouse, Lock+™ Hydro Friends Fund XXXI, LLC, P.O. Box 43796, Birmingham, AL 35243; phone: 877–556–6566, ext. 709.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–15007–000.

More information about this project, including a copy of the application, can be viewed or printed on the eLibrary link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–15007) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 24, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23696 Filed 10–29–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL20–5–000; QF19–881–001; QF19–882–001]

Branch Street Solar Partners LLC; SSA Solar of NM 4, LLC; Notice of Petition for Declaratory Order

Take notice that on October 22, 2019, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] Branch Street Solar Partners LLC and SSA Solar of NM 4, LLC (collectively Petitioners), filed a petition for a declaratory order requesting limited waiver of the filing requirements applicable to small power production facilities set forth in section 292.203(a)(3) of the Commission's regulations[2] for the time-period beginning when two qualifying small power production facilities (QF's) were placed into operation, and ending on February 25, 2019, when Petitioners filed their respective QF self-certifications, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 21, 2019.

Dated: October 24, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23694 Filed 10–29–19; 8:45 am]

BILLING CODE 6717–01–P

---

[1] 18 CFR 385.207 (2019).

[2] 18 CFR 292.203(a)(3) (2019).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5679–039]

Energy Stream, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 5679–039.

c. *Date Filed:* August 5, 2019.

d. *Submitted By:* Energy Stream, LLC (Energy Stream).

e. *Name of Project:* M.S.C. Power Project.

f. *Location:* On the Quinebaug River, in the Town of Putnam, Windham County, Connecticut. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Rolland Zeleny, Energy Stream, LLC, 18 Washington Street, Suite 18, Canton, MA 02021; (603) 498–8089; email at *indigoharbor@yahoo.com.*

i. *FERC Contact:* John Baummer at (202) 502–6837; or email at *john.baummer@ferc.gov.*

j. Energy Stream filed its request to use the Traditional Licensing Process (TLP) on August 5, 2019, and provided public notice of the request on August 27, 2019 when it filed the Pre-Application Document (PAD). In a letter dated October 24, 2019, the Director of the Division of Hydropower Licensing approved Energy Stream's request to use the Traditional Licensing Process.

k. 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 Connecticut 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.

l. With this notice, we are designating Energy Stream as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On August 27, 2019, Energy Stream filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD 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. For assistance, contact FERC Online Support at *FERConlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for reproduction upon request by contacting Energy Stream at (603) 498–8089.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 5679. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2022.

p. 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.

Dated: October 24, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23699 Filed 10–29–19; 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 exempt wholesale generator filings:

Docket Numbers: EG20–13–000.
Applicants: Key Capture Energy.
Description: Notice of Self-Certification of EWG Status KCE TX 2, LLC.
Filed Date: 10/24/19.
Accession Number: 20191024–5061.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: EG20–14–000.
Applicants: Key Capture Energy.
Description: Notice of Self-Certification of EWG Status of KCE TX 8, LLC.
Filed Date: 10/24/19.
Accession Number: 20191024–5084.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: EG20–15–000.
Applicants: Key Capture Energy.
Description: Notice of Self-Certification of EWG Status of KCE TX 7, LLC.
Filed Date: 10/24/19.
Accession Number: 20191024–5085.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: EG20–16–000.
Applicants: Amadeus Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Amadeus Wind, LLC.
Filed Date: 10/24/19.
Accession Number: 20191024–5086.
Comments Due: 5 p.m. ET 11/14/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–157–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to Docket No. ER20–157–000 to be effective 11/12/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5060.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–175–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–10–23_Otter Tail Power Attachment GG Filing to be effective 1/1/2020.
Filed Date: 10/23/19.
Accession Number: 20191023–5125.
Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–176–000.
Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
Description: § 205(d) Rate Filing: 2019–10–23_Otter Tail Power Attachment O Filing to be effective 1/1/2020.
Filed Date: 10/23/19.
Accession Number: 20191023–5126.
Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–177–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Rate Schedule Nos. 242, 244, and 288 Cancellations to be effective 12/23/2019.
Filed Date: 10/23/19.
Accession Number: 20191023–5134.
Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–178–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Cost Reimbursement Agreement (SA 2486) re: Niagara Mohawk and O'Brien and Gere to be effective 9/25/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5000.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–179–000.
Applicants: California Independent System Operator Corporation.
Description: Petition for Approval of Disposition of Proceeds of Penalty Assessments and Non-Refundable Interconnection Financial Security of California Independent System Operator Corporation.
Filed Date: 10/23/19.
Accession Number: 20191023–5136.
Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–180–000.

Applicants: Crazy Mountain Wind LLC.
Description: Tariff Cancellation: Cancellation of Tariff to be effective 10/25/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5050.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–181–000.
Applicants: Cimarron Windpower II, LLC.
Description: Compliance filing: MBR Tariff Language Clean-up Filing to be effective 12/24/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5062.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–182–000.
Applicants: Ironwood Windpower, LLC.
Description: Compliance filing: MBR Tariff Language Clean-up Filing to be effective 12/24/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5063.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–183–000.
Applicants: Caprock Solar I LLC.
Description: Compliance filing: MBR Tariff Language Clean-up Filing to be effective 12/24/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5064.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–184–000.
Applicants: Frontier Windpower, LLC.
Description: Compliance filing: MBR Tariff Language Clean-up Filing to be effective 12/24/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5067.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–185–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Solar Star 3, LLC SA No. 235 to be effective 10/25/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5089.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–186–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Solar Star 4, LLC SA No. 236 to be effective 10/25/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5091.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–187–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notice of Cancellation LGIA AES Redondo Beach SA No. 64 to be effective 10/1/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5092.
Comments Due: 5 p.m. ET 11/14/19.

Docket Numbers: ER20–188–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 2019 Revised Added Facilities Rate for the Rate Schedules to be effective 7/26/2019.
Filed Date: 10/24/19.
Accession Number: 20191024–5093.
Comments Due: 5 p.m. ET 11/14/19.

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: October 24, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23698 Filed 10–29–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–136–000]

Reading Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Reading Wind Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 12, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 23, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23693 Filed 10–29–19; 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: ER20–76–001.
Applicants: Tehachapi Plains Wind, LLC.
Description: Tariff Amendment: Amendment to Petition Requesting

Market-Based Rate Authorization to be effective 12/10/2019.

Filed Date: 10/23/19.

Accession Number: 20191023–5060.

Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–168–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: 2nd Amendment to Interim Black Start Agreement (RS 234) to be effective 12/21/2019.

Filed Date: 10/22/19.

Accession Number: 20191022–5167.

Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: ER20–169–000.

Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.

Description: § 205(d) Rate Filing: 2019–10–23_SA 2376 METC-Lowell Light and Power IFA 1st Rev to be effective 12/23/2019.

Filed Date: 10/23/19.

Accession Number: 20191023–5033.

Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–170–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–10–23_Filing of MISO TOs for Cost Recovery of Operating and Maintenance Exp to be effective 1/1/2020.

Filed Date: 10/23/19.

Accession Number: 20191023–5070.

Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–171–000.

Applicants: Otter Tail Power Company.

Description: Tariff Cancellation: Notice of Termination of Service Agreement No. 50 with WMMPA to be effective 12/31/2019.

Filed Date: 10/23/19.

Accession Number: 20191023–5072.

Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–172–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Cancellation: Notice of Termination sPower Sand Hill C E&P Agreement (SA 2100 EP–22) to be effective 10/21/2019.

Filed Date: 10/23/19.

Accession Number: 20191023–5083.

Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–173–000.

Applicants: RWE Renewables Energy Marketing, LLC.

Description: § 205(d) Rate Filing: Notice of Succession to be effective 12/22/2019.

Filed Date: 10/23/19.

Accession Number: 20191023–5090.

Comments Due: 5 p.m. ET 11/13/19.

Docket Numbers: ER20–174–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule Nos. 298, 299 & 300 to be effective 12/23/2019.

Filed Date: 10/23/19.

Accession Number: 20191023–5104.

Comments Due: 5 p.m. ET 11/13/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–65–000.

Applicants: Monongahela Power Company.

Description: Supplement to September 27, 2019 Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Monongahela Power Company.

Filed Date: 10/22/19.

Accession Number: 20191022–5173.

Comments Due: 5 p.m. ET 11/12/19.

Docket Numbers: ES20–6–000.

Applicants: Massachusetts Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Massachusetts Electric Company.

Filed Date: 10/23/19.

Accession Number: 20191023–5005.

Comments Due: 5 p.m. ET 11/13/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified 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: October 23, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23692 Filed 10–29–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0326; FRL–9997–28]

Anthraquinone; Pesticide Registration Review; Docket Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this document, EPA is opening the public comment period for review of anthraquinone. 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. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. 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.

DATES: Comments must be received on or before December 30, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2017–0326, 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 anthraquinone information contact: Rachel Fletcher, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001;

telephone number: (703) 347–0512; fax number: (703) 308–8090; email address: *fletcher.rachel@epa.gov.*

For general information contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7106; fax number: (703) 308–8090; email address: *biscoe.melanie@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, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticide identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136a(g)) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. FIFRA section 3(g) 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.

III. Registration Reviews

A. What action is the Agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registration for anthraquinone to assure that it continues to satisfy the FIFRA standard for registration—that is, it can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. The registration review docket for anthraquinone was opened in 2017 and included a Preliminary Work Plan reflecting anthraquinone's status as a biopesticide. Anthraquinone is currently classified as a conventional pesticide. As such, EPA has drafted an amended Preliminary Work Plan reflecting anthraquinone's conventional pesticide status. This amended Preliminary Work Plan is being made available for public comment in docket EPA–HQ–OPP–2017–0326 (Case Number 6054).

B. Docket Content

1. *Review docket.* The registration review docket contains information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on this case, including the active ingredient, may be located in the registration review schedule on the Agency's website at *https://www.epa.gov/pesticide-reevaluation/registration-review-schedules.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/pesticide-reevaluation.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 1, 2019.

Mary Reaves,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2019–23664 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0202; FRL–9995–78–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Related to E15 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Recordkeeping and Reporting Related to E15 (EPA ICR Number 2408.05, OMB Control Number 2060–0675) 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 October 31, 2019. Public comments were previously requested via the **Federal Register** on March 18, 2019 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 not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 29, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2015–0202, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@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 *oria_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: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, 6405A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2802; email address: *caldwell.jim@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: Under the Clean Air Act, EPA granted partial waivers that allow gasoline containing greater than 10 volume percent ethanol and up to 15 volume percent ethanol (E15) to be introduced into commerce for use in model year 2001 and newer light-duty motor vehicles, subject to certain conditions. EPA issued a final rule establishing several measures to deter the use of E15 in ineligible vehicles and equipment (misfueling). The rule (1) prohibits the use of gasoline containing more than 10 volume percent ethanol in vehicles and equipment that are not covered by the partial waiver decisions, (2) requires all E15 dispensers to have a specific label indicating eligible vehicles, (3) requires E15 and related product transfer documents to contain certain information, and (4) requires ethanol producers, gasoline refiners, blenders, and related parties to conduct a survey of retail stations to monitor compliance with these requirements and submit periodic reports. In addition, to comply with conditions in the partial waivers, each survey party must implement a misfueling mitigation plan. This ICR covers the associated recordkeeping and reporting requirements.

Form Numbers: None.

Respondents/affected entities: Ethanol producers and importers, gasoline refiners, importers, terminals, distributors, retailers, and wholesale purchaser-consumers.

Respondent's obligation to respond: Mandatory (40 CFR part 80).

Estimated number of respondents: 2,604 (total).

Frequency of response: On occasion, quarterly, annually.

Total estimated burden: 14,770 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,841,445 (per year), includes $128,125 in annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 1,500 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an adjustment to an hourly estimate and the addition of some burdens not addressed in the current ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–23620 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0338; FRL–10001–64–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for the Manufacture of Amino/Phenolic Resins (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for the Manufacture of Amino/Phenolic Resins (EPA ICR Number 1869.10, OMB Control Number 2060–0434) 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 January 31, 2020. Public comments were previously requested via the **Federal Register** on May 6, 2019 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 not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 29, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0338, to (1) EPA online using *www.regulations.gov* (our preferred method), 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 National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart OOO were proposed on December 14, 1998, promulgated on January 20, 2000, and amended on April 20, 2006, October 8, 2014, and October 15, 2018. These regulations apply to existing facilities and new facilities that engage in the manufacture of amino/phenolic resins with HAP emissions points that include: (1) Reactor batch process vents; (2) nonreactor batch process vents; (3) continuous process vents; (4) equipment leaks; (5) wastewater; (6) storage vessels; and (7) heat exchangers. New facilities include those that commenced construction or reconstruction after the date of proposal of the 2014 rule amendment. This information is being collected to assure compliance with 40 CFR part 63, subpart OOO.

The October 15, 2018 amendments (83 FR 51842) responded to petitions for reconsideration regarding the NESHAP rule revisions that were promulgated on October 8, 2014 and revised the standards for continuous process vents (CPVs) at existing affected sources, revised the requirements for storage vessels at new and existing sources during periods when an emission control system used to control vents on fixed roof storage vessels is undergoing planned routine maintenance, and included minor technical corrections to improve rule clarity. This renewal incorporates revised costs and burden from activities from these final rule amendments.

In general, all NESHAP 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 NESHAP.

Form Numbers: None.

Respondents/affected entities: Facilities that manufacture amino/phenolic resins.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart OOO).

Estimated number of respondents: 19 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 23,300 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,910,000 (per year), which includes $2,210,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most recently approved ICR. This renewal incorporates revised costs and burden from activities applicable to a subset of facilities with storage tanks or continuous process vents, which includes recordkeeping, reporting and monitoring requirements. There is an increase in the annual O&M costs for facilities with RTOs for control of continuous process vents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–23618 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0178; FRL–9999–99–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA Application Materials for the Water Infrastructure Finance and Innovation Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), EPA Application Materials for the Water Infrastructure Finance and Innovation Act (EPA ICR Number 2549.02, OMB Control Number 2040–0292) 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 December 31, 2019. Public comments were previously requested via the **Federal Register** on April 23, 2019 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 not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 29, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2016–0178, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental

Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, 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: Arielle Gerstein, Water Infrastructure Division, Office of Wastewater Management, 4201–T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–1868; email address: *gerstein.arielle@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 collection of information is necessary in order to receive applications for credit assistance pursuant to section 5024 of the Water Infrastructure Finance and Innovation Act (WIFIA) of 2014, 33 U.S.C. 3903. The purpose of the WIFIA program is to provide Federal credit assistance in the form of direct loans and loan guarantees to eligible water infrastructure projects.

WIFIA requires that an eligible entity submit to the Administrator an application at such time, in such manner, and containing such information, as the Secretary or the Administrator *may require* to receive assistance under WIFIA. In order to satisfy these requirements, EPA must collect an application from prospective borrowers seeking funding. The Letters of Interest and Applications collected from prospective borrowers through this solicitation will be used by the EPA, WIFIA program staff, and reviewers to evaluate applications for credit assistance under the WIFIA eligibility requirements and selection criteria.

Form Numbers: SWIFIA Application—6100–030; SWIFIA Letter of Interest—6100–031; WIFIA Application—6100–032; WIFIA Letter of Interest—6100–033.

Respondents/affected entities: Corporations, partnerships, joint ventures, trusts, federal, state, or local government entities, tribal governments or a consortium of tribal governments, and state infrastructure finance authorities.

Respondent's obligation to respond: The collection is required to obtain credit assistance pursuant to section 5024 of WIFIA, 33 U.S.C. 3903.

Estimated number of respondents: 100 per year (total).

Frequency of response: Once.

Total estimated burden: 10,825 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $14,946,754 (per year), which includes 14,500,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 9,325 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to EPA receiving more Letters of Interest and applications than it originally estimated during program inception. Initially, EPA estimated the program would receive 20 LOIs and 5 applications. This was based on the amount of budget authority initially authorized for WIFIA. However, in 2017, the program received 43 LOIs and invited 12 prospective borrowers to apply. In 2018, the program received 62 LOIs and invited 39 prospective borrowers to apply. In addition, EPA is including the newly authorized State Revolving Fund WIFIA (SWIFIA) program as part of this ICR renewal. EPA estimates that WIFIA will receive 5 LOIs and 5 applications through SWIFIA.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–23621 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0119; FRL–10001–67–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Motor Vehicle and Engine Compliance Program Fees (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Motor Vehicle and Engine Compliance Program Fees (EPA ICR Number 2080.07, OMB Control Number 2060–0545) 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 December 31, 2019. Public comments were previously requested via the **Federal Register** on April 11, 2019 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 not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before November 29, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2013–0119, to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, 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: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Dr., Ann Arbor, MI 48105; telephone number: 734–214–4851, fax number: 734–214–4869; email address: *sohacki.lynn@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: As required by the Clean Air Act, EPA has regulations establishing emission standards and other requirements for various classes of vehicles, engines, and evaporative emission component. These regulations require that compliance be demonstrated prior to EPA granting a ''Certificate of Conformity''. EPA charges fees for administering this certification program. In 2004 the fees program was expanded to include nonroad categories of vehicles and engines, such as several categories of marine engines, locomotives, non-road recreational vehicles, and many nonroad compression-ignition and spark-ignition engines. Manufacturers and importers of covered vehicles, engines and components are required to pay the applicable certification fees prior to their certification applications being reviewed by the Agency. Under section 208 of the Clean Air Act (42 U.S.C. 7542(c)) all information, other than trade secret processes or methods, must be publicly available. Information about fee payments is treated as confidential information prior to certification.

Form Numbers: EPA MVECP Fee Filing Form (3520–29).

Respondents/affected entities: Manufacturers or importers of passenger cars, motorcycles, light trucks, heavy duty truck engines, nonroad vehicles or engines, and evaporative emissions components.

Respondent's obligation to respond: Required to obtain or retain a benefit (40 CFR part 1027).

Estimated number of respondents: 611 (total).

Frequency of response: Annually.

Total estimated burden: 1,019 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $67,445 (per year), includes $11,411 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 92 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is based on the increase in the number applications for certification and the associated fees, updates and corrections that are filed by the manufacturer as part of the fee payment process.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–23619 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2019–0143; FRL–10000–00–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act (EPA ICR Number 2553.03; OMB Control Number 2040–0290), 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 December 31, 2019. Public comments were previously requested via the **Federal Register** on April 15, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comment. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments must be submitted on or before November 29, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2019–0143, to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, 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, or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Carol Peterson, Watershed Assessment, Restoration, and Protection Division, Office of Wetlands, Oceans, and Watersheds (4503T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1304; fax number: (202) 566–1331; email address: *peterson.carol@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: In 2016, EPA issued regulations establishing a process for federally recognized tribes to obtain treatment in a similar manner as states (TAS) for purposes of administrating the water quality restoration provisions of Clean Water Act (CWA) Section 303(d), including establishing lists of impaired waters on their reservations and developing total maximum daily loads (TMDLs). The CWA does not require tribes to administer the CWA Section 303(d) program. However, tribes seeking to be authorized must apply for and be found eligible for TAS through the procedures described in the regulations.

Section 303(d) of the CWA requires states, territories, and authorized tribes to identify and establish a priority ranking for waters that do not meet EPA-approved or promulgated water quality standards (WQS) following the implementation of technology-based controls. For waters so identified, Section 303(d) requires states, territories, and authorized tribes to establish TMDLs in accordance with their priority ranking for those pollutants the Administrator identified as suitable for TMDL calculation. A TMDL is the calculation and allocation to point and nonpoint sources of the maximum amount of a pollutant that a water body can receive and still meet applicable WQS, with a margin of safety.

Form Numbers: None.

Respondents/affected entities: Any federally recognized tribe with a reservation.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: Five.

Frequency of response: Once for initial TAS status, thereafter biennially

for lists of impaired waters, and from time to time for TMDLs.

Total estimated burden: 34,757 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,003,045 (per year), which includes $12,443 in annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 55,147 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. These decreases are due to: (1) The estimated annual number of respondents decreasing from twelve to five; (2) new and better data that parses out labor and costs per activity; and (3) TAS application burden and cost estimates from post-final rule, *Revised Interpretation of Clean Water Act Tribal Provision* (the previous ICR used pre-final rule estimates).

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–23673 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2019–0489; FRL–10001–50–OAR]

Proposed Information Collection Request; Comment Request; Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission Standards (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission Standards (Renewal)'' (EPA ICR No. 0783.65, OMB Control No. 2060–0104) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2020. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 30, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2019–0489, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: David Wright, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4467; fax number 734–214–4869; email address: *wright.davida@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.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under sections 202(a) and 202(k) of the Clean Air Act (42 U.S.C. 7521), EPA finalized regulations to set more stringent vehicle emission standards beginning in model year 2017, as part of a systems approach to addressing the impacts of motor vehicles and fuels on air quality and public health. The Tier 3 vehicle emission standards, which are the subject of this ICR, reduce both tailpipe and evaporative emissions from passenger cars, light-duty trucks, medium-duty passenger vehicles, and some heavy-duty vehicles. The Tier 3 vehicle standards are harmonized with California's Low Emission Vehicle Program—LEVIII standards, creating a federal vehicle emissions program allowing automakers to sell the same vehicles in all fifty states. This ICR covers the information that affected respondents must provide to the Agency. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in CFR title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2).

Form numbers:

Form 5800–258—Template for Light-duty Conversion of Intermediate Age System

Form 5900–257—Template for Light-duty Cover of Outside Useful Life System

Form number N/A—Template for Tier 3 Light-duty FTP and SFTP AB&T Reporting

Form number N/A—Template for Tier 3 Heavy-duty NMOG+NO_X, Evaporative and Cold NMHC AB&T Reporting

Respondents/affected entities: Manufacturers of light-duty passenger vehicles, light-duty trucks, medium-duty passenger vehicles and some heavy-duty vehicles.

Respondent's obligation to respond: Required in order to receive Certificate of Conformity per section as outlined in section 206(a) of the Clean Air Act.

Estimated number of respondents: 55 (total).

Frequency of response: As needed.

Total estimated burden: 73,567 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,662,565 (per year), which includes $6,455,695 annualized capital and $1,206,870 annual operation & maintenance costs.

Changes in estimates: There is no change in the total estimated respondent

burden hours compared with the ICR currently approved by OMB. There is a $28,369 reduction in estimated burden cost compared with the ICR currently approved by OMB.

Dated: October 17, 2019.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2019–23710 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011980–002.

Agreement Name: South Atlantic Chassis Pool Agreement.

Parties: Ocean Carrier Equipment Management Association, Inc.; Consolidated Chassis Management LLC, Georgia Ports Authority; South Carolina State Ports Authority; Maersk Line A/S; Hamburg-Sud; CMA CGM S.A.; APL Co. Pte. Ltd.; American President Lines, Ltd.; COSCO Shipping Lines Co., Ltd.; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Evergreen Line Joint Service Agreement; Hyundai Merchant Marine Co., Ltd.; Orient Overseas Container Line Limited; Ocean Network Express Pte., Ltd.; and Crowley Maritime Corporation.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The amendment changes the name of the COSCO entity that is a party to the Agreement; removes Yang Ming Marine Transport Corp., Atlantic Container Line, Hanjin and CSAV as parties to the Agreement; removes references to Kawasaki Kisen Kaisha, Ltd. Nippon Yusen Kaisha Line, and Mitsui O.S.K. Lines, Ltd. and replaces them with Ocean Network Express Pte., Ltd.; corrects the address of various parties, updates the description of the corporate relationships between certain parties, and changes the classification of Crowley Maritime from an OCEMA common carrier party to a non-OCEMA ocean common carrier party.

Proposed Effective Date: 10/23/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/464.

Agreement No.: 201321.

Agreement Name: Sealand/CMA CGM AGAS Space Charter Agreement.

Parties: Maersk Line A/S d/b/a Sealand and CMA CGM S.A.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes Sealand to charter space to CMA CGM on its AGAS service between the U.S. East Coast on the one hand and ports in Panama and Colombia on the other hand.

Proposed Effective Date: 12/6/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/24438.

Agreement No.: 201322.

Agreement Name: Maersk/Matson Space Charter Agreement.

Parties: Maersk Line A/S and Matson Navigation Company, Inc.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The agreement authorizes Maersk to charter space to Matson in the trade between ports on the Pacific Coast of the United States, American Samoa, Samoa, and Tahiti.

Proposed Effective Date: 12/8/2019.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/24440.

Dated: October 25, 2019.

Rachel E. Dickon,

Secretary.

[FR Doc. 2019–23705 Filed 10–29–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 29, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *CCB Financial Corporation, Kansas City, Missouri;* to acquire Prairie Star Bancshares, Inc., and thereby indirectly acquire Bank of the Prairie, both in Olathe, Kansas.

Board of Governors of the Federal Reserve System, October 25, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–23707 Filed 10–29–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention (CDC), with the authority to redelegate exclusively to the Director, National Institute for Occupational Safety and Health, the authority vested in the Secretary, under the Firefighter Cancer Registry Act of 2018 (Pub. L. 115–194).

This delegation became effective upon date of signature. In addition, I hereby adopt any actions taken by the Director, CDC, or his/her subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: October 24, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–23668 Filed 10–29–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Report/ACF 204 (State MOE) (OMB #0970–0248).

OMB No.: 0970–0248.

Description: The Administration for Children and Families (ACF) is requesting a three-year extension of the ACF–204 (Annual MOE Report). The report is used to collect descriptive program characteristics information on the programs operated by States and Territories in association with their Temporary Assistance for Needy Families (TANF) programs. All State and Territory expenditures claimed toward States and Territories MOE requirements must be appropriate, *i.e.,* meet all applicable MOE requirements. The Annual MOE Report provides the ability to learn about and to monitor the nature of State and Territory expenditures used to meet States and Territories MOE requirements, and it is an important source of information about the different ways that States and Territories are using their resources to help families attain and maintain self-sufficiency. In addition, the report is used to obtain State and Territory program characteristics for ACFs annual report to Congress, and the report serves as a useful resource to use in Congressional hearings about how TANF programs are evolving, in assessing State the Territory MOE expenditures, and in assessing the need for legislative changes.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–204	54	1	118	6,372

Estimated Total Annual Burden Hours: 6,372.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–23635 Filed 10–29–19; 8:45 am]

BILLING CODE 4184–82–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3953]

Providing Regulatory Submissions in Electronic Format: Investigational New Drug Application Safety Reports; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' The draft guidance describes the electronic format sponsors will be required to use when they electronically submit to FDA investigational new drug (IND) safety reports to the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) for serious and unexpected suspected adverse reactions that are required under the Agency's regulations. FDA is establishing the electronic format requirements described in this guidance under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The draft guidance, once finalized and effective, will require sponsors submitting the specified IND safety reports electronically to submit the reports to FDA using the FDA Adverse Event Reporting System (FAERS) as structured data elements and will provide sponsors with a reporting format that is consistent with the International Council for Harmonisation (ICH) E2B(R2) format guidelines and reporting requirements to other regulatory agencies. Additional technical specification documents and instructions for submitting IND safety reports, including ''Electronic Submission of IND Safety Reports Technical Conformance Guide'' and an updated technical specifications document entitled ''Specifications for Preparing and Submitting Electronic ICSRs and ICSR Attachments'' are available on the FAERS Electronic Submission web page (available at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Surveillance/AdverseDrugEffects/ucm115894.htm*).

DATES: Submit either electronic or written comments on the draft guidance by December 30, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2019–D–3953 for ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' 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 draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Meredith K. Chuk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, MD 20993–0002, 301–796–2340; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' The draft guidance describes the electronic format sponsors will be required to use when they electronically submit to FDA IND safety reports to CDER and CBER for serious and unexpected suspected adverse reactions that are required under 21 CFR 312.32(c)(1)(i). FDA is establishing the electronic format requirements described in this guidance under section 745A(a) of the FD&C Act. In section 745A(a) of the FD&C Act, Congress granted explicit statutory authorization to FDA to specify in guidance the format for the electronic submissions required under that section. The draft guidance, once finalized, will require sponsors submitting the specified IND safety reports electronically to submit the reports to FDA using FAERS as structured data elements. Additional technical specification documents and instructions for submitting IND safety reports, including ''Electronic Submission of IND Safety Reports Technical Conformance Guide'' and an updated technical specifications document entitled ''Specifications for Preparing and Submitting Electronic ICSRs and ICSR Attachments,'' are available on the FAERS Electronic Submission web page (available at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Surveillance/AdverseDrugEffects/ucm115894.htm*)).

The draft guidance, when finalized, will represent the current thinking of FDA on ''Providing Regulatory Submissions in Electronic Format: IND Safety Reports.'' The electronic format requirements specified in this guidance will be effective 24 months after the publication of the final guidance on this topic. Before the effective date of this requirement, FDA will accept the IND safety reports described in this guidance to FAERS as part of a voluntary submission program.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information under 21 CFR 312.10 for submitting waiver requests and under 21 CFR 312.32 for submitting IND safety reports and reporting serious and unexpected adverse events has been approved under OMB control number 0910–0014. The collection of information for submitting Forms FDA 3500 and 3500A has been approved under OMB control number 0910–0291. The collection of information for submitting periodic adverse drug experience reports has been approved under OMB control number 0910–0230.

The collection of information for FDA adverse event reporting and electronic submissions using the Electronic Submission Gateway and the Safety Reporting Portal has been approved under OMB control number 0910–0645.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *https://www.regulations.gov.*

Dated: October 24, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–23666 Filed 10–29–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0221]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 29, 2019.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Family Planning Annual Report (FPAR).

Type of Collection: Renewal with change.

OMB No.: 0990–0221.

Abstract: The Office of Population Affairs within the Office of the Assistant Secretary for Health is requesting an extension on a currently approved Family Planning Annual Report (FPAR) data collection and reporting tool (OMB No. 0990–0221). This annual reporting requirement is for family planning services delivery projects authorized and funded by the Title X Family Planning Program [''Population Research and Voluntary Family Planning Programs'' (Pub. L. 91–572)], which was enacted in 1970 as Title X of the Public Health Service Act (Section 1001; 42 U.S.C. 300). The FPAR data collection and reporting tool will include a new module to collect substance use disorder (SUD) screening data in this request to extend an OMB approval to collect essential, annual data from Title X grantees.

Need and Proposed Use of the Information

The Title X Family Planning Program (''Title X program'' or ''program'') is the only Federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services (*e.g.,* screening for breast and cervical cancer, sexually transmitted diseases (STDs), and human immunodeficiency virus). By law, priority is given to persons from low-income families (Section 1006[c] of Title X of the Public Health Service Act, 42 U.S.C. 300). The Office of Population Affairs (OPA) within the Office of the Assistant Secretary for Health administers the Title X program.

Likely Respondents: Respondents for this annual reporting requirement are centers that receive funding directly from OPA for family planning services authorized and funded under the Title X Family

This weighted average hour burden accounts for differences in reporting burden by type of grantee agency grantee (*e.g.,* public health department or private agency), as found in the *2009 FPAR Burden Study.* For purposes of this estimate, the average hour burden ranges between 39 hours (public health department) and 32 hours (private agency).

ANNUALIZED BURDEN HOUR TABLE

Type of respondents	Form name	Number of respondents	Number of responses per respondents	Average annualized burden per response (hours)	Annualized total burden (hours)
Grantees	FPAR	93	1	36	3,348
Total		93	1	36	3,348

Terry Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–23675 Filed 10–29–19; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV Vaccines Clinical Trials Network Leadership and Operations Center (UM1 Clinical Trial Required).

Date: November 21, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Audrey O. Lau, Ph.D., MPH Acting Senior Scientific Review Officer, AIDS Review Branch, Scientific Review Program, RM 3E70, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Rockville, MD 20852–9834, 240–669–2081, *audrey.lau@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13 Clinical Trial Not Allowed).

Date: November 25, 2019.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Audrey O. Lau, Ph.D., MPH Scientific Review Officer, AIDS Review Branch, Scientific Review Program, RM 3E70, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9834, Rockville, MD 20852–9834 240–669–2081 *audrey.lau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 24, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23641 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–177: High-End Instrumentation (HEI) Grant Program.

Date: November 22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Songtao Liu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, Bethesda, MD 20817, 301–827–6828, *songtao.liu@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Interdisciplinary Molecular Sciences and Technologies (S10).

Date: November 22, 2019.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301–408–9655, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Synapses, Neurodegeneration and Signaling.

Date: November 22, 2019.

Time: 10:15 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Vanessa S. Boyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4185, MSC 7850, Bethesda, MD 20892, (301) 402–3726, *boycevs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Regulatory Science B.

Date: November 22, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Regulatory Science B.

Date: November 22, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Michael J. McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, Bethesda, MD 20892, 301–480–1276, *mike.mcquestion@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dermatology.

Date: November 22, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809 *beheraak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Interventions, Nursing & Aging.

Date: November 22, 2019.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rock Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mark Allen Vosvick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, Bethesda, MD 20892, *mark.vosvick@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle Pathobiology and Regeneration.

Date: November 22, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Psychosocial Risks and Disease Prevention.

Date: November 22, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral, Dental, and Craniofacial Sciences.

Date: November 22, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, Bethesda, MD 20892, 301–402–3912 *chowc2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 24, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23646 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Collection of Grants and Contracts Data the Historically Black Colleges and Universities (HBCUS) and Small Businesses May Be Interested in Pursuing, (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health, Office of the Director, Office of Acquisitions and Logistics Management (OALM), Small Business Program Office (SBPO), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Rachel Kenlaw, Program Analyst, NIH, Office of the Director, Office of Acquisitions and Logistics Management, Small Business Program Office, 6100 Executive Blvd., Suite 6E01G, Rockville, MD 20852, or call non-toll-free number (301) 451–6827 or Email your request, including your address to: *Rachel.Kenlaw@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Collection of Grants and Contracts data the Historically Black Colleges and Universities (HBCUs) and small businesses may be interested in pursuing, 0925–NEW, exp., date, XX/XX/XXXX, Office of the Director, Office of Acquisitions and Logistics Management, Small Business Program Office, National Institutes of Health.

Need and Use of Information Collection: Presidential Executive Order 13779 is the White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities. Through this initiative, Federal agencies are mandated to assist in strengthening HBCU's ability for equitable participation in Federal programs and explore new ways to improve the relationship between the Federal Government and Historically Black Colleges and Universities. This initiative will establish how the agency intends to increase the capacity of Historically Black Colleges and Universities to compete effectively for grants and contracts.

The Path to Excellence and Innovation is a comprehensive plan to expand the existing National Institutes of Health Small Business Program in the Office of Acquisition and Logistics Management. The Path to Excellence provides a platform for increased transparency between Historically Black Colleges and Universities and the Federal Government through the provision of outreach events, training opportunities and one-on-one assistance. There are six pilot schools and each school has chosen one or more small business teaming partner(s) to support their effort in this pilot program. Through the collection of this information the National Institutes of Health Small Business Program Office will gain insight into what government grants and contracts are of interest to Historically Black Colleges and Universities and small businesses. This information will support the initiative to help Historically Black Colleges and Universities and small businesses because this tool aids them to be more knowledgeable about what opportunities regarding grants and contracts exist for their organization.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 22.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
HBCU Pre-Solicitation Portal for Contracts and Grants	13	10	10/60	22

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Total		130		22

Dated: October 24, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019–23681 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel: Contraceptive Development Program NICHD Contraceptive Clinical Trials Network Female Sites.

Date: March 2–3, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Steven D. Silverman, Lead Review Technical Assistant, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 B Rockledge Drive, Room 2131C, Bethesda, MD 20892, 301–435–8386, *steven.silverman@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 24, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23647 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Institutional Training Grants (T32, T35, K12).

Date: November 25, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zhihong Shan, Ph.D., Scientific Review Administrator, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr., Ste 3400, Bethesda, MD 20892, (301) 451–2020, *zhihong.shan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 24, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23645 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17–094: Maximizing Investigators' Research Award (R35).

Date: November 19–20, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Intra- and Inter-personal Determinants and Behavioral Interventions Study Section.

Date: November 20–21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV Immunopathogenesis and Vaccine Development Study Section.

Date: November 20–21, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

Date: November 20, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7818, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pain, Perception and Learning.

Date: November 20–21, 2019.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nephrology Small Business Review.

Date: November 20–21, 2019.

Time: 9:00 a.m. to 6:00 p.m

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hepatobiliary Pathophysiology.

Date: November 20, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Pediatric and Obstetric Pharmacology and Therapeutics.

Date: November 20, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–17–340: Collaborative Program Grant for Multidisciplinary Teams (RM1).

Date: November 20, 2019.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Rehabilitation Sciences.

Date: November 20, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR17–199 and PAR17–200 Panel: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery Systems.

Date: November 20, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Science.

Date: November 20, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *hunnicuttgr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Societal and Ethical Issues in Research.

Date: November 20, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Benjamin Greenberg Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, Bethesda, MD 20892, *shaperobg@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cellular and Molecular Immunology.

Date: November 20, 2019.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *alok.mulky@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 24, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23648 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: E-Learning For Hazmat And Emergency Response.

Date: November 12, 2019.

Time: 1:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27713 (Virtual Meeting).

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/ Room 3170 B, Research Triangle Park, NC 27709, (919)541–7556, *allen9@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Revolutionizing, Innovative, Visionary, Environmental Health Research (RIVER).

Date: November 14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Aloft Raleigh Durham Airport Brier Creek, 10020 Sellona Street, Raleigh, NC 27617.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/ Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Summer Research Experience to Enhance Diversity.

Date: November 20, 2019.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27713 (Telephone Conference Call).

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: NIH Support for Conferences and Scientific Meetings (R13).

Date: December 5, 2019.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27713 (Virtual Meeting).

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/ Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556, *allen9@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences (R21).

Date: December 11, 2019.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive Durham, NC 27713 (Virtual Meeting).

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, 530 Davis Drive, Keystone Building, Room 3094, Durham, NC 27713 (984) 287–3288, *Varsha.shukla@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 24, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23640 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Radiation/Nuclear Medical Countermeasure Product Development Support (N01).

Date: November 22, 2019.

Time: 10:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892.

Contact Person: Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, Division of Extramural Activities, Room #3G40, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–7616, 240–669–5066, *pmehrotra@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 24, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23644 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44), Clinical Trial Implementation Cooperative Agreement (U01), and Clinical Trial Planning Grant (R34).

Date: November 20–21, 2019.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G13B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–7616, (240) 669–5048, *gaoL2@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 24, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23643 Filed 10–29–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–46]

30-Day Notice of Proposed Information Collection: Requisition for Disbursements of Sections 202 & 811 Capital Advance/Loan Funds; OMB No.: 2502–0187

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* November 29, 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: Colette 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 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available 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.

FOR FURTHER INFORMATION CONTACT: Katina Washington, Program Analyst, Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email: *Katina.X.Washington@hud.gov* or telephone 202–402–2651. 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. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comments on the information for a period of 30 days was published on May 22, 2019.

A. Overview of Information Collection

Title of Information Collection: Requisition for Disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

OMB Approval Number: 2502–0187.

OMB Expiration Date: 8/31/2019.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–92403–CA and HUD–92403–EH.

Description of the need for the information and proposed use: Owner entities submit requisitions to HUD during construction to obtain Section 202/811 capital advance/loan funds. This collection helps to identify the owner, project, type of disbursement, items covered, name of the depository, and account number.

Respondents (i.e., affected public): Affected Public.

Estimated Number of Respondents: 178.00.

Estimated Number of Responses: 356.00.

Frequency of Response: 2.00.

Average Hours per Response: .50.

Total Estimated Burden: 178.00.

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: October 17, 2019.

Colette Pollard,

Department Reports Management Officer, Officer of the Chief Information Officer.

[FR Doc. 2019–23702 Filed 10–29–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–42]

30-Day Notice of Proposed Information Collection: Electronic Line of Credit Control System (eLOCCS) System Access Authorization Form Collection (OMB #2535–0102)

AGENCY: Office of the Chief Information Officer, 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 30 days of public comment.

DATES: *Comments Due Date:* November 29, 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: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing

and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 2, 2019.

A. Overview of Information Collection

Title of Information Collection: Electronic Line of Credit Control System (eLOCCS) System Access Authorization Form Collection.

OMB Approval Number: 2535–0102.

Type of Request: Extension of currently approved collection.

Form Number: HUD—27054e.

Description of the need for the information and proposed use: An authorization form is submitted to establish access to the eLOCCS payment system.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD—27054e	2,420.00	1.00	2,420.00	0.17	411.40	$24.29	$9,992.91
Total					411.40	24.29	9,992.91

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: October 3, 2019.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–23691 Filed 10–29–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–43]

30-Day Notice of Proposed Information Collection: Public Housing Agency (PHA) 5-Year and Annual Plan

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, 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:* November 29, 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: Colette 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 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available 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.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comments on the information for a period days was published on October 9, 2018.

A. Overview of Information Collection

Title of Information Collection: Public Housing Agency (PHA) 5-Year and Annual Plan.

OMB Approval Number: 2577–0226.

Type of Request: Reinstatement with change, of previously approved collection of which approval has expired.

Form Number(s): HUD–50075–5Y, HUD–50075–ST, HUD–50075–SM, HUD–50075 HCV, HUD–50075–HP, HUD–50077–CR, HUD–50077–SL, HUD–50077–CRT–SM, and HUD–50077–ST–HCV–HP.

Description of the need for the information and proposed use:

Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Department of Housing and Urban Development (HUD) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal**

Register on October 09, 2018 (FR 83, 50676) and allowed 60-days for public comment. Four public comments were received, and responses were sent. The comments referenced the challenges of including the Moving to Work (MTW) Supplement in the Annual Pubic Housing Agency (PHA) Plan process for PHAs that join MTW under the 2016 Appropriations Act (*i.e.,* MTW Expansion) as well as certain changes proposed to the original PHA Plan templates and certifications. Due to the MTW Supplement undergoing significant revisions, all references to it has been withdrawn from the collection for now and will be added again at a later time. The purpose of this notice is to allow an additional 30 days for public comment on the original PHA Plan Templates and certifications alone.

The PHA Plan was created by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1). There are two different PHA Plans: The Five-Year Plan and the Annual Plan. The Five-Year Plan describes the agency's mission, long-range goals and objectives for achieving its mission over a five-year period. The Annual PHA Plan is a comprehensive guide to PHA policies, programs, operations, and strategies for meeting local housing needs and goals each fiscal year.

The PHA Plans informs HUD, residents, and the public of the PHA's goals, programs, and activities for serving the housing needs of low, very low-income, and extremely low-income families and its strategy for addressing those needs. This information helps hold PHAs accountable to HUD, residents, and the local community for how PHAs intend to spend their funding and operate their programs. Also, PHA Plans allow HUD to review the PHA's proposed changes in the administration and operation of HUD-funded housing programs.

In July 2016, HUD revised the collection in response to public comments urging HUD to return to earlier multiple versions of the PHA Plan template and certifications by PHA type (*e.g.,* standard, small, high performer, Housing Choice Voucher/HCV-only) instead of a ''One-Size Fits All'' form. Also, HUD added a section to accommodate new requirements for PHAs under the Affirmatively Furthering Fair Housing (AFFH) Rule, to reflect other public comments from 2013, and implement a minor change made in late 2014. OMB approved these changes, but the 2016 versions of the forms were not made public due to the Department's review of AFFH Rule implementation activities.

With this current proposed information collection, HUD intends to further modify the 5-Year and Annual PHA Plan Templates, as well as the accompanying certification forms in the following manner:

(1) Revise the instructions provided on items related to the AFFH Rule, reflecting that, until HUD approves a revised Assessment of Fair Housing (AFH) Tool and template, PHAs would not be specifying fair housing strategies actions in their PHA Plans. Instead, PHAs would rely on their corresponding community's Analysis of Impediments (AI) to fair housing until choice and undertake activities to support their civil rights certification specified in PHA Plan regulations promulgated prior to August 17, 2015. (See **Federal Register** Notice 5173–N–17 (May 23, 2018).)

(2) Revise PHA certifications to bring them up to date with HUD program and AFFH requirements, and to give PHAs an optional blank answer section to explain how they are not able to certify compliance with civil rights authorities and certain specific requirements.

(3) Revise the introductory text and signature blocks on certification forms to distinguish the PHA Executive Director (ED) and Board Chairperson.

In addition, it should be noted that, due to the de-coupling of reporting on Capital Fund Program activities and plans from PHA Plan submissions in 2016, (*i.e.,* Form HUD–50075.1 and Form HUD–50075.2 Capital Fund Annual Statement/Performance and Evaluation Report and 5-Year Action Plan forms), the burden hours associated with these two forms (10,070) as reflected in the estimate under OMB no. 2577–0226 were removed.

Finally, revisions to the reporting burden reflect a reduction in the total number of, active PHAs. The number of active public housing agencies has changed from 3,819 to 3,780 since the last approved information collection. The number of PHAs can fluctuate due to many factors, including but not limited to performance scoring, the merging of two or more PHAs or the termination of a PHA's public and other assisted housing programs due to conversion under the Rental Assistance Demonstration (RAD).

Respondents (i.e., affected public): Local, Regional and State Body Corporate Politic Public Housing Agencies (PHAs) Governments.

Estimated Number of Respondents: 3,780.

Estimated Number of Responses: 4,838.40.

Frequency of Response: 1.28.

Average Hours per Response: 2.70.

Total Estimated Burden: 13,063.68.

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 automated data collection techniques or other forms of information technology, such as 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: October 16, 2019.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–23701 Filed 10–29–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–48]

30-Day Notice of Proposed Information Collection: Form HUD–92266 Application for Transfer of Physical Assets (TPA); OMB Control No.: 2502–0275

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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 an additional 30 days of public comment.

DATES: Comments Due Date: November 29, 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: Colette 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 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available 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.

FOR FURTHER INFORMATION CONTACT: Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Harry Messner at *harry.messner@hud.gov* or telephone 202–402–2626. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** that solicited public comments on the information for a period of 60 days was published on May 3, 2019.

A. Overview of Information Collection

Title: Application for Transfer of Physical Assets (TPA).

OMB Approval Number: 2502–0275.

Type of Request: Extension of currently approved collection.

Form Number: HUD–92266.

Description of the need for the information and proposed use: When the sale and conveyance by deed to an insured mortgage necessitates a substitution of mortgagors, HUD approval of the substitution is required.

Respondents (i.e., affected public): Multifamily property owners with loans insured or held by HUD.

Estimated Number of Respondents: 27,127.

Estimated Number of Responses: 542.54.

Frequency of Response: 0.02.

Average Hours per Response: 8.

Total Estimated Burdens: 4,340.32.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: October 17, 2019.

Colette Pollard,

Department Reports Management Officer, Officer of the Chief Information Officer.

[FR Doc. 2019–23703 Filed 10–29–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2019–0091; FXES11140100000–201–FF01E00000]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan; Receipt of Applications for Incidental Take Permits; Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is extending the public comment period for the draft environmental impact statement (DEIS) and habitat conservation plan (HCP) in support of incidental take permit (ITP) applications received from the Deschutes Basin Board of Control, on behalf of its eight member irrigation districts, and the City of Prineville (applicants). The applicants have submitted applications for ITPs to both the Service and the National Marine Fisheries Service for various species under each agency's jurisdiction. Also available for review is the Service's DEIS, which was prepared in response to the applications.

DATES: The comment period for the DEIS and HCP addressing the ITP applications for incidental take, which published on October 4, 2019 (84 FR 53164), is extended by 15 days. Please submit your written comments by 11:59 p.m. EST on December 3, 2019.

ADDRESSES:

Document availability: To view the DEIS and HCP, go to *http://www.regulations.gov* and search for Docket No. FWS–R1–ES–2019–0091.

Submitting comments: You may submit comments by one of the following methods. If you have already submitted a comment, you need not resubmit it.

- *Online:* You may submit comments online at *http://www.regulations.gov/* in Docket No. FWS–Rl–ES–2019–0091.
- *Hard copy:* Submit comments by U.S. mail or hand delivery to Public Comments Processing, Attn: Docket No. FWS–Rl–ES–2019–0091; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/lN; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Bridget Moran, by telephone at 541–383–7146, or by email at *bridget_moran@fws.gov.* Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service (NMFS) received incidental take permit (ITP) applications on August 30, 2019, from the Deschutes Basin Board of Control (DBBC) member districts (Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts), and the City of Prineville (applicants) in accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicants prepared the draft Deschutes Basin habitat conservation plan (HCP) in support of the ITP applications and are seeking authorization for take of the federally threatened Oregon spotted frog (*Rana pretiosa*) and bull trout (*Salvelinus confluentus*) from the Service; and take of the federally threatened Middle Columbia River steelhead trout (*Oncorhynchus mykiss*) and the non-listed Middle Columbia River spring Chinook salmon (*O. tshawytscha*) and sockeye salmon (*O. nerka*) from the NMFS.

The ITPs, if issued, would authorize take of the covered species that may occur incidental to the storage, release,

diversion, and return of irrigation water by the DBBC member districts and groundwater withdrawals, effluent discharges, and surface water diversions by the City of Prineville.

We are extending the public comment period on the DEIS and HCP documents (see **DATES** and **ADDRESSES**).

Public Availability of Comments

We will post on *http://regulations.gov* all public comments and information received electronically. All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA and its implementing regulations (50 CFR 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–23670 Filed 10–29–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2018–N101; FXES11130100000–189–FF01E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Streaked Horned Lark

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Recovery Plan for the Streaked Horned Lark under the Endangered Species Act of 1973, as amended. The draft recovery plan includes specific goals, objectives, and criteria that should be met to remove the species from the Federal List of Endangered and Threatened Wildlife. We request review and comment on this draft recovery plan from Federal, State, and local agencies; Native American Tribes; and the public.

DATES: In order to be considered, comments on the draft recovery plan must be received on or before December 30, 2019.

ADDRESSES:

Document availability: An electronic copy of the draft recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html* and *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.* Copies of the draft recovery plan are also available by request from the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266; telephone (503) 231–6179.

Comment submission: If you want to comment, you may submit written comments by one of the following methods:

(1) You may submit written comments and materials via U.S. mail or hand-delivery to State Supervisor, Oregon Fish and Wildlife Office, at the above Portland address.

(2) You may fax comments to (503) 231–6195.

(3) You may send comments by email to *fw1ofwo@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, at the above Portland address; telephone (503) 231–6179. If you use a telecommunications device for the deaf, call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The streaked horned lark (*Eremophila alpestris strigata*) is a ground-nesting songbird occurring in open habitats of western Oregon and Washington. In October 2013, the streaked horned lark was listed as a threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* Act) (78 FR 61451; October 3, 2013).

Recovery of endangered and threatened animals and plants is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Service has recently revised its approach to recovery planning, and is now using a new process termed Recovery Planning and Implementation (RPI) (see *https://www.fws.gov/endangered/esa-library/pdf/RPI-Feb2017.pdf*). The RPI approach is intended to reduce the time needed to develop and implement recovery plans, increase recovery plan relevancy over a longer timeframe, and add flexibility to recovery plans so they can be adjusted to new information or circumstances. Under RPI, a recovery plan includes the statutorily-required elements under section 4(f) of the Act (objective and measurable recovery criteria, site-specific management actions, and estimates of time and costs), along with a concise introduction and our strategy for how we plan to achieve species recovery. The RPI recovery plan is supported by two supplementary documents: A Species Status Assessment or Biological Report, which describes the best available scientific information related to the biological needs of the species and assessment of threats; and the Recovery Implementation Strategy, which details the particular near-term activities needed to implement the recovery actions identified in the recovery plan. Under this approach new information on species biology or details of recovery implementation may be incorporated by updating these supplementary documents without concurrent revision of the entire recovery plan, unless changes to statutorily required elements are necessary.

Recovery Plan Components

The Streaked Horned Lark Draft Recovery Plan is supported by the Streaked Horned Lark Biological Report and the Recovery Implementation Strategy, which are available at *https://www.fws.gov/pacific/ecoservices/endangered/recovery/larkrecovery.html.*

The primary recovery strategy for the streaked horned lark is to reduce or eliminate systemic threats to the species; reduce risk from random events and natural catastrophes; conserve genetic variability; and provide for long-term survival by protecting, managing, and restoring habitat and monitoring populations. We may initiate an assessment of whether recovery has been achieved and delisting is warranted when the recovery criteria have been met, including: A population of at least 5,725 individuals distributed across core sites and matrix lands in 3

occupied recovery zones; stable or increasing populations in each recovery zone; management plans implementing permanent or long-term conservation provisions at core sites with appropriate lark habitat characteristics in each recovery zone; and additional management of matrix lands sufficient to meet lark population targets.

Request for Public Comments

Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. In an appendix to the approved final recovery plan, we will summarize and respond to the issues raised during public comment. Substantive comments may or may not result in changes to the recovery plan; comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of implementing recovery actions.

We request written comments on the draft recovery plan. We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

Public Availability of Comments

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

The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Mary Abrams,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–23633 Filed 10–29–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19LR000F60100; OMB Control Number 1028–0070/Renewal]

Agency Information Collection Activities; Consolidated Consumers' Report

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 30, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0070 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at 703–648–7720.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Respondents to this form supply the U.S. Geological Survey (USGS) with domestic consumption data for 12 metals and ferroalloys, some of which are considered strategic and critical, to assist in determining National Defense Stockpile goals. These data and derived information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry education programs, and the general public.

Title of Collection: Consolidated Consumers' Report.

OMB Control Number: 1028–0070.

Form Number: USGS Form 9–4117–MA.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Total Estimated Number of Annual Respondents: 241.

Total Estimated Number of Annual Responses: 1,275.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 956.

Respondent's Obligation: Voluntary.

Frequency of Collection: Monthly and Annually.

Total Estimated Annual Nonhour Burden Cost: There are no ''non-hour cost'' burdens associated with this IC.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C.

21(a)), the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*), and the Defense Production Act (Pub. L. 81–774).

Michael Magyar,

USGS, Associate Director, National Minerals Information Center.

[FR Doc. 2019–23661 Filed 10–29–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19LR000F60100; OMB Control Number 1028–0059]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comprehensive Test Ban Treaty

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an Information Collection.

DATES: Interested persons are invited to submit comments on or before November 29, 2019.

ADDRESSES: Send your comments on this Information Collection Request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0059 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at 703–648–7720. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 17, 2019, 84 FR 28068. We did not receive any public comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The collection of this information is required by the Comprehensive Test Ban Treaty (CTBT), and will, upon request, provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred.

Title of Collection: Comprehensive Test Ban Treaty.

OMB Control Number: 1028–0059.

Form Number: USGS Form 9–4040–A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Total Estimated Number of Annual Respondents: 2,500.

Total Estimated Number of Annual Responses: 2,500.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 625.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: There are no ''nonhour cost'' burdens associated with this IC.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), the CTBT Part III, and the CTBT USGS-Department of Defense Memorandum of Agreement.

Michael Magyar,

Associate Director, National Minerals Information Center.

[FR Doc. 2019–23660 Filed 10–29–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on September 10, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 500 new standards have been initiated and 360 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/jun2015.html, https://standards.ieee.org/about/sasb/sba/sep2015.html, https://standards.ieee.org/about/sasb/sba/oct2015.html, https://standards.ieee.org/about/sasb/sba/dec2015.html, https://standards.ieee.org/about/sasb/sba/feb2016.html, https://standards.ieee.org/about/sasb/sba/mar2016.html, https://standards.ieee.org/about/sasb/sba/may2016.html, https://*

standards.ieee.org/about/sasb/sba/jun2016.html, https://standards.ieee.org/about/sasb/sba/sep2016.html, https://standards.ieee.org/about/sasb/sba/dec2016.html, https://standards.ieee.org/about/sasb/sba/feb2017.html, https://standards.ieee.org/about/sasb/sba/mar2017.html, https://standards.ieee.org/about/sasb/sba/may2017.html, https://standards.ieee.org/about/sasb/sba/jun2017.html, https://standards.ieee.org/about/sasb/sba/sep2017.html, https://standards.ieee.org/about/sasb/sba/dec2017.html, https://standards.ieee.org/about/sasb/sba/feb2018.html, https://standards.ieee.org/about/sasb/sba/mar2018.html, https://standards.ieee.org/about/sasb/sba/may2018.html, https://standards.ieee.org/about/sasb/sba/jun2018.html, https://standards.ieee.org/about/sasb/sba/sept2018.html, https://standards.ieee.org/about/sasb/sba/oct2018.html, https://standards.ieee.org/about/sasb/sba/dec2018.html, https://standards.ieee.org/about/sasb/sba/feb2019.html, https://standards.ieee.org/about/sasb/sba/mar2019.html, https://standards.ieee.org/about/sasb/sba/may2019.html, https://standards.ieee.org/about/sasb/sba/june2019.html.

On February 8, 2015, the IEEE Board of Directors approved an update of the IEEE patent policy for standards development, which became effective on 15 March 2015. The updated policy is available at *http://standards.ieee.org/develop/policies/bylaws/approved-changes.pdf* and, from the effective date, will be available at *http://standards.ieee.org/develop/policies/bylaws/sect6-7.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on April 13, 2015. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 27, 2015 (80 FR 30267).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit Antitrust Division.

[FR Doc. 2019–23637 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pxi Systems Alliance, Inc.

Notice is hereby given that, on October 10, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. (''PXI Systems'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Acculogic Inc., Markham, CANADA, has been added as a party to this venture.

Also, Anritsu Company, Morgan Hill, CA; and INTERLATIN, Tlaquepaque, MÉXICO, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on July 23, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2019 (84 FR 39372).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–23628 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Integrated Photonics Institute for Manufacturing Innovation Operating Under the Name of the American Institute for Manufacturing Integrated Photonics

Notice is hereby given that, on October 8, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (''AIM Photonics'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Syntec Technologies, Inc., Rochester, NY; and Pacific Bioscience of California, Inc., Menlo Park, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AIM Photonics intends to file additional written notifications disclosing all changes in membership.

On June 16, 2016, AIM Photonics filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 2016 (81 FR 48450).

The last notification was filed with the Department on July 26, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2019 (84 FR 48378).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–23623 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on October 16, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Information Warfare Research Project Consortium (''IWRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ActioNet, Inc., Vienna, VA; Alchemy Global Networks, LLC, Nicholasville, KY; AM Pierce & Associates, Inc., California, MD; Avaya Federal Solutions (Avaya), Fairfax, VA; BEAT LLC (Business Enabled Acquisition and Technology), San Antonio, TX; CalQLogic, Inc., Los Angeles, CA; Capstone Corporation, Alexandria, VA; CDIT LLC, Slidell, LA; Charles River Analytics, Inc., Cambridge, MA; Cohere Solutions, LLC, Reston, VA; CommIT Enterprises, Inc., Hughesville, MD; Cubic Defense Applications, Inc. (Cubic Mission Solutions Secure Comms group), San Diego, CA; Definitive Logic Corporation, Arlington, VA; f5 Government Solutions, LLC, Reston, VA; GBL Systems Corporation, Camarillo, CA; GIRD Systems, Inc., Cincinnati, OH; Global Air Logistics and Training, Inc., Del Mar, CA; GSD, LLC, Williamsburg, VA; GuidePoint Security Government Solutions, Herndon, VA; Guidon Technology Solutions, Inc., Issaquah, WA; HaloTech Solutions LLC, Columbia, MD; Heilig Defense Inc., Arlington, VA; i3Tech Data Solutions, Inc., El Dorado Hills, CA; Insight Public Sector, Tempe, AZ; Intercax, LLC, Dunwoody, GA; Ironclad Technology Services LLC, Virginia Beach, VA; Jireh Consulting LLC, Suffolk, VA; Juniper Networks (US) Inc., Sunnyvale, CA; KeyLogic Systems, LLC, Morgantown, WV; MartinFederal Consulting, LLC, Huntsville, AL; Moebius Solutions, Inc., San Diego, CA; Morgan 6, LLC, Charleston, SC; Na Ali'i Consulting & Sales, LLC, Honolulu, HI; NanoVMs, Inc., San Francisco, CA; Netsync Network Solutions, Inc., Houston, TX; Noblis, Inc., Reston, VA; Orbis Sibro, Inc., Charleston, SC; Owl Cyber Defense, Danbury, CT; Persistent Systems, LLC, New York, NY; r4 Technologies, Inc., Ridgefield, CT; Recogniti LLP, Hagerstown, MD; Robotic Research, LLC, Gaithersburg, MD; Rocket Technology, Inc., Richmond, VA; Rudram Engineering, Inc., Rockledge, FL; Sabre Systems, Inc., Warrington, PA; SafeNet Assured Technologies LLC, Abingdon, MD; Semantic AI Inc., San Diego, CA; Sher Industries LLC, Daniel Island, SC; SitScape, Inc., Vienna, VA; Smart Security Systems LLC dba Bear Systems, Boulder, CO; Southern Methodist University, Dallas, TX; SRC, Inc., N. Syracuse, NY; STEALTHbits Technologies, Inc., Hawthorne, NJ; T3W Business Solutions, San Diego, CA; Tactical Edge, Inc., San Diego, CA; TDI Technologies, Inc., King of Prussia, PA; Technica Corporation, Dulles, VA; Technology Solutions Provider Inc. (DBA TSPi), Reston, VA; Telesto Group LLC, West Palm Beach, FL; The Marlin Alliance, San Diego, CA; Thinklogical, LLC, Milford, CT; Trex Enterprises Corporation, San Diego, CA; TVAR Solutions, LLC, McLean, VA; UEC Electronics, LLC, Hanahan, SC; Vanguard LED Displays, Inc., Lakeland, FL; Vertosoft LLC, Leesburg, VA; and Wireless Research Center of North Carolina, Wake Forest, NC, have been added as parties to this venture.

Also, Alpha Proto, Casselberry, FL; and Presidio Networked Solutions LLC, Fulton, MD, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on July 12, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 1, 2019 (84 FR 37679).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–23631 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—TeleManagement Forum

Notice is hereby given that, on September 16, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Wavelength Communications Ltd, St Albans, UNITED KINGDOM; Nuevatel PCS de Bolivia, La Paz, BOLIVIA; Mvine Limited, London, UNITED KINGDOM; VCT International, Somerset, NJ; Telenor Connexion, Solna, SWEDEN; Falcorp Technologies, Midrand, SOUTH AFRICA; GDX, Dainfern, SOUTH AFRICA; Altice Labs, S.A, Aveiro, PORTUGAL; Inceptum d.o.o. za usluge, Zagreb, CROATIA; Etisalat UAE, Abu Dhabi, UNITED ARAB EMIRATES; SES Astra S.A., Betzdorf, LUXEMBOURG; Couchbase Limited, London, UNITED KINGDOM; Innowave Technologies, Lisbon, PORTUGAL; Innovation, Riyadh, SAUDI ARABIA; T-Mobile Nederland BV, Den Haag, THE NETHERLANDS; STC Solutions, Riyadh, SAUDI ARABIA; PrJSC 'VF Ukraine', Kyiv, UKRAINE; Magyar Telekom Plc., Budapest, HUNGARY; TIMWETECH, Lisbon, PORTUGAL; Business-intelligence of Oriental Nations Corporation Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Asiainfo International (H.K.) Limited, Hong Kong, HONG KONG–CHINA; China Mobile Online Service Company Limited Yunnan Branch, Kunming, PEOPLE'S REPUBLIC OF CHINA; Unitel Group, Ulan Bator, MONGOLIA; POSLOVNA INTELIGENCIJA d.o.o., Zagreb, CROATIA; Deviare, Johannesburg, SOUTH AFRICA; Amalgamotion PTY, East Lindfield, AUSTRALIA; St. Petersburg College, St. Petersburg, FL; Roads and Transport Authority, Dubai, UNITED ARAB EMIRATES; Valo Networks, Calgary, CANADA; Abdatis, Regina, CANADA; Vertical Systems Group, Norwood, MA; TelcoVas Solutions and Services Limited, Sharjah, UNITED ARAB EMIRATES; University of Applied

Sciences Konstanz, Konstanz, GERMANY; LE SAVOIR–FAIRE ITIL, Yaounde, CAMEROON; Mindarray Systems Pvt. Ltd, Ahmedabad, INDIA; Florida Institute of Technology, Melbourne, FL; Optix Pakistan (Pvt.) Limited, Lahore, PAKISTAN; J. Rosen Consulting KG, Vienna, AUSTRIA; SPPrac, Cape Town, SOUTH AFRICA; Panorama Software (Europe) Ltd, Borehamwood, UNITED KINGDOM; Inmanta, Leuven, BELGIUM; Biplus Vietnam Software Solution JSC, Hanoi, VIETNAM; IOTA Foundation c/o Nextland, Berlin, GERMANY; KDext j.d.o.o., Zagreb, CROATIA; EverestIMS Technologies, Bangalore, INDIA; Etihad Etisalat Mobily, Riyadh, SAUDI ARABIA; North State Telephone Company d.b.a. NorthState, A North Carolina corporation, High Point, NC; Arago, New York, NY; ServiceNow, Inc., San Jose, CA; Science Applications International Corporation, Reston, VA; ARRIS Solutions, Inc., Suwanee, GA; LogiSense Corporation, Cambridge, CANADA; Mercato, Birmingham, UNITED KINGDOM; r3., London, UNITED KINGDOM; Seacom ltd, Curepipe, MAURITIUS; Unico Computer Systems, Melbourne, AUSTRALIA; Bain & Company, Inc., Munich, GERMANY; Celfinet, Lisbon, PORTUGAL; and 1&1 Versatel GmbH, Flensburg, GERMANY, have been added as parties to this venture.

Also, the following members have changed their names: Ernst & Young LLP to Ernst & Young, New York, NY; Vodafone Ukraine to PrJSC 'VF Ukraine', Kyiv, UKRAINE; Isoton to Isoton Pty Ltd, Adelaide, AUSTRALIA; and SAIC to Science Applications International Corporation, Reston, VA.

In addition, the following parties have withdrawn as parties to this venture: Accruent, LLC, Austin, TX; Agillis Satcom, 567710, SINGAPORE; APInf, Tampere, FINLAND; ArtOfArc, Dortmund, GERMANY; AVSystem, Kraków, POLAND; Beesion Technologies, Fort Lauderdale, FL; Brytlyt Limited, Maidstone, UNITED KINGDOM; CA IT Management Solution Spain S.L.U, Barcelona, SPAIN; Cartesian, Overland Park, VA; Cellos Software Limited, Melbourne, AUSTRALIA; CENX, Ottawa, CANADA; Dark Fibre Africa, Gauteng, SOUTH AFRICA; Deploy Partners Pty Ltd, Newport, AUSTRALIA; Dimension Data, Johannesburg, SOUTH AFRICA; Docomo Pacific, Tamuning, GUAM; EMC, Hopkinton, MA; Entel Peru SA, Lima, PERU; Ergon Informatik AG, Zurich, SWITZERLAND; FASTWEB, Milano, ITALY; ForgeRock Ltd., Bristol, UNITED KINGDOM; Freestone Ltd, London, UNITED KINGDOM; GEMALTO SA, Meudon, FRANCE; GE Smallworld, Chesterton, UNITED KINGDOM; Guavus, San Jose, CA; Hangzhou Eastcom Software Technology Co., Ltd, Guangzhou, PEOPLE'S REPUBLIC OF CHINA; Hortonworks Inc., Santa Clara, CA; Icaro Tech, Campinas, BRAZIL; Ideasoft Uruguay S.R.L., Montevideo CP, URUGUAY; Inabox Group Limited, Sydney, AUSTRALIA; Indra Sistemas S.A., Madrid, SPAIN; Inomial Pty Ltd, Melbourne, AUSTRALIA; ISPM, Rio de Janeiro, BRAZIL; Italtel S.p.A, Settimo Milane, ITALY; Juvo, San Francisco, CA; Knowesis Pte Ltd, Singapore, SINGAPORE; Millicom—Tigo—Paraguay, Fernando De La Mora, PARAGUAY; NW Consulting, Billericay, UNITED KINGDOM; Panamax Inc., New York, NY; Peritus j.d.o.o., Varaždin, CROATIA; Philips Electronics Nederland B.V., Eindhoven, THE NETHERLANDS; PT Telkomunikasi Indonesia, Bandung, INDONESIA; Simple Consulting, Santiago de Chile, CHILE; Simpledata Group S.A., Santiago, CHILE; Singapore Management University, Singapore, SINGAPORE; solvatio AG, Rimpar, GERMANY; Space Star Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; SP Telecommunications Pte Ltd, Singapore, SINGAPORE; Stream Technologies Ltd, Glasgow, UNITED KINGDOM; Subex, Bangalore, INDIA; SunTec Business Solutions Pvt Ltd, Kerala, INDIA; Suomen Erillisverkot Oy, Espoo, FINLAND; Swiss Post Ltd, Berne, SWITZERLAND; Technology Transitions, Inc., Bound Brook, NJ; Teltech Communications LLC, Dallas, TX; Thunderhead, London, UNITED KINGDOM; Twinsec GmbH, Koln, GERMANY; University of Málaga, Málaga, SPAIN; UXP Systems, Toronto, CANADA; Windstream Communications, Little Rock, AR; Wind Tre S.P.A., Rome, ITALY; Wytec International, Inc., San Antonio, TX; Xpertnest, Biggleswade, UNITED KINGDOM; Zat Consulting, Lima, PERU; 100 Celsius AI, Frick, SWITZERLAND; Active Ticketing PLC, London, UNITED KINGDOM; AGGAROS, Barcelona, SPAIN; Agile Fractal Grid, Inc., Medway, MA; Airtel Africa, Nairobi, KENYA; Algorithmic Intuition Inc., Millbrae, CA; AMKB Cloud, Denver, CO; Andorra Telecom, Santa Coloma, ANDORRA; APIVERSITY, Madrid, SPAIN; Araxxe, Lyon, FRANCE; ARGELA Yazilim ve Bilisim Teknolojileri Sanayi ve Ticaret A.S., Istanbul, TURKEY; AsiaCell Communications LLC, Sulaymaniyah, IRAQ; Atilze Digital, Petaling Jaya, MALAYSIA; Axiros GmbH, Munich Hoehenkirchen, GERMANY; BaseN, Helsinki, FINLAND; Basildon Borough Council, Basildon, UNITED KINGDOM; Beyond Verbal, Tel Aviv, ISRAEL; Bharat Broadband Network Limited, Chhattarpur, INDIA; BOC, Dublin, IRELAND; BPS Service Consulting and Development SAS, Bogotá DC, COLOMBIA; BridgeWorx Ltd, Brighton, UNITED KINGDOM; Bring Labs, Lisbon, PORTUGAL; Bristol is Open, Bristol, UNITED KINGDOM; CableVision, SA, Buenos Aires, ARGENTINA; CallVU, Tel Aviv, ISRAEL; and Carphone Warehouse Ltd, London, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 29, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 2019 (84 FR 3490).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–23634 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Corrosion Under Insulation

Notice is hereby given that, on October 10, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Cooperative Research Group on Corrosion Under Insulation (''CUI–JIP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

under specified circumstances. Specifically, ConocoPhillips Company, Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CUI–JIP intends to file additional written notifications disclosing all changes in membership.

On March 22, 2018, CUI–JIP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2018 (83 FR 17851).

The last notification was filed with the Department on October 4, 2018. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 2, 2018 (83 FR 55204).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–23627 Filed 10–29–19; 8:45 am]

BILLING CODE 4410–11–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2019–6]

Unclaimed Royalties Study: Announcement of Public Symposium

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of public symposium.

SUMMARY: As directed by the Music Modernization Act, the U.S. Copyright Office is conducting a study to evaluate best practices that the Mechanical Licensing Collective should implement in the following areas: (1) To identify and locate musical work copyright owners and unclaimed accrued royalties held by the collective; (2) to encourage musical work copyright owners to claim the royalties of those owners; and (3) to reduce the incidence of unclaimed royalties. To initiate this effort, the Office is holding a one-day symposium to provide an educational foundation and facilitate public discussion on issues relevant to the study. Following this symposium, the Office will separately issue Notices of Inquiry soliciting written comments and announcing roundtables, both of which will provide opportunities for public input on the Unclaimed Royalties Study.

DATES: The symposium will be held on December 6, 2019. Registration will start at 8:30 a.m. and the event will run all day ending at 6:00 p.m. Additional information is available on the Copyright Office website at *https://www.copyright.gov/policy/unclaimed-royalties/.*

ADDRESSES: Library of Congress Madison Building, 101 Independence Avenue SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: John R. Riley, Assistant General Counsel, by email at *jril@copyright.gov* or Cassandra Sciortino, Barbara A. Ringer Honors Fellow, by email at *csciortino@copyright.gov.* Each may be reached by telephone at 202–707–8350. Requests for ADA accommodations should be made five business days in advance at *ada@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (''MMA'').[1] Title I of the MMA substantially modifies the compulsory ''mechanical'' license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115.[2] Prior to the MMA, licensees obtained a section 115 compulsory license on a song-by-song basis by serving a notice of intention on the relevant copyright owner (or filing it with the Copyright Office if the Office's public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements.[3]

The MMA amends this regime most significantly by establishing a new blanket license that digital music providers may obtain to make digital phonorecord deliveries (''DPDs'') of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as ''covered activity'').[4] The blanket licensing structure is designed to reduce the transaction costs associated with song-by-song licensing by commercial services striving to offer ''as much music as possible,'' while ''ensuring fair and timely payment to all creators'' of the musical works used on these digital services.[5] The new blanket license will become available upon the statutory license availability date (*i.e.,* January 1, 2021).[6] In the interim, the MMA ''creates a transition period in order to move from the current work-by-work license to the new blanket license.''[7]

This blanket license will cover all musical works available for compulsory licensing and will be centrally administered by a mechanical licensing collective (''MLC''), which has recently been designated by the Register of Copyrights.[8] As previously detailed by the Office,[9] the MLC, through its board of directors and task-specific committees,[10] is responsible for a variety of duties under the blanket license, including receiving usage reports from digital music providers, collecting and distributing royalties associated with those uses, identifying musical works embodied in particular sound recordings, administering a process by which copyright owners can claim ownership of musical works (and shares of such works), and establishing a musical works database relevant to these activities.[11] The MLC is also tasked with distributing unclaimed accrued royalties following a proscribed holding period.

As the legislative history explains, these responsibilities are intended to fill a gap in the music licensing marketplace:

> [F]or far too long, it has been difficult to identify the copyright owner of most copyrighted works, especially in the music industry where works are routinely commercialized before all of the rights have been cleared and documented. This has led to significant challenges in ensuring fair and timely payment to all creators even when the licensee can identify the proper individuals to pay. . . . [T]here is no reliable, public database to link sound recordings with their

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] *See* S. Rep. No. 115–339, at 1–2 (2018); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://www.copyright.gov/legislation/mma_conference_report.pdf; see also* H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee's efforts to review music copyright laws).

[3] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017); U.S. Copyright Office, *Copyright and the Music Marketplace* 28–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing operation of prior section 115 license).

[4] 17 U.S.C. 115(d)(1), (e)(7); *see* H.R. Rep. No. 115–651, at 4–6 (describing operation of the blanket license and the mechanical licensing collective); S. Rep. No. 115–339, at 3–6 (same).

[5] S. Rep. No. 115–339, at 4, 8.

[6] 17 U.S.C. 115(d)(2)(B), (e)(15).

[7] H.R. Rep. No. 115–651, at 10; S. Rep. No. 115–339, at 10; *see* 17 U.S.C. 115(b)(2)(A), (d)(9), (d)(10). The Copyright Office has separately issued regulatory updates related to digital music providers' obligations during this transition period before the blanket license is available. *See* 84 FR 10685 (Mar. 22, 2019); 83 FR 63061 (Dec. 7, 2018).

[8] 17 U.S.C. 115(d)(1), (3); 84 FR 32274 (July 8, 2019).

[9] *See generally* 84 FR 32274; 83 FR 65747 (Dec. 21, 2018).

[10] By statute, the MLC board must establish three committees: An operations advisory committee, 17 U.S.C. 115(d)(3)(D)(iv), an unclaimed royalties oversight committee, *id.* at 115(d)(3)(D)(v), (d)(3)(J)(ii), and a dispute resolution committee, *id.* at 115(d)(3)(D)(vi), (d)(3)(H)(ii), (d)(3)(K).

[11] *Id.* at 115(d)(3)(C).

underlying musical works. Unmatched works routinely occur as a result of different spellings of artist names and song titles. . . . The Committee believes that this must end so that all artists are paid for their creations and that so-called ''black box'' revenue is not a drain on the success of the entire industry.[12]

In designating the MLC, the Copyright Office accordingly noted that it is the MLC's ''core project [to] encourag[e] musical work copyright owners with unclaimed accrued royalties to come forward and claim such monies'' after identifying them based on the data ingested through uses of the license.[13]

In recognition of the significant duties involved with respect to the potential distribution of unclaimed, accrued royalties for which the creators of such works will not be paid,[14] the MMA also directs the Copyright Office to undertake a study that recommends best practices for the MLC to identify and locate copyright owners with unclaimed royalties, encourage copyright owners to claim their royalties, and reduce the incidence of unclaimed royalties. The resulting Unclaimed Royalties Study recommending best practices for the collective must be submitted to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives by July 8, 2021. The Register is directed to solicit and review comments and relevant information from music industry participants and other interested parties, and consult with the Comptroller General of the United States. The MLC is required to carefully consider, and give substantial weight to, the recommendations that will be set forth in the Unclaimed Royalties Study.[15] Separately, the MMA also directs the Copyright Office to engage in education and outreach activities to educate songwriters and other interested parties about the new law, including the processes by which a copyright owner may claim ownership in accrued royalties and the MLC may distribute unclaimed, accrued royalties.[16]

While the statute, legislative history, and indeed, prior Copyright Office policy studies are highly informative with respect to various aspects relevant to the policy study,[17] the Office appreciates the keen interest of interested members of the public with respect to the MLC's functions. For example, the recent designation of the MLC resulted in over 600 comments, including many submitted by individual songwriters, expressing views with respect to the MLC's forthcoming activities matching uses to musical works and ownership information, locating copyright owners with accrued royalties, and ultimately reducing the amount of unclaimed royalties.[18]

Because the section 115 license and the MLC's statutory duties are a relatively complex area of copyright that affects many in the music licensing ecosystem, the Copyright Office is electing to initiate its study with an educational public event. The public process for this study will roughly track that of the Office's recently-completed study on attribution and integrity rights.[19] To launch the Unclaimed Royalties Study, the Office is holding a symposium on December 6, 2019. A transcript and video of the event will be made available on the Copyright Office website, and interested members of the public will have a subsequent opportunity to comment on statements or topics raised during the symposium, to aid the Office in its analysis of the issues. In 2020, the Office will separately issue a Notice of Inquiry soliciting written comments from the public, and also expects to announce public roundtables. These subsequent steps in the study process are intended to provide ample opportunities for the public to provide input on the Unclaimed Royalties Study.

II. Subjects of Discussion

The symposium will consist of three core panel discussions regarding: (1) Creating comprehensive databases (including discussions of past efforts); (2) matching musical works to sound recordings; and (3) education on unclaimed royalties across the industry. The symposium is also expected to include representatives from the MLC and the Digital Licensee Coordinator, as well as a breakout session to solicit artists' perspectives on relevant issues. The Office will also provide participants and observers with an opportunity to offer additional comments for the record, following the panel discussion.

The Office is currently finalizing its list of panelists. The finalized agenda for the symposium will be made available through the Office's website in the weeks prior to the event. The symposium hearing room will have a limited number of seats for participants and observers. For persons who wish to observe one or more of the roundtable sessions, the Office will provide public seating on a first-come, first-served basis on the day of the symposium.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2019–23625 Filed 10–29–19; 8:45 am]

BILLING CODE 1410–30–P

[12] H.R. Rep. No. 115–651, at 7–8.

[13] 84 FR at 32279, 32289.

[14] *See* H.R. No. 115–651, at 13.

[15] Public Law 115–264, sec. 102(f), 132 Stat. at 3722–23.

[16] *Id.* at sec. 102(e), 132 Stat. at 3722.

[17] *See generally* U.S. Copyright Office, *Copyright and the Music Marketplace* (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf;* H.R. Rep. No. 115–651, at 2 (citing same).

[18] *See* 84 FR at 32283–84 (discussing ways in which the statute addresses issues with respect to smaller independent songwriters, including the Unclaimed Royalties Study).

[19] U.S. Copyright Office, *Authors, Attribution, and Integrity: Examining Moral Rights in the United States* (2019), *https://www.copyright.gov/policy/moralrights/full-report.pdf.*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–076)]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, November 18, 2019, 8:30 a.m.–4:15 p.m., and Tuesday, November 19, 2019, 8:30 a.m.–12:45 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 9H40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll free number 1–888–469–1762 or toll number 1–212–287–1653, passcode 8281293 followed by the # sign, on both days, to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com;* the meeting number is 906 106 313 and the

password is SC@Nov2019 (case sensitive) on both days. The agenda for the meeting includes the following topics:

—Science Mission Directorate (SMD) Missions, Programs and Activities
—Research and Analysis Innovations
—SMD Science Activation

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days in advance. Information should be sent to Ms. KarShelia Henderson, via email at *khenderson@nasa.gov* or by fax at (202) 358–2779. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–23717 Filed 10–29–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–075)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Aeronautics Committee of the NASA Advisory Council (NAC). The Committee reports the NAC. This meeting will be held for soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Thursday, November 21, 2019, 1:00 p.m.–5:30 p.m., and Friday, November 22, 2019, 9:00 a.m. to 12:30 p.m., Eastern Time.

ADDRESSES: National Institute of Aerospace, Room 101, 100 Exploration Way, Hampton, VA 23666.

FOR FURTHER INFORMATION CONTACT: Ms. Irma Rodriguez, Designated Federal Officer, Aeronautics Research Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0984, or *irma.c.rodriguez@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch-tone telephone to participate in this meeting. Any interested person may dial the USA toll-free conference number 1–888–769–8716, participant passcode: 6813159, followed by the # sign, on both days to participate in this meeting by telephone. The WebEx link is *https://nasaenterprise.webex.com.* The meeting number on November 21 is 904 832 378, and the password is 2Vqhs9D* (case sensitive). The meeting on November 22 number is 909 681 526 and the password is qPs5d3N* (case sensitive). The agenda for the meeting includes the following topics:

—System Wide Safety Assurance
—Supersonic Market Developments and Low Boom Flight Demonstrator Status

For questions, please call Ms. Irma Rodriguez at (202) 358–0984. Attendees will be requested to sign a register to document meeting attendance. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–23716 Filed 10–29–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, November 19, 2019.

MATTER TO BE CONSIDERED:

59687 Aircraft Accident Report—Left Engine Failure and Subsequent Depressurization, Southwest Airlines Flight 1380, Boeing 737–7H4, N772SW, Philadelphia, Pennsylvania, April 17, 2018

TIME AND DATE: 1:30 p.m., Tuesday, November 19, 2019.

MATTER TO BE CONSIDERED:

59392 Highway Accident Report—Collision Between Vehicle Controlled by Developmental Automated Driving System and Pedestrian, Tempe, Arizona, March 18, 2018

STATUS: The two items are open to the public.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, November 13, 2019.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: LaSean McCray at (202) 314–6047 or by email at *lasean.mccray@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Keith Holloway at (202) 314–6100 or by email at *keith.holloway@ntsb.gov* for the Aircraft Accident Report and Eric Weiss at (202) 314–6100 or by email at *eric.weiss@ntsb.gov* for the Highway Accident Report.

Dated: Friday, October 25, 2019.

LaSean R. McCray,

Alternate Federal Register Liaison Officer.

[FR Doc. 2019–23736 Filed 10–28–19; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35252; NRC–2019–0206]

In the Matter of Team Industrial Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; modification.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued an order imposing a civil monetary penalty (Order) to Team Industrial Services, Inc., (licensee) on September 20, 2019. The purpose of the Order was to document the NRC's review of the licensee's response to the Notice of

Violation and Proposed Imposition of Civil Penalty, issued on March 8, 2019. The licensee's response did not dispute the violation but did dispute both the deliberateness associated with the violation and the significance of the violation. The licensee also requested that the NRC not impose a civil penalty. After consideration of the response, the NRC concluded that the significance determination was appropriate and that an adequate basis to mitigate the proposed civil penalty amount was not provided.

DATES: The Order was issued on September 20, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0206 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 *https://www.regulations.gov* and search for Docket ID NRC–2019–0206. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://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 order imposing civil monetary penalty on Team Industrial Services, Inc., is available in ADAMS under Accession No. ML19263E598.
- *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: Casey Alldredge, Region IV, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 817–200–1217, email: *Casey.Alldredge@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 25th day of October, 2019.

For the Nuclear Regulatory Commission.

Scott A. Morris,

Regional Administrator, NRC Region IV.

Attachment—Order Imposing Civil Monetary Penalty

United States of America

Nuclear Regulatory Commission

In the Matter of: Team Industrial Services, Inc., Alvin, Texas

Docket No. 030–35252, License No. 42–32219–01, EA–18–124

Order Imposing Civil Monetary Penalty

I

Team Industrial Services, Inc. (Licensee) is the holder of Materials License No. 42–32219–01 issued on January 10, 2000, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 30 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the use and possession of nuclear materials in accordance with conditions specified therein. The facility is based in Alvin, Texas.

II

The NRC conducted an investigation of the Licensee's activities from October 12, 2017, to August 27, 2018. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements associated with transporting a radiographic device in a locked configuration. Specifically, two Team Industrial employees appeared to have deliberately failed to follow procedural requirements when unlocking and relocating a gamma exposure device, which caused Team Industrial to be in violation of Condition 25 of its license. A letter conveying the results of the NRC Investigation was issued to the Licensee on January 4, 2019 (ADAMS Accession ML19007A235), including a factual summary of the report. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to the Licensee by letter dated March 8, 2019 (ADAMS Accession ML19066A206). The Notice stated the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated May 23, 2019. In its response, the Licensee did not dispute the violation, but stated that it conducted an internal investigation regarding the issues and did not consider the violation to be willful on the part of the radiographers. The Licensee also stated that the violation was not significant because there was no risk of exposure of the source due to the unlocked plunger because of redundant safety features of the device.

III

After considering the Licensee's explanation and argument for mitigation, the NRC staff has determined that, as set forth in the Appendix to this Order, the violation of License Condition 25 occurred as stated, and that an adequate basis does not exist for the reduction of the severity of the violation or mitigation of the civil penalty amount. Therefore, a civil penalty in the amount of $14,500 should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $14,500 within 30 days of the issuance date of this Order, in accordance with NUREG/BR–0254 ''Payment Methods'' (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0254/*). In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

V

In accordance with 10 CFR 2.202 and 10 CFR 2.309, the Licensee must, and any other person adversely affected by this Order may, submit a response within 30 days of the issuance date of this Order. In addition, the Licensee or any other person adversely affected by this Order may request a hearing within 30 days of the issuance date of this Order. Where good cause is shown, consideration will be given to extending the time to respond or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities

participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's Public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an Order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or Order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which their interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the issuance date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing or alternative dispute resolution (ADR) request has not been received. If

ADR is requested, the provisions specified in Section IV shall be final upon termination of an ADR process that did not result in issuance of an Order.

For the Nuclear Regulatory Commission.

Scott A. Morris,

Regional Administrator, NRC Region IV.

Dated this 20th day of September 2019.

Evaluation and Conclusion

On March 8, 2019, the U.S. Nuclear Regulatory Commission (NRC) issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for a violation identified as the result of an investigation conducted by the NRC Office of Investigations (OI). Team Industrial Services, Inc., (Licensee) responded to the Notice on May 23, 2019. The Licensee did not dispute the violation but did dispute both the deliberateness associated with the violation and the significance of the violation. The NRC's evaluation and conclusion regarding the Licensee's request is documented below.

Summary of the Licensee's Request of Reevaluation of Deliberate Determination

The Licensee stated an internal investigation determined that the violation was due to a human error made in completing the daily inspection process. The Licensee concluded that there was no intent to leave the device in an unlocked state prior to boarding the Navy vessel and there was no advantage to relocating the device in the partially unlocked condition.

NRC Evaluation of the Licensee's Request of Reevaluation of Deliberate Determination

The Licensee stated that an internal investigation was conducted which did not conclude that there was any deliberateness associated with the violation. Title 10 of the *Code of Federal Regulations* (10 CFR) 30.10(c) states, in part, that deliberate misconduct by a person means an intentional act or omission that the person knows would cause a licensee to be in violation of a condition of a license issued by the Commission. Both the NRC OI investigation and the Licensee's internal investigation indicated that the radiographers were trained on the operating and emergency procedures and were knowledgeable in the requirements, including the requirement to fully lock the exposure device prior to relocating to another physical location.

The Licensee's investigation determined that the violation was the result of a human error made in the completion of the daily inspection process. However, the Licensee's description of the internal investigation did not include any additional information to support its conclusion that was not previously evaluated in the investigation conducted by OI. The NRC's position continues to be that the circumstances in this case support a willful violation. Based on the facts of this case and the testimony of the radiographers, the radiographers were: (1) Familiar with the Licensee's operating and emergency procedures, (2) aware that the device was required to be locked when relocated to a new location, and (3) aware that the device was unlocked at the time they relocated the device. Further, OI interviewed the Team Industrial Radiation Safety Officer, who testified that immediately after the incident, the radiographers explained that they had unlocked the device in order to save time. Therefore, the NRC found sufficient evidence to conclude that the radiographers deliberately transported an exposure device in an unlocked configuration.

Summary of the Licensee's Request of Reevaluation of Significance

The Licensee stated that the radiographic device has three independent locking mechanisms to prevent accidental movement or exposure of the source. The device has a tungsten shield which provides a shielding factor to reduce exposure from the source and provides an additional level of security because it prevents the source from projecting out of the device unless a guide tube is connected. The Licensee also indicated that its operating and emergency procedure is more restrictive than the regulation in 10 CFR 34.23(a), since it requires the device to be fully locked prior to movement to another location. Based on this, the Licensee concluded that the significance level of the violation should be reduced.

The Licensee also stated that the violation was not significant because additional barriers were in place to prevent inadvertent exposure. The Licensee included additional information about the design of the radiographic device, including a description of the three locking mechanisms that prevent accidental movement or exposure of the source. The Licensee stated that even in the unlocked configuration which occurred during the violation, the source was secured and met the intent of 10 CFR 34.23(a).

NRC Evaluation of the Licensee's Request of Reevaluation of Significance

The Licensee's investigation did not provide any information that the NRC had not already considered as part of the enforcement process. The NRC Enforcement Policy Example 6.3.d.3 states, in part, that a failure to implement procedures including, but not limited to, recordkeeping, surveys, and inventories is a Severity Level IV violation. The NRC concluded that, absent deliberateness, based on the relatively short duration that the device was carried unlocked, the fact that the device was always under the direct surveillance and control of a radiographer, and the presence of the additional locking mechanisms, the significance of the Licensee failing to adequately implement the applicable section of its procedures should be characterized as a Severity Level IV violation.

However, the NRC Enforcement Policy Section 2.2.1.d states that a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The NRC considers factors such as the position, training, experience level, and responsibilities of the individuals involved in the violation. In this instance, the NRC determined that the violation should be increased to a Severity Level III violation, due to the conclusion that it involved deliberate misconduct by the radiographers.

Conclusion

Based on its evaluation, the NRC has concluded that the violation occurred as stated and the Licensee did not provide an adequate basis to reduce the severity of the violation or modify the willful determination.

[FR Doc. 2019–23713 Filed 10–29–19; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, a modified collection of

information under its regulation on Payment of Premiums (OMB control number 1212–0009; expiring June 30, 2021). This notice informs the public of PBGC's request and solicits public comment on the collection.

DATES: Comments must be submitted by November 29, 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-regulation/federal-register-notices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel, 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 1–800–877–8339 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: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6563. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 6563.)

SUPPLEMENTARY INFORMATION: Section 4007 of title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under title IV pension insurance programs to pay premiums to PBGC. All plans covered by title IV pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Under § 4007.3 of the premium payment regulation, the plan administrator of each pension plan covered by title IV of ERISA is required to file a premium payment and information prescribed by PBGC for each premium payment year. Premium information is filed electronically using ''My Plan Administration Account'' (''My PAA'') through PBGC's website. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

Premium filings report (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). PBGC needs this information to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

PBGC is modifying the 2020 filing and instructions to require that plans offering a lump sum window [1] separately report the number of participants in pay status who were offered and elected a lump sum in addition to the related current requirement with respect to participants not in pay status. This change reflects recent guidance issued by the Internal Revenue Service.[2] In addition, PBGC is changing the reporting period for risk transfer activity (lump sum windows and annuity purchases). Rather than the period falling between 60 days before the prior filing and 60 days before the current filing, the reporting period will be the prior premium payment year.

PBGC also is modifying the filing instructions for a plan that reports that a premium filing will be the last for the plan and checks the ''cessation of covered status'' box as the reason. Currently, such a plan must provide an explanation as to why they believe coverage has ceased and then PBGC typically contacts the plan to verify that coverage has ceased. PBGC is adding to the instructions that a plan that claims cessation of coverage status should complete a coverage determination request.

PBGC also is updating the premium rates and making conforming, clarifying, and editorial changes to the premium filing instructions.

[1] PBGC's premium filing instructions define a lump sum window as a temporary opportunity to elect a lump sum in lieu of future annuity payments that is offered to individuals meeting specified criteria who would not otherwise be eligible to elect a lump sum.

[2] See Notice 2019–18, 2019–13 I.R.B. 915.

On August 1, 2019, PBGC published in the **Federal Register** (at 84 FR 37694) a notice informing the public of its intent to request OMB approval for the revised information collection. PBGC did not receive any comments.

The collection of information has been approved through June 30, 2021, by OMB under control number 1212–0009. PBGC is requesting that OMB approve the revised collection of information for three years. 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 it will receive 31,245 premium filings per year from 31,245 plan administrators under this collection of information. PBGC further estimates that the annual burden of this collection of information is 13,540 hours and $21,621,540.

Issued in Washington, DC.

Hilary Duke,

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

[FR Doc. 2019–23690 Filed 10–29–19; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Wednesday, November 13, 2019, at 10:30 a.m.; and Thursday, November 14, 2019, at 9:00 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Wednesday, November 13, 2019, at 10:30 a.m.—Closed. Thursday, November 14, 2019, at 9:00 a.m.—Open.

MATTERS TO BE CONSIDERED:

Wednesday, November 13, 2019, at 10:30 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Compensation and Personnel Matters.
4. Executive Session—Discussion of prior agenda items and Board governance.

Thursday, November 14, 2019, at 9:00 a.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of Minutes of Previous Meetings.

4. Committee Reports.
5. Five-Year Strategic Plan.
6. FY2019 10K and Financial Statements, Annual Report and Comprehensive Statement.
7. FY2020 IFP and Financing Resolution.
8. FY2021 Appropriations Request.
9. Quarterly Service Performance Request.
10. Approval of Tentative Agenda for February Meetings.
11. Board Leadership.

A public comment period will begin immediately following the adjournment of the open session on November 14, 2019. During the public comment period, which shall not exceed 30 minutes, members of the public may comment on any item or subject listed on the agenda for the open session above. Registration of speakers at the public comment period is required. Speakers may register online at *https://www.surveymonkey.com/r/BOG-11-14-19.* Onsite registration will be available until thirty minutes before the meeting starts. No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Acting Secretary.

[FR Doc. 2019–23794 Filed 10–28–19; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87392; File No. SR–NSCC–2019–003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Require Confirmation of Cybersecurity Program

October 24, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2019, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules and Procedures (''Rules'') [3] in order to (1) define ''Cybersecurity Confirmation'' as a signed, written representation that addresses the submitting firm's cybersecurity program; (2) enhance the NSCC application requirements and ongoing requirements for Members to (a) require that a Cybersecurity Confirmation be provided as part of the application materials for all Members, and (b) require that all Members deliver to NSCC a complete, updated Cybersecurity Confirmation at least every two years; and (3) provide that NSCC may require a Cybersecurity Confirmation from organizations that report trade data to NSCC for comparison and trade recording, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) Overview

NSCC is proposing to modify the Rules in order to (1) define ''Cybersecurity Confirmation'' as a signed, written representation that addresses the submitting firm's cybersecurity program; (2) enhance the NSCC application requirements and ongoing requirements for Members to (a) require that a Cybersecurity Confirmation be provided as part of the application materials for all Members, and (b) require that all Members deliver to NSCC a complete, updated Cybersecurity Confirmation at least every two years; and (3) provide that NSCC may require a Cybersecurity Confirmation from organizations that report trade data to NSCC for comparison and trade recording.

The proposed change would require all Members and applicants to deliver to NSCC a signed, written Cybersecurity Confirmation, which includes representations regarding the submitting firm's cybersecurity program and framework. The Cybersecurity Confirmation would be required to be (1) delivered with the application materials for every applicant for membership, and (2) updated and re-delivered at least every two years by all Members. NSCC is also proposing to modify the Rules to provide that it may require any organization from which it may accept trade data for comparison and trade recording to deliver a Cybersecurity Confirmation.

As described in more detail below, the Cybersecurity Confirmation would help NSCC to assess the cybersecurity risks that may be introduced to it by Members and other entities that connect to NSCC either through the Securely Managed and Reliable Technology (''SMART'') network [4] or through other connections. The proposed Cybersecurity Confirmation would allow NSCC to better understand its Members' cybersecurity programs and frameworks and identify possible cybersecurity risk exposures. Based on this information, NSCC would be able to establish appropriate controls to mitigate these risks and their possible impacts to NSCC's operations.

(ii) Background of Proposal

NSCC believes it is prudent to better understand the cybersecurity risks that it may face through its interconnections to Members. As a designated systemically important financial market utility, or ''SIFMU,'' NSCC occupies a unique position in the marketplace such that a failure or a disruption to NSCC could increase the risk of significant liquidity problems spreading among

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.* References to ''Members'' in this filing include both Members and Limited Members, as such terms are defined in the Rules.

[4] The SMART network is a technology managed by NSCC's parent company, The Depository Trust & Clearing Corporation (''DTCC''), that connects a nationwide complex of networks, processing centers and control facilities. This network extends between NSCC's and its Members' operating premises. DTCC operates on a shared services model with respect to NSCC and DTCC's other subsidiaries pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to its subsidiaries, including NSCC.

financial institutions or markets and thereby threaten the stability of the financial system in the United States.[5] Given its designation as a SIFMU, NSCC believes it is prudent to develop an enhanced endpoint security framework designed so that its SMART network or other connectivity is adequately protected against cyberattacks.

Currently, NSCC does not obtain any information regarding the security of a firm's systems or cybersecurity program prior to permitting that firm to connect either directly to the SMART network or to NSCC through another means, such as through a third party service provider, service bureau, network, or the internet. Given NSCC's critical role in the marketplace, NSCC is proposing to address the risks that could be posed by these connections.

Members may currently be subject to regulations that are designed, in part, to enhance the safeguards used by these entities to protect themselves against cyberattacks.[6] In order to comply with such regulations, Members and applicants would be required to follow standards established by national or international organizations focused on information security management, and would have already established protocols to allow their senior management to verify that they have sufficient cybersecurity programs in place to fulfill existing regulatory obligations. Other Members have established and follow substantially similar protocols because of evolving expectations by regulators or by institutional customers as to the sufficiency of their cyber safeguards. NSCC believes that it should require confirmation of the cybersecurity standards utilized by its Members and applicants that connect to its network.

The proposed Cybersecurity Confirmation would require Members and applicants to represent that they have established adequate controls and security to help limit (1) cybersecurity risks to NSCC and to the other Members' networks and (2) access by unauthorized third parties while the firm is connected to NSCC either directly through the SMART network or through other connectivity such as a service provider, service bureau, network, or the internet.

(iii) Proposed Rule Changes

NSCC is proposing to modify its Rules to (1) define ''Cybersecurity Confirmation;'' (2) require that firms deliver a completed Cybersecurity Confirmation (a) as part of their initial application with NSCC, and (b) on an ongoing basis, at least every two years; and (3) provide that NSCC may require a Cybersecurity Confirmation from organizations that report trade data to NSCC. Each of these proposed rule changes is described in greater detail below.

(1) Proposed Cybersecurity Confirmation

NSCC is proposing to adopt a definition of ''Cybersecurity Confirmation.'' Each Cybersecurity Confirmation would be required to be in writing on a form provided by NSCC and signed by a designated senior executive of the submitting firm who is authorized to attest to these matters. Based on the form provided by NSCC, each Cybersecurity Confirmation would contain representations regarding the submitting firm's cybersecurity program and framework. Such representations by the submitting firm would cover the two years prior to the date of the most recently provided Cybersecurity Confirmation.

NSCC is proposing to require that the following representations be included in the form of Cybersecurity Confirmation:

First, the Cybersecurity Confirmation would include a representation that the submitting firm has defined and maintains a comprehensive cybersecurity program and framework that considers potential cyber threats that impact the organization and protects the confidentiality, integrity and availability requirements of its systems and information.

Second, the Cybersecurity Confirmation would include a representation that the submitting firm has implemented and maintains a written enterprise cybersecurity policy or policies approved by the submitting firm's senior management or board of directors, and the organization's cybersecurity framework is in alignment with standard industry best practices and guidelines.[7]

Third, the Cybersecurity Confirmation would include a representation that, if the submitting firm is using a third party service provider or service bureau(s) to connect or transact business or to manage the connection with NSCC, the submitting firm has an appropriate program to (a) evaluate the cyber risks and impact of these third parties, and (b) review the third party assurance reports.

Fourth, the Cybersecurity Confirmation would include a representation that the submitting firm's cybersecurity program and framework protect the segment of their system that connects to and/or interacts with NSCC.

Fifth, the Cybersecurity Confirmation would include a representation that the submitting firm has in place an established process to remediate cyber issues identified to fulfill the submitting firm's regulatory and/or statutory requirements.

Sixth, the Cybersecurity Confirmation would include a representation that the submitting firm's cybersecurity program's and framework's risk processes are updated periodically based on a risk assessment or changes to technology, business, threat ecosystem, and/or regulatory environment.

And, finally, the Cybersecurity Confirmation would include a representation that the review of the submitting firm's cybersecurity program and framework has been conducted by one of the following: (1) The submitting firm, if it has filed and maintains a current Certification of Compliance with the Superintendent of the New York State Department of Financial Services confirming compliance with its Cybersecurity Requirements for Financial Services Companies;[8] (2) a

[5] NSCC and its affiliates, The Depository Trust Company and Fixed Income Clearing Corporation, were designated SIFMUs under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. 12 U.S.C. 5465(e)(1).

[6] For example, depending on the type of entity, Members may be subject to one or more of the following regulations: (1) Regulation S–ID, which requires ''financial institutions'' or ''creditors'' under the rule to adopt programs to identify and address the risk of identity theft of individuals (17 CFR 248.201–202); (2) Regulation S–P, which requires broker-dealers, investment companies, and investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information (17 CFR 248.1–30); and (3) Rule 15c3–5 under the Act, known as the ''Market Access Rule,'' which requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of its management controls and supervisory procedures (17 CFR 240.15c3–5).

[7] Examples of recognized frameworks, guidelines and standards that NSCC believes are adequate include the Financial Services Sector Coordinating Council Cybersecurity Profile, the National Institute of Standards and Technology Cybersecurity Framework (''NIST CSF''), International Organization for Standardization (''ISO'') standard 27001/27002 (''ISO 27001''), Federal Financial Institutions Examination Council (''FFIEC'') Cybersecurity Assessment Tool, Critical Security Controls Top 20, and Control Objectives for Information and Related Technologies. NSCC would identify recognized frameworks, guidelines and standards in the form of Cybersecurity Confirmation and in an Important Notice that NSCC would issue from time to time. NSCC would also consider accepting other standards upon request by a Member or applicant.

[8] 23 N.Y. Comp. Codes R. & Regs. tit. 23, § 500 (2017). This regulation requires firms to confirm that they have a comprehensive cybersecurity program, as described in the regulation, which NSCC believes is sufficient to meet the objectives of the proposed Cybersecurity Confirmation.

regulator who assesses the program against an industry cybersecurity framework or industry standard, including those that are listed on the form of Cybersecurity Confirmation and in an Important Notice that is issued by NSCC from time to time;[9] (3) an independent external entity with cybersecurity domain expertise in relevant industry standards and practices, including those that are listed on the form of Cybersecurity Confirmation and in an Important Notice that is issued by NSCC from time to time;[10] or (4) an independent internal audit function reporting directly to the submitting firm's board of directors or designated board of directors committee, such that the findings of that review are shared with these governance bodies.

Together, the required representations are designed to provide NSCC with evidence of each Member's or applicant's management of cybersecurity with respect to their connectivity to NSCC. By requiring these representations from Members and applicants, the proposed Cybersecurity Confirmation would provide NSCC with information that it could use to make decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and protect the NSCC network.

NSCC is proposing to amend Rule 1 (Definitions and Descriptions) of the Rules to include a definition of ''Cybersecurity Confirmation'' as described above.

(2) Initial and Ongoing Membership Requirement

NSCC is proposing to require that a Cybersecurity Confirmation be submitted to NSCC by any applicant, as part of their application materials, and at least every two years by all Members. With respect to the requirement to deliver a Cybersecurity Confirmation at least every two years, NSCC would provide all Members with notice of the date on which such Cybersecurity Confirmations would be due no later than 180 calendar days prior to such due date.

In order to implement these proposed changes, NSCC would amend Rule 2A (Initial Membership Requirements), Section 1.C of the Rules to require applicants to complete and deliver a Cybersecurity Confirmation as part of their application materials. Further, NSCC would amend Rule 2B (Ongoing Membership Requirements and Monitoring), Section 2.A of the Rules to require each Member to complete and deliver a Cybersecurity Confirmation at least every two years, on a date that is set by NSCC and following notice that is provided no later than 180 calendar days prior to such due date.

(3) Organizations Reporting Trade Data to NSCC

NSCC is also proposing to modify the Rules to provide that, when determining whether to accept trade data from an organization for comparison and trade recording, as provided for under Rule 7 (Comparison and Trade Recording Operation) of the Rules, NSCC may require such organization to provide a Cybersecurity Confirmation. These organizations are not Members of NSCC and, as such, NSCC's relationship with these organizations is governed by a contract that is separate from the Rules. Therefore, this change would provide transparency regarding the steps NSCC may take when determining whether to accept trade data from another organization.

To implement this change, NSCC would amend Rule 7 (Comparison and Trade Recording Operation), Section 6 of the Rules to provide that NSCC may require organizations that deliver trade data to NSCC as described in that Rule to provide a Cybersecurity Confirmation before agreeing to accept such trade data.

(iv) Implementation Timeframe

Subject to approval by the Commission, the proposed rule change would become effective immediately. The proposed requirement that applicants deliver a Cybersecurity Confirmation with their application materials would be implemented immediately and would apply to applications that have been submitted at that time but have not yet been approved or rejected. Following the effective date of the proposed rule change, NSCC would provide Members with notice of the due date of their Cybersecurity Confirmations, no later than 180 days prior to such due date, and would provide such notice at least every two years going forward.

2. Statutory Basis

NSCC believes the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act,[11] and Rules 17Ad–22(e)(17)(i) and (e)(17)(ii), each promulgated under the Act,[12] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[13]

As described above, the proposed requirement that Members and applicants provide a Cybersecurity Confirmation regarding their cybersecurity program that includes the representations described above would provide NSCC with evidence of each Member's or applicant's management of endpoint security with respect to the SMART network or other connectivity and would enhance the protection of NSCC against cyberattacks. The proposed Cybersecurity Confirmation would provide NSCC with information that it could use to make decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and protect the NSCC network. The proposed Cybersecurity Confirmation would give NSCC the ability to further identify its exposure and enable it to take steps to mitigate risks. These requirements would help reduce risk to NSCC's network with respect to its communications with Members and their submission of instructions and transactions to NSCC by requiring all entities connecting to NSCC to have appropriate cybersecurity programs in place.

Risks, threats and potential vulnerabilities could impact NSCC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control, or for which it is responsible. Therefore, by implementing a tool that would help to mitigate these risks, NSCC believes the proposal would

[9] Industry cybersecurity frameworks and industry standards could include, for example, the Office of the Comptroller of the Currency or the FFIEC Cybersecurity Assessment Tool. NSCC would identify acceptable industry cybersecurity frameworks and standards in the form of Cybersecurity Confirmation and in an Important Notice that NSCC would issue from time to time. NSCC would also consider accepting other industry cybersecurity frameworks and standards upon request by a Member or applicant.

[10] A third party with cybersecurity domain expertise is one that follows and understands industry standards, practices and regulations that are relevant to the financial sector. Examples of such standards and practices include ISO 27001 certification or NIST CSF assessment. NSCC would identify acceptable industry standards and practices in the form of Cybersecurity Confirmation and in an Important Notice that NSCC would issue from time to time. NSCC would also consider accepting other industry standards and practices upon request by a Member or applicant.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

[13] 15 U.S.C. 78q–1(b)(3)(F).

promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[14]

Rule 17Ad–22(e)(17)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[15] The proposed Cybersecurity Confirmation would reduce cybersecurity risks to NSCC by requiring all Members and applicants to confirm they have defined and maintain cybersecurity programs that meet standard industry best practices and guidelines. The proposed representations in the Cybersecurity Confirmations would help NSCC to mitigate its exposure to cybersecurity risk and, thereby, decrease the operational risks to NSCC that are presented by connections to NSCC through the SMART network or otherwise. The proposed Cybersecurity Confirmations would identify to NSCC potential sources of external operational risks and enable it to mitigate these risks and their possible impacts to NSCC's operations. As a result, NSCC believes the proposal is consistent with the requirements of Rule 17Ad–22(e)(17)(i) under the Act.[16]

Rule 17Ad–22(e)(17)(ii) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by ensuring, in part, that systems have a high degree of security, resiliency, and operational reliability.[17] The proposed Cybersecurity Confirmation would enhance the security, resiliency, and operational reliability of the endpoint security with respect to the SMART network or other connectivity because, as noted above, by making the Cybersecurity Confirmation an application requirement and an ongoing membership requirement, NSCC would be able to prevent the connection by any applicant, and take action against any Member, that may pose an increased cyber risk to NSCC by not having a defined and ongoing cybersecurity program that meets appropriate standards. Members or applicants that are not in alignment with a recognized framework, guideline, or standard that NSCC believes is adequate to guide and assess such organization's cybersecurity program may present increased risk to NSCC. By enabling NSCC to identify these risks, the proposed changes would allow NSCC to more effectively secure its environment against potential vulnerabilities. NSCC's controls are strengthened when NSCC's Members, and other organizations that connect to NSCC, have similar technology risk management controls and programs within their computing environment. Control weaknesses within a Member's environment could allow for malicious or unauthorized usage of the link between NSCC and the Member. As a result, NSCC believes the proposal would improve NSCC's ability to ensure that its systems have a high degree of security, resiliency, and operational reliability, and, as such, is consistent with the requirements of Rule 17Ad–22(e)(17)(ii) under the Act.[18]

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes the proposed rule change could have an impact on competition. Specifically, NSCC believes that the proposed rule change could burden competition because it would require Members and applicants that do not already have cybersecurity programs that meet the standards set out in the Cybersecurity Confirmation to incur additional costs including, but not limited to, establishing a cybersecurity program and framework, engaging an internal audit function or appropriate third party to review that program and framework, and remediating any findings from such review. In addition, those Members and applicants that do not connect directly to the SMART network, but connect through a third party service provider or service bureau would have the additional burden of evaluating the cyber risks and impact of these third parties and reviewing the third party's assurance reports.

NSCC believes the above described burden on competition that could be created by the proposed changes would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act, for the reasons described below.[19]

First, NSCC believes the proposed rule change would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act, because the Rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[20] By requiring Members and applicants to provide a Cybersecurity Confirmation, the proposed rule change would allow NSCC to better understand, assess, and, therefore, mitigate the cyber risks that NSCC could face through its connections to its Members. As described above, these risks could impact NSCC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in NSCC's custody or control, or for which it is responsible. Implementing a tool as described above would help to mitigate these risks, and therefore NSCC believes the proposal is necessary in furtherance of the requirements of Section 17A(b)(3)(F) of the Act.[21]

The proposed changes are also necessary in furtherance of the purposes of Rules 17Ad–22(e)(17)(i) and (e)(17)(ii) under the Act.[22] The proposed Cybersecurity Confirmations would identify to NSCC potential sources of external operational risks and allow it to establish appropriate controls that would mitigate these risks and their possible impacts to NSCC's operations. The proposed changes would also improve NSCC's ability to ensure that its systems have a high degree of security, by enabling NSCC to identify the cybersecurity risks that may be presented to it by Members and other entities that connect to NSCC.

Second, NSCC believes that the proposed rule change would be appropriate in furtherance of the purposes of the Act. The proposed rule change would apply equally to all Members and applicants. As described above, NSCC believes Members may already be subject to one or more regulatory requirements that include the implementation of a cybersecurity program, and these firms would already follow a widely recognized framework, guideline, or standard to guide and assess their organization's cybersecurity program to comply with these regulations. Therefore, NSCC believes any burden that may be imposed by the proposed rule change would be appropriate.

[14] *Id.*

[15] 17 CFR 240.17Ad–22(e)(17)(i).

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(17)(ii).

[18] *Id.*

[19] 15 U.S.C. 78q–1(b)(3)(I).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] *Id.*

[22] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

Further, while the proposed Cybersecurity Confirmation would identify certain standards and guidelines that would be appropriate, NSCC would consider requests by applicants and Members to allow other standards in accepting a Cybersecurity Confirmation. Additionally, the proposed Cybersecurity Confirmation would provide differing options to conduct the review of the applicant's or Member's cybersecurity program. As such, NSCC has endeavored to design the Cybersecurity Confirmation in a way that is reasonable and does not require one approach for meeting its requirements.

Finally, NSCC is proposing to provide Members with a minimum of 180 calendar days' notice before the deadline for providing a Cybersecurity Confirmation. This notice would allow Members to address any impact this change may have on their business. Applicants would be required to provide the Cybersecurity Confirmation as part of their application materials upon the effective date of this proposed rule change. This implementation schedule is designed to be fair and not disproportionately impact any Members more than others. The proposal is designed to provide all impacted Members with time to review their cybersecurity programs with respect to the required representations, and identify, if necessary, internal or third party cybersecurity reviewers.

For the reasons described above, NSCC believes any burden on competition that may result from the proposed rule change would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[23]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited or received any written comments relating to this proposal. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2019–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2019–003. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2019–003 and should be submitted on or before November 20, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23632 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78q–1(b)(3)(I).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87402; File No. SR–NYSENAT–2019–19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services To Offer Access to a Network Providing Connection to the Three Equities and Options Feeds

October 24, 2019.

On August 22, 2019, NYSE National, Inc. (''NYSE National'' 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 establish a network providing connection to three equities and options feeds[3] and amend the Exchange's price list relating to co-location services to offer access to the network. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] One comment on the proposed rule change has been received.[5]

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Securities Industry Automation Corporation disseminates information concerning: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan, (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan, and (3) quotation and last-sale price information in exchange options trading pursuant to the OPRA Plan. *See* Notice, *infra* note 4, at footnote 8.

[4] *See* Securities Exchange Act Release No. 86869 (September 4, 2019), 84 FR 47600.

[5] *See* Letter from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated October 24, 2019.

[6] 15 U.S.C. 78s(b)(2).

to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 25, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates December 9, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSENAT–2019–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23657 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Fixed Income Market Structure Advisory Committee (''FIMSAC'') will hold a public meeting on Monday, November 4, 2019 at 9:00 a.m.

PLACE: The meeting will be held in Room 443 at the Commission's New York Regional Office, 200 Vesey Street, New York, NY 10281.

STATUS: The meeting will begin at 9:00 a.m. and will be open to the public. Members of the public that wish to attend the meeting in person must complete the registration form on the FIMSAC's web page at *https://www.sec.gov/spotlight/fixed-income-advisory-committee* by October 30, 2019. Doors will open at 8:30 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED: On October 9, 2019, the Commission published notice of the Committee meeting (Release No. 34–87260), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will include updates and presentations from the FIMSAC subcommittees and discussions on secondary market trading in government securities and the transition away from LIBOR.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: October 28, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–23773 Filed 10–28–19; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87401; File No. SR–NYSEAMER–2019–34]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Exchange's Equities and Options Fee Schedules Related to Co-Location Services To Offer Access to a Network Providing Connection to the Three Equities and Options Feeds

October 24, 2019.

On August 23, 2019, NYSE American LLC (''NYSE American'' 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 establish a network providing connection to three equities and options feeds[3] and amend the Exchange's fee schedules relating to co-location services to offer access to the network. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] One comment on the proposed rule change has been received.[5]

Section 19(b)(2) of the Act[6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 25, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates December 9, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEAMER–2019–34).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23656 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Securities Industry Automation Corporation disseminates information concerning: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan, (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan, and (3) quotation and last-sale price information in exchange options trading pursuant to the OPRA Plan. *See* Notice, *infra* note 4, at footnote 8.

[4] *See* Securities Exchange Act Release No. 86867 (September 4, 2019), 84 FR 47563.

[5] *See* Letter from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated October 24, 2019.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87400; File No. SR–NYSEArca–2019–61)

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Exchange's Options and Equities Fee Schedules Related to Co-Location Services To Offer Access to a Network Providing Connection to the Three Equities and Options Feeds

October 24, 2019.

On August 22, 2019, NYSE Arca, Inc. (''NYSE Arca'' 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 establish a network providing connection to three equities and options feeds [3] and amend the Exchange's fee schedules relating to co-location services to offer access to the network. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] One comment on the proposed rule change has been received.[5]

Section 19(b)(2) of the Act [6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 25, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates December 9, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rulechange (File No. SR–NYSEArca–2019–61).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23655 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Securities Industry Automation Corporation disseminates information concerning: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan, (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan, and (3) quotation and last-sale price information in exchange options trading pursuant to the OPRA Plan. *See* Notice, *infra* note 4, at footnote 8.

[4] *See* Securities Exchange Act Release No. 86868 (September 4, 2019), 84 FR 47610.

[5] *See* Letter from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated October 24, 2019.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87399; File No. SR–NYSE–2019–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services To Offer Access to a Network Providing Connection to the Three Equities and Options Feeds

October 24, 2019.

On August 22, 2019, New York Stock Exchange LLC (''NYSE'' 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 establish a network providing connection to three equities and options feeds [3] and amend the Exchange's price list relating to co-location services to offer access to the network. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019.[4] One comment on the proposed rule change has been received.[5]

Section 19(b)(2) of the Act [6] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 25, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates December 9, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2019–46).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23654 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Securities Industry Automation Corporation disseminates information concerning: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan, (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan, and (3) quotation and last-sale price information in exchange options trading pursuant to the OPRA Plan. *See* Notice, *infra* note 4, at footnote 8.

[4] *See* Securities Exchange Act Release No. 86865 (September 4, 2019), 84 FR 47592.

[5] *See* Letter from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated October 24, 2019.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87393; File No. SR–DTC–2019–008]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Require Confirmation of Cybersecurity Program

October 24, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on October 15, 2019, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Rules, By-Laws and Organization Certificate of DTC (''Rules'')[3] in order to (1) define ''Cybersecurity Confirmation'' as a signed, written representation that addresses the submitting firm's cybersecurity program; and (2) enhance the DTC application requirements and ongoing requirements for Participants and Pledgees to (a) require that a Cybersecurity Confirmation be provided as part of the application materials for all Participants and Pledgees, and (b) require that Participants and Pledgees deliver to DTC a complete, updated Cybersecurity Confirmation at least every two years, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) Overview

DTC is proposing to modify the Rules in order to (1) define ''Cybersecurity Confirmation'' as a signed, written representation that addresses the submitting firm's cybersecurity program; and (2) enhance the DTC application requirements and ongoing requirements for Participants and Pledgees to (a) require that a Cybersecurity Confirmation be provided as part of the application materials for all Participants and Pledgees, and (b) require that Participants and Pledgees deliver to DTC a complete, updated Cybersecurity Confirmation at least every two years.

The proposed change would require all Participants, Pledgees and applicants to deliver to DTC a signed, written Cybersecurity Confirmation, which includes representations regarding the submitting firm's cybersecurity program and framework. The Cybersecurity Confirmation would be required to be (1) delivered with the application materials for every applicant for membership as a Participant and applicant to be a Pledgee, and (2) updated and re-delivered at least every two years by all Participants and Pledgees.

As described in more detail below, the Cybersecurity Confirmation would help DTC to assess the cybersecurity risks that may be introduced to it by Participants and Pledgees that connect to DTC either through the Securely Managed and Reliable Technology (''SMART'') network[4] or through other connections. The proposed Cybersecurity Confirmation would allow DTC to better understand its Participants' and Pledgees' cybersecurity programs and frameworks and identify possible cybersecurity risk exposures. Based on this information, DTC would be able to establish appropriate controls to mitigate these risks and their possible impacts to DTC's operations.

(ii) Background of Proposal

DTC believes it is prudent to better understand the cybersecurity risks that it may face through its interconnections to Participants and Pledgees. As a designated systemically important financial market utility, or ''SIFMU,'' DTC occupies a unique position in the marketplace such that a failure or a disruption to DTC could increase the risk of significant liquidity problems spreading among financial institutions or markets and thereby threaten the stability of the financial system in the United States.[5] Given its designation as a SIFMU, DTC believes it is prudent to develop an enhanced endpoint security framework designed so that its SMART network or other connectivity is adequately protected against cyberattacks.

Currently, DTC does not obtain any information regarding the security of a firm's systems or cybersecurity program prior to permitting that firm to connect either directly to the SMART network or to DTC through another means, such as through a third party service provider, service bureau, network, or the internet. Given DTC's critical role in the marketplace, DTC is proposing to address the risks that could be posed by these connections.

Participants and Pledgees may currently be subject to regulations that are designed, in part, to enhance the safeguards used by these entities to protect themselves against cyberattacks.[6] In order to comply with such regulations, Participants, Pledgees and applicants would be required to follow standards established by national or international organizations focused on information security management, and would have already established protocols to allow their senior management to verify that they have sufficient cybersecurity programs in place to fulfill existing regulatory obligations. Other Participants and Pledgees have established and follow substantially similar protocols because of evolving expectations by regulators or by institutional customers as to the sufficiency of their cyber safeguards. DTC believes that it should require confirmation of the cybersecurity standards utilized by its Participants, Pledgees and applicants that connect to its network.

The proposed Cybersecurity Confirmation would require

[3] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[4] The SMART network is a technology managed by DTC's parent company, The Depository Trust & Clearing Corporation (''DTCC''), that connects a nationwide complex of networks, processing centers and control facilities. This network extends between DTC's and its Participants' and Pledgees' operating premises. DTCC operates on a shared services model with respect to DTC and DTCC's other subsidiaries pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to its subsidiaries, including DTC.

[5] DTC and its affiliates, Fixed Income Clearing Corporation and National Securities Clearing Corporation, were designated SIFMUs under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. 12 U.S.C. 5465(e)(1).

[6] For example, depending on the type of entity, Participants and Pledgees may be subject to one or more of the following regulations: (1) Regulation S–ID, which requires ''financial institutions'' or ''creditors'' under the rule to adopt programs to identify and address the risk of identity theft of individuals (17 CFR 248.201–202); (2) Regulation S–P, which requires broker-dealers, investment companies, and investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information (17 CFR 248.1–30); and (3) Rule 15c3–5 under the Act, known as the ''Market Access Rule,'' which requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of its management controls and supervisory procedures (17 CFR 240.15c3–5).

Participants, Pledgees and applicants to represent that they have established adequate controls and security to help limit (1) cybersecurity risks to DTC and to the other Participants' and Pledgees' networks and (2) access by unauthorized third parties while the firm is connected to DTC either directly through the SMART network or through other connectivity such as a service provider, service bureau, network, or the internet.

(iii) Proposed Rule Changes

DTC is proposing to modify its Rules to (1) define ''Cybersecurity Confirmation;'' and (2) require that firms deliver a completed Cybersecurity Confirmation (a) as part of their initial application with DTC, and (b) on an ongoing basis, at least every two years. Each of these proposed rule changes is described in greater detail below.

(1) Proposed Cybersecurity Confirmation

DTC is proposing to adopt a definition of ''Cybersecurity Confirmation.'' Each Cybersecurity Confirmation would be required to be in writing on a form provided by DTC and signed by a designated senior executive of the submitting firm who is authorized to attest to these matters. Based on the form provided by DTC, each Cybersecurity Confirmation would contain representations regarding the submitting firm's cybersecurity program and framework. Such representations by the submitting firm would cover the two years prior to the date of the most recently provided Cybersecurity Confirmation.

DTC is proposing to require that the following representations be included in the form of Cybersecurity Confirmation:

First, the Cybersecurity Confirmation would include a representation that the submitting firm has defined and maintains a comprehensive cybersecurity program and framework that considers potential cyber threats that impact the organization and protects the confidentiality, integrity and availability requirements of its systems and information.

Second, the Cybersecurity Confirmation would include a representation that the submitting firm has implemented and maintains a written enterprise cybersecurity policy or policies approved by the submitting firm's senior management or board of directors, and the organization's cybersecurity framework is in alignment with standard industry best practices and guidelines.[7]

Third, the Cybersecurity Confirmation would include a representation that, if the submitting firm is using a third party service provider or service bureau(s) to connect or transact business or to manage the connection with DTC, the submitting firm has an appropriate program to (a) evaluate the cyber risks and impact of these third parties, and (b) review the third party assurance reports.

Fourth, the Cybersecurity Confirmation would include a representation that the submitting firm's cybersecurity program and framework protect the segment of their system that connects to and/or interacts with DTC.

Fifth, the Cybersecurity Confirmation would include a representation that the submitting firm has in place an established process to remediate cyber issues identified to fulfill the submitting firm's regulatory and/or statutory requirements.

Sixth, the Cybersecurity Confirmation would include a representation that the submitting firm's cybersecurity program's and framework's risk processes are updated periodically based on a risk assessment or changes to technology, business, threat ecosystem, and/or regulatory environment.

And, finally, the Cybersecurity Confirmation would include a representation that the review of the submitting firm's cybersecurity program and framework has been conducted by one of the following: (1) The submitting firm, if it has filed and maintains a current Certification of Compliance with the Superintendent of the New York State Department of Financial Services confirming compliance with its Cybersecurity Requirements for Financial Services Companies;[8] (2) a regulator who assesses the program against an industry cybersecurity framework or industry standard, including those that are listed on the form of Cybersecurity Confirmation and in an Important Notice that is issued by DTC from time to time;[9] (3) an independent external entity with cybersecurity domain expertise in relevant industry standards and practices, including those that are listed on the form of Cybersecurity Confirmation and in an Important Notice that is issued by DTC from time to time;[10] or (4) an independent internal audit function reporting directly to the submitting firm's board of directors or designated board of directors committee, such that the findings of that review are shared with these governance bodies.

Together, the required representations are designed to provide DTC with evidence of each Participant's, Pledgee's or applicant's management of cybersecurity with respect to their connectivity to DTC. By requiring these representations from Participants, Pledgees and applicants the proposed Cybersecurity Confirmation would provide DTC with information that it could use to make decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and protect the DTC network.

DTC is proposing to amend the Rules to include a definition of ''Cybersecurity Confirmation,'' as described above, in a new Section 11 of Rule 2 (Participants and Pledgees).

(2) Initial and Ongoing Requirement

DTC is proposing to require that a Cybersecurity Confirmation be submitted to DTC by any applicant, as part of their application materials, and at least every two years by all Participants and Pledgees. With respect

[7] Examples of recognized frameworks, guidelines and standards that DTC believes are adequate include the Financial Services Sector Coordinating Council Cybersecurity Profile, the National Institute of Standards and Technology Cybersecurity Framework (''NIST CSF''), International Organization for Standardization (''ISO'') standard 27001/27002 (''ISO 27001''), Federal Financial Institutions Examination Council (''FFIEC'') Cybersecurity Assessment Tool, Critical Security Controls Top 20, and Control Objectives for Information and Related Technologies. DTC would identify recognized frameworks, guidelines and standards in the form of Cybersecurity Confirmation and in an Important Notice that DTC would issue from time to time. DTC would also consider accepting other standards upon request by a Participant, Pledgee or applicant.

[8] 23 N.Y. Comp. Codes R. & Regs. tit. 23, § 500 (2017). This regulation requires firms to confirm that they have a comprehensive cybersecurity program, as described in the regulation, which DTC believes is sufficient to meet the objectives of the proposed Cybersecurity Confirmation.

[9] Industry cybersecurity frameworks and industry standards could include, for example, the Office of the Comptroller of the Currency or the FFIEC Cybersecurity Assessment Tool. DTC would identify acceptable industry cybersecurity frameworks and standards in the form of Cybersecurity Confirmation and in an Important Notice that DTC would issue from time to time. DTC would also consider accepting other industry cybersecurity frameworks and standards upon request by a Participant, Pledgee or applicant.

[10] A third party with cybersecurity domain expertise is one that follows and understands industry standards, practices and regulations that are relevant to the financial sector. Examples of such standards and practices include ISO 27001 certification or NIST CSF assessment. DTC would identify acceptable industry standards and practices in the form of Cybersecurity Confirmation and in an Important Notice that DTC would issue from time to time. DTC would also consider accepting other industry standards and practices upon request by a Participant, Pledgee or applicant.

to the requirement to deliver a Cybersecurity Confirmation at least every two years, DTC would provide all Participants and Pledgees with notice of the date on which such Cybersecurity Confirmations would be due no later than 180 calendar days prior to such due date.

In order to implement these proposed changes, DTC would amend the Rules to include a new Section 11 of Rule 2 (Participants and Pledgees) to require that (1) applicants complete and deliver a Cybersecurity Confirmation as part of their application materials; and (2) each Participant and Pledgee complete and deliver a Cybersecurity Confirmation at least every two years, on a date that is set by DTC and following notice that is provided no later than 180 calendar days prior to such due date.

(iv) Implementation Timeframe

Subject to approval by the Commission, the proposed rule change would become effective immediately. The proposed requirement that applicants deliver a Cybersecurity Confirmation with their application materials would be implemented immediately and would apply to applications that have been submitted at that time but have not yet been approved or rejected. Following the effective date of the proposed rule change, DTC would provide Participants and Pledgees with notice of the due date of their Cybersecurity Confirmations, no later than 180 days prior to such due date, and would provide such notice at least every two years going forward.

2. Statutory Basis

DTC believes the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, DTC believes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act,[11] and Rules 17Ad–22(e)(17)(i) and (e)(17)(ii), each promulgated under the Act,[12] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of DTC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[13]

As described above, the proposed requirement that Participants, Pledgees and applicants provide a Cybersecurity Confirmation regarding their cybersecurity program that includes the representations described above would provide DTC with evidence of each Participant's, Pledgee's or applicant's management of endpoint security with respect to the SMART network or other connectivity and would enhance the protection of DTC against cyberattacks. The proposed Cybersecurity Confirmation would provide DTC with information that it could use to make decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and protect the DTC network. The proposed Cybersecurity Confirmation would give DTC the ability to further identify its exposure and enable it to take steps to mitigate risks. These requirements would help reduce risk to DTC's network with respect to its communications with Participants and Pledgees and their submission of instructions and transactions to DTC by requiring all Participants and Pledgees connecting to DTC to have appropriate cybersecurity programs in place.

Risks, threats and potential vulnerabilities could impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control, or for which it is responsible. Therefore, by implementing a tool that would help to mitigate these risks, DTC believes the proposal would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[14]

Rule 17Ad–22(e)(17)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[15] The proposed Cybersecurity Confirmation would reduce cybersecurity risks to DTC by requiring all Participants, Pledgees and applicants to confirm they have defined and maintain cybersecurity programs that meet standard industry best practices and guidelines. The proposed representations in the Cybersecurity Confirmations would help DTC to mitigate its exposure to cybersecurity risk and, thereby, decrease the operational risks to DTC that are presented by connections to DTC through the SMART network or otherwise. The proposed Cybersecurity Confirmations would identify to DTC potential sources of external operational risks and enable it to mitigate these risks and their possible impacts to DTC's operations. As a result, DTC believes the proposal is consistent with the requirements of Rule 17Ad–22(e)(17)(i) under the Act.[16]

Rule 17Ad–22(e)(17)(ii) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by ensuring, in part, that systems have a high degree of security, resiliency, and operational reliability.[17] The proposed Cybersecurity Confirmation would enhance the security, resiliency, and operational reliability of the endpoint security with respect to the SMART network or other connectivity because, as noted above, by making the Cybersecurity Confirmation an application requirement and an ongoing membership requirement, DTC would be able to prevent the connection by any applicant, and take action against any Participant and Pledgee, that may pose an increased cyber risk to DTC by not having a defined and ongoing cybersecurity program that meets appropriate standards. Participants, Pledgees or applicants that are not in alignment with a recognized framework, guideline, or standard that DTC believes is adequate to guide and assess such organization's cybersecurity program may present increased risk to DTC. By enabling DTC to identify these risks, the proposed changes would allow DTC to more effectively secure its environment against potential vulnerabilities. DTC's controls are strengthened when DTC's Participants and Pledgees have similar technology risk management controls and programs within their computing environment. Control weaknesses within a Participant's or Pledgee's environment could allow for malicious or unauthorized usage of the link between DTC and the Participant or Pledgee. As a result, DTC believes the proposal would improve DTC's ability to ensure that its systems have a high degree of security, resiliency, and operational reliability, and, as such, is

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] *Id.*

[15] 17 CFR 240.17Ad–22(e)(17)(i).

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(17)(ii).

consistent with the requirements of Rule 17Ad–22(e)(17)(ii) under the Act.[18]

(B) Clearing Agency's Statement on Burden on Competition

DTC believes the proposed rule change could have an impact on competition. Specifically, DTC believes that the proposed rule change could burden competition because it would require Participants, Pledgees and applicants that do not already have cybersecurity programs that meet the standards set out in the Cybersecurity Confirmation to incur additional costs including, but not limited to, establishing a cybersecurity program and framework, engaging an internal audit function or appropriate third party to review that program and framework, and remediating any findings from such review. In addition, those Participants, Pledgees and applicants that do not connect directly to the SMART network, but connect through a third party service provider or service bureau would have the additional burden of evaluating the cyber risks and impact of these third parties and reviewing the third party's assurance reports.

DTC believes the above described burden on competition that could be created by the proposed changes would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act, for the reasons described below.[19]

First, DTC believes the proposed rule change would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act, because the Rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[20] By requiring that applicants, Participants and Pledgees provide a Cybersecurity Confirmation, the proposed rule change would allow DTC to better understand, assess, and, therefore, mitigate the cyber risks that DTC could face through its connections to its Participants and Pledgees. As described above, these risks could impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in DTC's custody or control, or for which it is responsible. Implementing a tool as described above would help to mitigate these risks, and therefore DTC believes the proposal is necessary in furtherance of the requirements of Section 17A(b)(3)(F) of the Act.[21]

The proposed changes are also necessary in furtherance of the purposes of Rules 17Ad–22(e)(17)(i) and (e)(17)(ii) under the Act.[22] The proposed Cybersecurity Confirmations would identify to DTC potential sources of external operational risks and allow it to establish appropriate controls that would mitigate these risks and their possible impacts to DTC's operations. The proposed changes would also improve DTC's ability to ensure that its systems have a high degree of security, by enabling DTC to identify the cybersecurity risks that may be presented to it by Participants and Pledgees that connect to DTC.

Second, DTC believes that the proposed rule change would be appropriate in furtherance of the purposes of the Act. The proposed rule change would apply equally to all Participants, Pledgees and applicants. As described above, DTC believes Participants and Pledgees may already be subject to one or more regulatory requirements that include the implementation of a cybersecurity program, and these firms would already follow a widely recognized framework, guideline, or standard to guide and assess their organization's cybersecurity program to comply with these regulations. Therefore, DTC believes any burden that may be imposed by the proposed rule change would be appropriate.

Further, while the proposed Cybersecurity Confirmation would identify certain standards and guidelines that would be appropriate, DTC would consider requests by applicants, Participants and Pledgees to allow other standards in accepting a Cybersecurity Confirmation. Additionally, the proposed Cybersecurity Confirmation would provide differing options to conduct the review of the applicant's, Participant's or Pledgee's cybersecurity program. As such, DTC has endeavored to design the Cybersecurity Confirmation in a way that is reasonable and does not require one approach for meeting its requirements.

Finally, DTC is proposing to provide Participants and Pledgees with a minimum of 180 calendar days' notice before the deadline for providing a Cybersecurity Confirmation. This notice would allow Participants and Pledgees to address any impact this change may have on their business. Applicants to be Participants or Pledgees would be required to provide the Cybersecurity Confirmation as part of their application materials upon the effective date of this proposed rule change. This implementation schedule is designed to be fair and not disproportionately impact any Participants or Pledgees more than others. The proposal is designed to provide all impacted Participants and Pledgees with time to review their cybersecurity programs with respect to the required representations, and identify, if necessary, internal or third party cybersecurity reviewers.

For the reasons described above, DTC believes any burden on competition that may result from the proposed rule change would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[23]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received any written comments relating to this proposal. DTC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[18] *Id.*

[19] 15 U.S.C. 78q–1(b)(3)(I).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] *Id.*

[22] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

[23] 15 U.S.C. 78q–1(b)(3)(I).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2019–008 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2019–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2019–008 and should be submitted on or before November 20,2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23629 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87394; File No. SR–FICC–2019–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Require Confirmation of Cybersecurity Program

October 24, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2019, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules''), FICC's Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules''), and the Electronic Pool Notification (''EPN'') Rules of MBSD (''EPN Rules,'' and, together with the GSD Rules and the MBSD Rules, the ''Rules'')[3] in order to (1) define ''Cybersecurity Confirmation'' as a signed, written representation that addresses the submitting firm's cybersecurity program; and (2) enhance the GSD and MBSD application requirements and ongoing requirements for Members to (a) require that a Cybersecurity Confirmation be provided as part of the application materials for all Members, and (b) require that all Members deliver to FICC a complete, updated Cybersecurity Confirmation at least every two years, as described in greater detail below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.* References to ''Members'' in this filing include the participants of GSD and MBSD, including GSD Netting Members, GSD Comparison-Only Members, GSD Sponsoring Members, GSD CCIT Members, GSD Funds-Only Settling Bank Members, MBSD Clearing Members, MBSD Cash Settling Bank Members, and MBSD EPN Users, as such terms are defined in the respective Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) Overview

FICC is proposing to modify the Rules in order to (1) define ''Cybersecurity Confirmation'' as a signed, written representation that addresses the submitting firm's cybersecurity program; and (2) enhance the GSD and MBSD application requirements and ongoing requirements for Members to (a) require that a Cybersecurity Confirmation be provided as part of the application materials for all Members, and (b) require that all Members deliver to FICC a complete, updated Cybersecurity Confirmation at least every two years.

The proposed change would require all Members and applicants to deliver to FICC a signed, written Cybersecurity Confirmation, which includes representations regarding the submitting firm's cybersecurity program and framework. The Cybersecurity Confirmation would be required to be (1) delivered with the application materials for every applicant, and (2) updated and re-delivered at least every two years by all Members.

As described in more detail below, the Cybersecurity Confirmation would help FICC to assess the cybersecurity risks that may be introduced to it by Members that connect to FICC either through the Securely Managed and Reliable Technology (''SMART'') network[4] or through other connections. The proposed Cybersecurity Confirmation would allow FICC to

[4] The SMART network is a technology managed by FICC's parent company, The Depository Trust & Clearing Corporation (''DTCC''), that connects a nationwide complex of networks, processing centers and control facilities. This network extends between FICC's and its Members' operating premises. DTCC operates on a shared services model with respect to FICC and DTCC's other subsidiaries pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to its subsidiaries, including FICC.

better understand its Members' cybersecurity programs and frameworks and identify possible cybersecurity risk exposures. Based on this information, FICC would be able to establish appropriate controls to mitigate these risks and their possible impacts to FICC's operations.

(ii) Background of Proposal

FICC believes it is prudent to better understand the cybersecurity risks that it may face through its interconnections to Members. As a designated systemically important financial market utility, or ''SIFMU,'' FICC occupies a unique position in the marketplace such that a failure or a disruption to FICC could increase the risk of significant liquidity problems spreading among financial institutions or markets and thereby threaten the stability of the financial system in the United States.[5] Given its designation as a SIFMU, FICC believes it is prudent to develop an enhanced endpoint security framework designed so that its SMART network or other connectivity is adequately protected against cyberattacks.

Currently, FICC does not obtain any information regarding the security of a firm's systems or cybersecurity program prior to permitting that firm to connect either directly to the SMART network or to FICC through another means, such as through a third party service provider, service bureau, network, or the internet. Given FICC's critical role in the marketplace, FICC is proposing to address the risks that could be posed by these connections.

Members may currently be subject to regulations that are designed, in part, to enhance the safeguards used by these entities to protect themselves against cyberattacks.[6] In order to comply with such regulations, Members and applicants would be required to follow standards established by national or international organizations focused on information security management, and would have already established protocols to allow their senior management to verify that they have sufficient cybersecurity programs in place to fulfill existing regulatory obligations. Other Members have established and follow substantially similar protocols because of evolving expectations by regulators or by institutional customers as to the sufficiency of their cyber safeguards. FICC believes that it should require confirmation of the cybersecurity standards utilized by its Members and applicants that connect to its network.

The proposed Cybersecurity Confirmation would require Members and applicants to represent that they have established adequate controls and security to help limit (1) cybersecurity risks to FICC and to the other Members' networks and (2) access by unauthorized third parties while the firm is connected to FICC either directly through the SMART network or through other connectivity such as a service provider, service bureau, network, or the internet.

(iii) Proposed Rule Changes

FICC is proposing to modify its Rules to (1) define ''Cybersecurity Confirmation;'' and (2) require that firms deliver a completed Cybersecurity Confirmation (a) as part of their initial application with FICC, and (b) on an ongoing basis, at least every two years. Each of these proposed rule changes is described in greater detail below.

(1) Proposed Cybersecurity Confirmation

FICC is proposing to adopt a definition of ''Cybersecurity Confirmation.'' Each Cybersecurity Confirmation would be required to be in writing on a form provided by FICC and signed by a designated senior executive of the submitting firm who is authorized to attest to these matters. Based on the form provided by FICC, each Cybersecurity Confirmation would contain representations regarding the submitting firm's cybersecurity program and framework. Such representations by the submitting firm would cover the two years prior to the date of the most recently provided Cybersecurity Confirmation.

FICC is proposing to require that the following representations be included in the form of Cybersecurity Confirmation:

First, the Cybersecurity Confirmation would include a representation that the submitting firm has defined and maintains a comprehensive cybersecurity program and framework that considers potential cyber threats that impact the organization and protects the confidentiality, integrity and availability requirements of its systems and information.

Second, the Cybersecurity Confirmation would include a representation that the submitting firm has implemented and maintains a written enterprise cybersecurity policy or policies approved by the submitting firm's senior management or board of directors, and the organization's cybersecurity framework is in alignment with standard industry best practices and guidelines.[7]

Third, the Cybersecurity Confirmation would include a representation that, if the submitting firm is using a third party service provider or service bureau(s) to connect or transact business or to manage the connection with FICC, the submitting firm has an appropriate program to (a) evaluate the cyber risks and impact of these third parties, and (b) review the third party assurance reports.

Fourth, the Cybersecurity Confirmation would include a representation that the submitting firm's cybersecurity program and framework protect the segment of their system that connects to and/or interacts with FICC.

Fifth, the Cybersecurity Confirmation would include a representation that the submitting firm has in place an established process to remediate cyber issues identified to fulfill the submitting firm's regulatory and/or statutory requirements.

Sixth, the Cybersecurity Confirmation would include a representation that the submitting firm's cybersecurity program's and framework's risk processes are updated periodically based on a risk assessment or changes to technology, business, threat ecosystem, and/or regulatory environment.

And, finally, the Cybersecurity Confirmation would include a representation that the review of the

[5] FICC and its affiliates, The Depository Trust Company and National Securities Clearing Corporation, were designated SIFMUs under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. 12 U.S.C. 5465(e)(1).

[6] For example, depending on the type of entity, Members may be subject to one or more of the following regulations: (1) Regulation S–ID, which requires ''financial institutions'' or ''creditors'' under the rule to adopt programs to identify and address the risk of identity theft of individuals (17 CFR 248.201–202); (2) Regulation S–P, which requires broker-dealers, investment companies, and investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information (17 CFR 248.1–30); and (3) Rule 15c3–5 under the Act, known as the ''Market Access Rule,'' which requires broker-dealers to establish, document, and maintain a system for regularly reviewing the effectiveness of its management controls and supervisory procedures (17 CFR 240.15c3–5).

[7] Examples of recognized frameworks, guidelines and standards that FICC believes are adequate include the Financial Services Sector Coordinating Council Cybersecurity Profile, the National Institute of Standards and Technology Cybersecurity Framework (''NIST CSF''), International Organization for Standardization (''ISO'') standard 27001/27002 (''ISO 27001''), Federal Financial Institutions Examination Council (''FFIEC'') Cybersecurity Assessment Tool, Critical Security Controls Top 20, and Control Objectives for Information and Related Technologies. FICC would identify recognized frameworks, guidelines and standards in the form of Cybersecurity Confirmation and in an Important Notice that FICC would issue from time to time. FICC would also consider accepting other standards upon request by a Member or applicant.

submitting firm's cybersecurity program and framework has been conducted by one of the following: (1) The submitting firm, if it has filed and maintains a current Certification of Compliance with the Superintendent of the New York State Department of Financial Services confirming compliance with its Cybersecurity Requirements for Financial Services Companies; [8] (2) a regulator who assesses the program against an industry cybersecurity framework or industry standard, including those that are listed on the form of Cybersecurity Confirmation and in an Important Notice that is issued by FICC from time to time; [9] (3) an independent external entity with cybersecurity domain expertise in relevant industry standards and practices, including those that are listed on the form of Cybersecurity Confirmation and in an Important Notice that is issued by FICC from time to time; [10] or (4) an independent internal audit function reporting directly to the submitting firm's board of directors or designated board of directors committee, such that the findings of that review are shared with these governance bodies.

Together, the required representations are designed to provide FICC with evidence of each Member's or applicant's management of cybersecurity with respect to their connectivity to FICC. By requiring these representations from Members and applicants, the proposed Cybersecurity Confirmation would provide FICC with information that it could use to make decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and protect the FICC network.

FICC is proposing to amend Rule 1 (Definitions) of the GSD Rules, Rule 1 (Definitions) of the MBSD Rules, and Rule 1 (Definitions) of Article I (Definitions and General Provisions) of the EPN Rules, to include a definition of ''Cybersecurity Confirmation'' as described above.

(2) Initial and Ongoing Membership Requirement

FICC is proposing to require that a Cybersecurity Confirmation be submitted to FICC by any applicant, as part of their application materials, and at least every two years by all Members. With respect to the requirement to deliver a Cybersecurity Confirmation at least every two years, FICC would provide all Members with notice of the date on which such Cybersecurity Confirmations would be due no later than 180 calendar days prior to such due date.

In order to implement these proposed changes, FICC would amend Section 5 of Rule 2A (Initial Membership Requirements) of the GSD Rules, Section 3 of Rule 3B (Centrally Cleared Institutional Triparty Service) of the GSD Rules, Section 4 of Rule 13 (Funds-Only Settlement) of the GSD Rules, Section 3 of Rule 2A (Initial Membership Requirements) of the MBSD Rules, Rule 3A (Cash Settlement Bank Members) of the MBSD Rules, and Section 2 of Rule 1 (Requirements Applicable to EPN Users) of Article III of the EPN Rules to require that applicants complete and deliver a Cybersecurity Confirmation as part of their application materials.

Further, FICC would amend Section 2 of Rule 3 (Ongoing Membership Requirements) of the GSD Rules, Section 5 of Rule 3B (Centrally Cleared Institutional Triparty Service) of the GSD Rules, Section 4 of Rule 13 (Funds-Only Settlement) of the GSD Rules, Section 2 of Rule 3 (Ongoing Membership Requirements) of the MBSD Rules, Rule 3A (Cash Settlement Bank Members) of the MBSD Rules and Section 8 of Rule 1 (Requirements Applicable to EPN Users) of Article III of the EPN Rules to require each Member to complete and deliver a Cybersecurity Confirmation at least every two years, on a date that is set by FICC and following notice that is provided no later than 180 calendar days prior to such due date.

(iv) Implementation Timeframe

Subject to approval by the Commission, the proposed rule change would become effective immediately. The proposed requirement that applicants deliver a Cybersecurity Confirmation with their application materials would be implemented immediately and would apply to applications that have been submitted at that time but have not yet been approved or rejected. Following the effective date of the proposed rule change, FICC would provide Members with notice of the due date of their Cybersecurity Confirmations, no later than 180 days prior to such due date, and would provide such notice at least every two years going forward.

2. Statutory Basis

FICC believes the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes that the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act,[11] and Rules 17Ad–22(e)(17)(i) and (e)(17)(ii), each promulgated under the Act,[12] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of FICC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[13]

As described above, the proposed requirement that Members and applicants provide a Cybersecurity Confirmation regarding their cybersecurity program that includes the representations described above would provide FICC with evidence of each Member's or applicant's management of endpoint security with respect to the SMART network or other connectivity and would enhance the protection of FICC against cyberattacks. The proposed Cybersecurity Confirmation would provide FICC with information that it could use to make decisions about risks or threats, perform additional monitoring, target potential vulnerabilities, and protect the FICC network. The proposed Cybersecurity Confirmation would give FICC the ability to further identify its exposure and enable it to take steps to mitigate risks. These requirements would help reduce risk to FICC's network with respect to its communications with Members and their submission of instructions and transactions to FICC by requiring all Members connecting to

[8] 23 N.Y. Comp. Codes R. & Regs. tit. 23, § 500 (2017). This regulation requires firms to confirm that they have a comprehensive cybersecurity program, as described in the regulation, which FICC believes is sufficient to meet the objectives of the proposed Cybersecurity Confirmation.

[9] Industry cybersecurity frameworks and industry standards could include, for example, the Office of the Comptroller of the Currency or the FFIEC Cybersecurity Assessment Tool. FICC would identify acceptable industry cybersecurity frameworks and standards in the form of Cybersecurity Confirmation and in an Important Notice that FICC would issue from time to time. FICC would also consider accepting other industry cybersecurity frameworks and standards upon request by a Member or applicant.

[10] A third party with cybersecurity domain expertise is one that follows and understands industry standards, practices and regulations that are relevant to the financial sector. Examples of such standards and practices include ISO 27001 certification or NIST CSF assessment. FICC would identify acceptable industry standards and practices in the form of Cybersecurity Confirmation and in an Important Notice that FICC would issue from time to time. FICC would also consider accepting other industry standards and practices upon request by a Member or applicant.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

[13] 15 U.S.C. 78q–1(b)(3)(F).

FICC to have appropriate cybersecurity programs in place.

Risks, threats and potential vulnerabilities could impact FICC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control, or for which it is responsible. Therefore, by implementing a tool that would help to mitigate these risks, FICC believes the proposal would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[14]

Rule 17Ad–22(e)(17)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.[15] The proposed Cybersecurity Confirmation would reduce cybersecurity risks to FICC by requiring all Members and applicants to confirm they have defined and maintain cybersecurity programs that meet standard industry best practices and guidelines. The proposed representations in the Cybersecurity Confirmations would help FICC to mitigate its exposure to cybersecurity risk and, thereby, decrease the operational risks to FICC that are presented by connections to FICC through the SMART network or otherwise. The proposed Cybersecurity Confirmations would identify to FICC potential sources of external operational risks and enable it to mitigate these risks and their possible impacts to FICC's operations. As a result, FICC believes the proposal is consistent with the requirements of Rule 17Ad–22(e)(17)(i) under the Act.[16]

Rule 17Ad–22(e)(17)(ii) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by ensuring, in part, that systems have a high degree of security, resiliency, and operational reliability.[17] The proposed Cybersecurity Confirmation would enhance the security, resiliency, and operational reliability of the endpoint security with respect to the SMART network or other connectivity because, as noted above, by making the Cybersecurity Confirmation an application requirement and an ongoing membership requirement, FICC would be able to prevent the connection by any applicant, and take action against any Member, that may pose an increased cyber risk to FICC by not having a defined and ongoing cybersecurity program that meets appropriate standards. Members or applicants that are not in alignment with a recognized framework, guideline, or standard that FICC believes is adequate to guide and assess such organization's cybersecurity program may present increased risk to FICC. By enabling FICC to identify these risks, the proposed changes would allow FICC to more effectively secure its environment against potential vulnerabilities. FICC's controls are strengthened when FICC's Members have similar technology risk management controls and programs within their computing environment. Control weaknesses within a Member's environment could allow for malicious or unauthorized usage of the link between FICC and the Member. As a result, FICC believes the proposal would improve FICC's ability to ensure that its systems have a high degree of security, resiliency, and operational reliability, and, as such, is consistent with the requirements of Rule 17Ad–22(e)(17)(ii) under the Act.[18]

(B) Clearing Agency's Statement on Burden on Competition

FICC believes the proposed rule change could have an impact on competition. Specifically, FICC believes that the proposed rule change could burden competition because it would require Members and applicants that do not already have cybersecurity programs that meet the standards set out in the Cybersecurity Confirmation to incur additional costs including, but not limited to, establishing a cybersecurity program and framework, engaging an internal audit function or appropriate third party to review that program and framework, and remediating any findings from such review. In addition, those Members and applicants that do not connect directly to the SMART network, but connect through a third party service provider or service bureau would have the additional burden of evaluating the cyber risks and impact of these third parties and reviewing the third party's assurance reports.

FICC believes the above described burden on competition that could be created by the proposed changes would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act, for the reasons described below.[19]

First, FICC believes the proposed rule change would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act, because the Rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[20] By requiring that Members and applicants provide a Cybersecurity Confirmation, the proposed rule change would allow FICC to better understand, assess, and, therefore, mitigate the cyber risks that FICC could face through its connections to its Members. As described above, these risks could impact FICC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in FICC's custody or control, or for which it is responsible. Implementing a tool as described above would help to mitigate these risks, and therefore FICC believes the proposal is necessary in furtherance of the requirements of Section 17A(b)(3)(F) of the Act.[21]

The proposed changes are also necessary in furtherance of the purposes of Rules 17Ad–22(e)(17)(i) and (e)(17)(ii) under the Act.[22] The proposed Cybersecurity Confirmations would identify to FICC potential sources of external operational risks and allow it to establish appropriate controls that would mitigate these risks and their possible impacts to FICC's operations. The proposed changes would also improve FICC's ability to ensure that its systems have a high degree of security, by enabling FICC to identify the cybersecurity risks that may be presented to it by Members that connect to FICC.

Second, FICC believes that the proposed rule change would be appropriate in furtherance of the purposes of the Act. The proposed rule change would apply equally to all Members and applicants. As described above, FICC believes Members may already be subject to one or more

[14] *Id.*

[15] 17 CFR 240.17Ad–22(e)(17)(i).

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(17)(ii).

[18] *Id.*

[19] 15 U.S.C. 78q–1(b)(3)(I).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] *Id.*

[22] 17 CFR 240.17Ad–22(e)(17)(i) and (e)(17)(ii).

regulatory requirements that include the implementation of a cybersecurity program, and these firms would already follow a widely recognized framework, guideline, or standard, to guide and assess their organization's cybersecurity program to comply with these regulations. Therefore, FICC believes any burden that may be imposed by the proposed rule change would be appropriate.

Further, while the proposed Cybersecurity Confirmation would identify certain standards and guidelines that would be appropriate, FICC would consider requests by applicants and Members to allow other standards in accepting a Cybersecurity Confirmation. Additionally, the proposed Cybersecurity Confirmation would provide differing options to conduct the review of the applicant's or Member's cybersecurity program. As such, FICC has endeavored to design the Cybersecurity Confirmation in a way that is reasonable and does not require one approach for meeting its requirements.

Finally, FICC is proposing to provide Members with a minimum of 180 calendar days' notice before the deadline for providing a Cybersecurity Confirmation. This notice would allow Members to address any impact this change may have on their business. Applicants would be required to provide the Cybersecurity Confirmation as part of their application materials upon the effective date of this proposed rule change. This implementation schedule is designed to be fair and not disproportionately impact any Members more than others. The proposal is designed to provide all impacted Members with time to review their cybersecurity programs with respect to the required representations, and identify, if necessary, internal or third party cybersecurity reviewers.

For the reasons described above, FICC believes any burden on competition that may result from the proposed rule change would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[23]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received any written comments relating to this proposal. FICC will notify the Commission of any written comments received.

[23] 15 U.S.C. 78q–1(b)(3)(I).

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2019–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2019–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2019–005 and should be submitted on or before November 20, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23650 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16162 and #16163; FLORIDA Disaster Number FL–00146]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4468–DR), dated 10/21/2019.

Incident: Hurricane Dorian.

Incident Period: 08/28/2019 through 09/09/2019.

DATES: Issued on 10/21/2019.

Physical Loan Application Deadline Date: 12/20/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 07/21/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/21/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the

address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Brevard, Duval, Flagler, Indian River, Martin, Nassau, Osceola, Palm Beach, Putnam, Saint Johns, Saint Lucie, Seminole.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 161628 and for economic injury is 161630.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–23663 Filed 10–29–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 10934]

Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage

ACTION: Notice of request for emergency review and approval by OMB and public comment.

SUMMARY: The Department of State (''Department'') has submitted the information collection request described below to the Office of Management and Budget (''OMB'') for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The purpose of this notice is to allow for public comment from all interested individuals and organizations. Emergency review and approval of this collection has been requested from OMB by November 1, 2019. If granted, the approval is only valid for 180 days. The Department is separately submitting a 3 year approval through OMB's normal PRA clearance process.

ADDRESSES: Direct any comments on this request to both the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB) and to the Department of State's Bureau of Consular Affairs, Office of Visa Services.

All public comments must be received by October 31, 2019.

You may submit comments to OMB by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State. You may submit comments to the Bureau of Consular Affairs, Visa Office by the following methods:
- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2019–0039'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov.* You must include *Emergency Submission Comment on ''information collection title''* in the subject line of your message.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to Megan Herndon, who may be reached at (202) 485–7586 or at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Immigrant Health Insurance Coverage.
- *OMB Control Number:* None.
- *Type of Request:* Emergency Review.
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO).
- *Form Number:* DS–5541 (oral information collection).
- *Respondents:* Certain immigrant visa applicants.
- *Estimated Number of Respondents:* 450,500.
- *Estimated Number of Responses:* 450,500.
- *Average Time Per Response:* 10 minutes.
- *Total Estimated Burden Time:* 75,083 hours.
- *Frequency:* Once per respondent's application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review

Abstract of Proposed Collection

The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (''PP 9945'') requires immigrant visa applicants to establish, to the satisfaction of a consular officer, that the applicant will be covered by an approved health insurance plan within 30 days of entry into the United States, unless the applicant possesses sufficient financial resources to cover reasonably foreseeable medical costs. Proclamation No. 9945, 84 FR 53991 (Oct. 4, 2019). Section 3 of the Proclamation authorizes the Secretary of State to establish standards and procedures for governing such determinations. *Id.* PP 9945 was signed on October 4, 2019, and emergency review of this information collection is necessary for the Department to prepare consular officers to implement PP 9945 when it goes into effect on November 3, 2019.

Methodology

Consular officers will verbally ask immigrant visa applicants covered by PP 9945 whether they will be covered by health insurance in the United States within 30 days of entry to the United States and, if so, for details relating to such insurance. Proclamation No. 9945, 84 FR 53991 (Oct. 4, 2019). PP 9945 only applies to applicants seeking to enter the United States pursuant to an immigrant visa. If applicants answer affirmatively, consular officers will ask for applicants to identify the specific health insurance plan, the date coverage will begin, and such other information

related to the insurance plan as the consular officer deems necessary. PP 9945 does not suspend or limit the entry of applicants if they do not have coverage, but possess financial resources to pay for reasonably foreseeable medical expenses. Reasonably foreseeable medical expenses are those expenses related to existing medical conditions, relating to health issues existing at the time of visa adjudication.

PP 9945 does not apply to holders of valid immigrant visas issued before the effective date of the proclamation; aliens seeking to enter the United states pursuant to a Special Immigrant Visa, in either the SI or SQ classification; any alien who is seeking to enter the United States pursuant to an IR–2, CR–2, IR–3, IR–4, IH–3, or IH–4 visa; aliens seeking to enter pursuant to an IR–5 visa, provided the alien or alien's sponsor demonstrates to the satisfaction of consular officers that they will not impose a substantial burden on the United States healthcare system; aliens seeking to enter the United States pursuant to a SB–1 visa; any alien under the age of 18, except for any alien accompanying a parent who is also immigrating to the United States and subject to PP 9945; any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State or his designee based on a recommendation from the Attorney General or his designee; or aliens whose entry would be in the national interest, as determined by the Secretary of State or his designee on a case-by-case basis.

Edward J. Ramotowski,

Deputy Assistant Secretary, Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2019–23639 Filed 10–29–19; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0087]

Petition for Waiver of Compliance

Under part 211 of title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that on October 16, 2019, the Northeast Illinois Regional Commuter Railroad Corporation (Metra) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 236.566, *Locomotive of each train operating in train stop, train control or cab signal territory; equipped.* FRA assigned the petition Docket Number FRA–2019–0087.

Specifically, Metra requests to operate positive train control (PTC) equipped controlling locomotives with the automatic cab signals (ACS) cut-out. The relief is to be within a PTC revenue service demonstration (RSD) area on the Rock Island District, on which a PTC system (Interoperable Electronic Train Management System) is installed and operative; the PTC system is successfully initialized; and a locomotive engineer trained and qualified in the operation of PTC is present for the operation of the train with the ACS cut-out.

Locations of the requested relief on the Rock Island District are:

- Track No. 1, Westward—MP 14.5 to MP 39.9; Eastward—MP 39.9 to MP 14.5
- Track No. 2, Westward—MP 14.5 to MP 39.9; Eastward—MP 39.9 to MP 14.5
- Main Track, MP 39.9 to 40.2.

If the PTC system fails and/or is cut-out en route, the train crew will cut-in the ACS onboard system, perform a departure test, and if successful, continue the trip through the project limits under ACS operation. If the ACS onboard system cut-in and/or departure test are not completed successfully, the train will continue to operate under the provisions of § 236.567, *Restrictions imposed when device fails and/or is cut out en route.*

Metra notes that the ACS and PTC systems are not integrated on the locomotive, and their concurrent use would be potentially confusing and distracting to the train crew due to differences in the content of their displays, audible and visual alerts provided, and required acknowledgement protocols.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Ave. SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 16, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–23669 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2019–0004–N–19]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 30, 2019, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before November 29, 2019.

ADDRESSES: Submit written comments on the ICR to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–0440) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 30, 2019, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 84 FR 45824. To date, FRA has received no comments in response to this notice and any comments received will be considered.

Before OMB decides whether to approve this proposed collection of information, it must provide 30-days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The Federal Railroad Administration (FRA) and the railroad industry will use the information collected to determine the extent of alcohol and drug abuse on railroad property, curtail alcohol and drug use, and ensure compliance with all 49 CFR part 219 requirements covering regulated employees. For example, FRA will use the information collected to ensure that regulated employees are subject to random alcohol and drug testing. This information collection also covers foreign-railroads' foreign-based employees who perform train or dispatching service in the United States.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.73, 6180.74, 6180.75.

Respondent Universe: 713 railroads (includes 2 foreign-based railroads), 44,797 Maintenance-of-Way (MOW) employees, and 146,000 total regulated employees.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 427,661.

Total Estimated Annual Burden: 3,132 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $238,032.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Authority: 44 U.S.C. 3501–3520)

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2019–23659 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2019–0148]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: No FEAR Act notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). It is the annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Yvette Rivera, Associate Director of the Equity and Access Division (S–32), Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W78–306, Washington, DC 20590, 202–366–5131 or by email at *Yvette.Rivera@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at *http://www.regulations.gov.* Electronic retrieval instructions are available under the help section of the website.

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' now recognized as the No FEAR Act (Pub. L. 107–174). One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and

whistleblower protection laws.'' (Pub. L. 107–174, Summary). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination'' (Pub. L. 107–174, Title I, General Provisions, section 101(1)). The Act also requires the United States Department of Transportation (USDOT) to provide this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice informs such individuals of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, disability, marital status, genetic information, or political affiliation. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, 42 U.S.C. 2000e–16 and 2000ff.

If you believe you have experienced unlawful discrimination on the bases of race, color, religion, sex, national origin, age, genetic information, and/or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action. A directory of EEO officers is available on the Departmental Office of Civil Rights website at *http://www.transportation.gov/civil-rights,* under the ''Contact Us'' tab. You will be offered the opportunity to resolve the matter informally; if you are unable to resolve the matter informally, you can file a formal complaint of discrimination with USDOT (See, *e.g.,* 29 CFR part 1614).

If you believe you experienced unlawful discrimination based on age, you must either contact an EEO counselor as noted above, or file a civil action in a United States district court under the Age Discrimination in Employment Act, against the head of an alleged discriminating agency. If you choose to file a civil action, you must give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action, and not less than 30 days before filing a civil action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, the EEOC website *https://www.eeoc.gov/employees/charge.cfm,* personal delivery, or facsimile.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC). Form OSC–11 is available online at the OSC website *http://www.osc.gov,* under the tab to file a complaint. Additionally, you can download the form from *http://www.osc.gov/Pages/Resources-OSCForms.aspx.* Complete Form OSC–11 and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW, Suite 218, Washington, DC 20036–4505. You also have the option to call the Complaints Examining Unit at (800) 872–9855 for additional assistance. In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available.

If you are alleging compensation discrimination pursuant to the Equal Pay Act, and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action, as such complaints are processed under EEOC's regulations at 29 CFR part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 CFR part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A USDOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, or fail to take, or threaten to take a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel at 1730 M Street NW, Suite 218, Washington, DC 20036–4505 using Form OSC–11. Alternatively, you may file online through the OSC website at *http://www.osc.gov.*

Disciplinary Actions

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC initiates an investigation under 5 U.S.C. 1214, USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation (5 U.S.C. 1214). Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (*e.g.,* EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC website at *http://www.eeoc.gov* and the OSC website at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Issued in Washington, DC, on October 24, 2019.

Charles E. James, Sr.,

Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2019–23667 Filed 10–29–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Form 13614–NR—Nonresident Alien Intake and Interview Sheet

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before November 29, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Form 13614–NR—Nonresident Alien Intake and Interview Sheet.

OMB Control Number: 1545–2075.

Type of Review: Extension without change of a currently approved collection.

Description: The form is used to assist volunteer tax preparers in preparing tax returns for nonresident aliens. It ensures essential personal information is obtained and collected in a consistent manner which is critical to the preparation of accurate returns compliant with tax law.

Form: 13614–NR.

Affected Public: Individuals and households.

Estimated Number of Respondents: 565,039.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 565,039.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 141,260.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 24, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–23658 Filed 10–29–19; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 210 October 30, 2019

Part II

Securities and Exchange Commission

17 CFR Parts 230 and 240

Publication or Submission of Quotations Without Specified Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release No. 34–87115; File No. S7–14–19]

RIN 3235–AM54

Publication or Submission of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and concept release.

SUMMARY: The Securities and Exchange Commission (the ''SEC'' or the ''Commission'') is proposing amendments to 17 CFR 240.15c2–11 (the ''Rule'') under the Securities Exchange Act of 1934 (the ''Exchange Act''). The Rule governs the publication of quotations for securities in a quotation medium other than a national securities exchange, *i.e.,* over-the-counter (''OTC'') securities. The Commission is proposing to provide greater transparency to investors and other market participants by requiring that information about the issuer and the security be current and publicly available; limit certain existing exceptions to the Rule, including the ''piggyback exception,'' to provide greater protections to retail investors; reduce regulatory burdens on broker-dealers for the publication of quotations of certain OTC securities that may be less susceptible to potential fraud and manipulation, such as securities of certain issuers with higher capitalization and securities that were issued in underwritten offerings; and streamline the Rule, remove obsolete provisions without undermining the important investor protections of the Rule, and make technical, non-substantive changes. The Commission is also seeking comment about information repositories.

DATES: Comments should be received by December 30, 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.*

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 S7–14–19. This file number should be included on the subject line if email is used. To help us 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. Commenters should submit only information that they wish to make available publicly.

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: John Guidroz, Branch Chief, Laura Gold, Special Counsel, Theresa Hajost, Special Counsel, Quinn Kane, Attorney-Advisor, Sam Litz, Attorney-Advisor, Aaron Washington, Special Counsel, Elizabeth Sandoe, Senior Special Counsel, Timothy M. Riley, Branch Chief, Josephine Tao, Assistant Director, Office of Trading Practices, and Mark Wolfe, Associate Director, Office of Derivatives Policy and Trading Practices, Division of Trading and Markets, Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549, at (202) 551–5777.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rule 15c2–11 [17 CFR 240.15c2–11] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*]; and a conforming amendment to 17 CFR 230.144(c)(2) under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*].

Table of Contents

I. Executive Summary
A. Introduction
1. Existing Rule
2. Overview of Proposed Amendments
3. Intended Objectives
B. Summary of Proposed Amendments
II. Background
A. Regulatory Approaches To Combating Retail Investor Fraud
B. OTC Market Developments
C. Prior Rule 15c2–11 Proposals
III. Discussion of Proposed Amendments
A. Proposed Amendments to the Information Review Requirement
1. Existing Information Review Requirement
2. Proposed Amendments to the Information Review Requirement
(a) Revisions to the Review Requirement
(b) Require Current and Publicly Available Issuer Information
(c) Reorganize the Reporting Issuer Information
(d) Current Reports
(e) Expand Catch-All Issuer Information
(f) Modify Requirement To Make Catch-All Issuer Information Available Upon Request
(g) Clarify the Application of the Catch-All Issuer Provision
B. Proposed Amendments to Supplemental Information
1. Existing Supplemental Information Requirement
2. Proposed Amendments to Supplemental Information
(a) Supplemental Information for Qualified IDQSs
(b) Supplemental Information for Company Insiders' Transactions
C. Proposed Amendments to the Piggyback Exception
1. Existing Piggyback Exception and Fraudulent Activity
2. Proposed Amendments to the Piggyback Exception
(a) Current and Publicly Available Information for Catch-All Issuers
(b) Two-Way Priced Quotations
(c) After a Trading Suspension
(d) Shell Companies
(e) Frequency Requirements for the Piggyback Exception
(f) General Request for Comment Regarding the Piggyback Exception
D. Proposed Amendments to the Unsolicited Quotation Exception
1. Existing Unsolicited Quotation Exception
2. Proposed Amendments to the Unsolicited Quotation Exception
(a) Current and Publicly Available Information
(b) Company Insiders
E. Proposed New Exceptions To Reduce Burdens
1. ADTV and Asset Tests
(a) ADTV Test
(b) Asset Test
2. Underwritten Offerings
3. Qualified IDQS Complies With the Information Review Requirement
F. Proposed New Exception for Relying on Determinations by a Qualified IDQS or a Registered National Securities Association
G. Proposed Amendments to the Recordkeeping Requirement
1. Existing Recordkeeping Requirement
2. Proposed Amendments to the Recordkeeping Requirement
(a) Recordkeeping Requirement Upon Publication or Submission of Quotations

(b) Recordkeeping Requirement for Relying on an Exception
H. Proposed Amendments to the Rule's Definitions
1. Current
2. Shell Company
3. Publicly Available
4. Qualified Interdealer Quotation System
I. Proposed Amendment to the Nasdaq Security Exception
J. Proposed Amendments to the Furnishing Requirement and Annual, Quarterly, and Current Reports of Reporting Issuers
1. Proposed Amendment To Remove Furnishing Requirement for Catch-All Issuer Information
2. Proposed Amendments To Obtain Annual, Quarterly, and Current Reports Directly From the Issuer
K. Proposed Amendment to Commission Exemptions From Rule 15c2–11
L. Proposed Amendment To Remove Preliminary Note
M. Technical Amendments to Rule Text
IV. Conforming Rule Change and General Request for Comment
A. Proposed Conforming Amendments to Cross-References in Rule 144(c)(2)
B. General Request for Comment
V. Proposed Guidance
A. Source Reliability
B. Information Review Requirement
VI. Concept Release
A. Information Repositories
VII. Paperwork Reduction Act Analysis
A. Background
B. Respondents Subject to the Rule
C. Summary of Collections of Information
1. Burden Associated With the Initial Publication or Submission of a Quotation in a Quotation Medium
(a) Proposed Amendments to the Piggyback Exception
(b) Other Proposed Amendments
2. Other Burden Hours
3. Collection of Information Is Mandatory
4. Confidentiality
5. Retention Period of Recordkeeping Requirement
D. Request for Comment
VIII. Economic Analysis
A. Background
B. Baseline and Affected Parties
C. Discussion of Economic Effects
1. Effects of Rule 15c2–11 Amendments
(a) Making Proposed Paragraph (b) Information Current and Publicly Available
(b) Proposed Amendments to Rule 15c2–11 Exceptions
(c) Proposed New Exceptions to Rule 15c2–11 To Reduce Burdens
2. Efficiency, Competition, and Capital Formation
D. Reasonable Alternatives
1. Eliminating the Piggyback Exception
2. Eliminating the Piggyback Exception for Shell Companies After Reverse Mergers
3. Alternative Thresholds for Exceptions
4. Quotations With Either Bid or Ask Prices for Piggyback Exception
5. Alternative Disclosure Frequency
E. Request for Comment
IX. Regulatory Flexibility Act Certification
X. Consideration of Impact on the Economy
XI. Statutory Basis and Text of Proposed Rules
XII. List of Subjects

I. Executive Summary

A. Introduction

Securities that trade on the OTC market are primarily owned by retail investors. Many issuers of quoted OTC securities publicly disclose current information about themselves. However, in other cases, there is no or limited current public information available about certain issuers of quoted OTC securities to allow investors or other market participants to make informed decisions regarding company fundamentals. The absence of current public information about such issuers can contribute to incidents of fraud and manipulation. The existing Rule is designed to ensure that a broker-dealer reviews basic information about a security and issuer prior to publishing a quotation in the OTC market. In practice, however, the Rule's exceptions permit broker-dealers to publish quotations in perpetuity even when there is no or limited current information about the issuer available to the public or the broker-dealer, and even when the issuer no longer exists or has ceased operations. The proposed amendments are intended to modernize the Rule and in so doing better protect retail investors from incidents of fraud and manipulation in OTC securities, particularly securities of issuers for which there is no or limited publicly available information, and facilitate more efficient trading in certain more widely followed OTC securities.

1. Existing Rule

Adopted in 1971 [1] and last substantively amended in 1991,[2] Rule 15c2–11 governs the publication and submission of quotations by a broker-dealer in a quotation medium for securities that are not listed on a national securities exchange.[3] In general terms, a quotation medium is an electronic communications network or other device used by broker-dealers to indicate interest to others in transacting in a security.[4]

Issuers of quoted OTC securities may range from large foreign issuers to small domestic companies, and some quoted OTC securities are thinly traded.[5] Information about these types of issuers is often limited, particularly when they are not subject to the Commission's periodic disclosure requirements.[6] A lack of current and publicly available information about an issuer can hinder an investor's ability to evaluate an issuer's security, thereby potentially preventing the investor from making an informed investment decision. In addition, an increased potential for fraud and manipulation exists when securities trade in the absence of information about the issuer.

Because broker-dealers play an integral role in facilitating investor access to OTC securities and serve an important gatekeeper function under Rule 15c2–11, it is important that a broker-dealer reviews key, basic information about an issuer before initiating a quoted market to solicit retail investors to purchase and sell a security in the OTC market. The existing Rule prohibits a broker-dealer from publishing any quotation for a security in a quotation medium without first

[1] *See Initiation or Resumption of Quotations by a Broker or Dealer Who Lacks Certain Information,* Exchange Act Release No. 9310 (Sept. 13, 1971), 36 FR 18641 (Sept. 18, 1971).

[2] *See Initiation or Resumption of Quotations Without Specified Information,* Exchange Act Release No. 29094 (Apr. 17, 1991), 56 FR 19148 (Apr. 25, 1991) (''1991 Adopting Release'').

[3] A ''national securities exchange'' is a securities exchange that has registered with the SEC under Section 6 of the Exchange Act.

[4] A ''quotation'' is defined as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security. Exchange Act Rule 15c2–11(e)(3). A ''quotation medium'' is defined as ''any publication or electronic communications network or other device that is used by broker-dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.'' Exchange Act Rule 15c2–11(e)(1). The OTC market consists of quotation mediums and interdealer quotation systems (''IDQSs'') where broker-dealers actively publish quotations. An IDQS is a type of quotation medium and is defined as ''any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.'' Exchange Act Rule 15c2–11(e)(2). A quotation medium is an IDQS only if quotations in its system are attributed to a broker-dealer that is fully identified in such system.

[5] *See generally Stock Screener,* OTC Mkts. Grp. Inc., *https://www.otcmarkets.com/research/stock-screener* (last visited Aug. 5, 2019) (''OTC Markets Stock Screener'') (providing market activity data for securities that are quoted on OTC Link ATS).

[6] An analysis of quoted OTC securities using Bloomberg's equity screening tool identified 2,007 securities for which quotations are published in an IDQS that have a three-month daily average dollar trading volume of less than $1,000. According to the OTC Markets Stock Screener, and based on the tier on which they are quoted in OTC Markets Group's system, such issuers do not provide current and publicly available information. *See id.* OTC Markets Group's ''Pink: No Information'' category contains ''companies that are not able or willing to provide current disclosure to the public markets—either to a regulator, an exchange or OTC Markets Group. This category includes defunct companies that have ceased operations as well as 'dark' companies with questionable management and market disclosure practices.'' *See generally* Information for Pink Companies, OTC Mkts. Grp. Inc., *https://www.otcmarkets.com/corporate-services/information-for-pink-companies* (last visited July 12, 2019) (describing characteristics and requirements of each category of Pink companies).

reviewing certain information about the relevant issuer.[7] Under the existing Rule, a broker-dealer must have a reasonable basis for believing that the information about the issuer that it reviewed is accurate in all material respects and from a reliable source. The information review requirement is designed to help ensure that a quoted market for a security is less susceptible to fraudulent or manipulative schemes.[8]

While existing Rule 15c2–11 contains a requirement to review certain information, the Rule also provides exceptions from that requirement. Once a broker-dealer has published a quotation pursuant to the Rule, under specified exceptions to the Rule, other broker-dealers may publish quotations for that security (without being subject to the Rule's information review requirement). The Commission is concerned that market participants can take advantage of such exceptions from the information review requirement to the detriment of retail investors. For example, an active trading market, built upon broker-dealers' quotations, can give the market for the securities an appearance of credibility. Such a situation can facilitate the purchase or sale of securities even when there is no or limited current issuer information publicly available to investors. Without current public information about an issuer, it is difficult for an investor or other market participant to evaluate the issuer and the risks involved in purchasing or selling its securities.

When there is little or no current information about an issuer available to investors, they can fall victim to fraudsters that make false and misleading statements about an issuer to promote sales of a security. Without current public information about an issuer, investors may not have the ability to assess the validity of the claims in a promotion campaign due to the lack of information against which to compare the claims. A fraudster's promotional campaign with false claims and published quotations may generate trading volume for a thinly-traded security and the security's market price may rise to an artificially high level (''pumping'' the security). However, when the fraudster ceases its promotional campaign, the market price of the security may drop due to the fraudster selling its shares into the market it created by ''pumping'' the share prices up with false claims (''dumping'' the security). The remaining investors may be left owning an essentially worthless security or one for which the price is artificially inflated.

2. Overview of Proposed Amendments

The proposed amendments to Rule 15c2–11 are a part of the Commission's ongoing effort to better address risks to retail investors and promote market efficiency. The proposed amendments seek to better protect retail investors from incidents of fraud and manipulation in OTC securities, by requiring that certain issuer information the broker-dealer is required to review be current and publicly available, while modernizing the Rule to be more efficient and effective.

First, the proposed amendments would provide greater transparency to the investing public regarding issuers of OTC securities by requiring that certain information about the issuer and the security be current and publicly available before a broker-dealer can publish a quote for the security. This proposed amendment would allow retail investors to more easily access basic information about an issuer. Additionally, the proposed amendments would require that information be current and publicly available before a broker-dealer may rely on certain exceptions from the review requirement. In the absence of current and publicly available information, such exceptions would either be unavailable or more limited.

Second, the Commission is proposing to modify existing exceptions and, taking into consideration the evolution of the OTC market over the past 30 years, add several new exceptions. The Commission is proposing to limit eligibility for an existing exception, commonly known as the ''piggyback exception,'' which allows broker-dealers to publish quotations for a security in reliance on the quotations of another broker-dealer that initially performed the review of the issuer's information. Under its existing formulation, this exception has been used by broker-dealers to continuously quote a security over many years, even when the issuer of the security no longer exists. The proposed amendments would limit the use of the exception in circumstances where issuer information is not current and publicly available.

The proposal would also limit the use of the existing unsolicited order exception for quotations on behalf of company insiders if information about the issuer is not current and publicly available.[9] This proposed revision is designed to help prevent the use of unsolicited orders by company insiders to facilitate a scheme that can harm retail investors, such as a ''pump-and-dump'' scheme.

The proposal would add an exception to allow broker-dealers to publish quotations of securities, without being required to conduct the information review required by the existing Rule, of certain issuers with significant assets and trading volume. The Commission believes that these types of issuers tend to be less susceptible to the type of fraud that the Rule is designed to prevent. The proposal would also add a new exception to reduce the burdens on broker-dealers that are quoting securities that were issued in an underwritten offering where the broker-dealer served as the underwriter. When a broker-dealer underwrites an offering of securities, it generally conducts a review of the same information that it must examine under the Rule. Thus, the Commission believes that continuing to require the broker-dealer to conduct a review under the Rule in this circumstance is redundant and unnecessary.

The Commission is also proposing new exceptions that would provide relief from the review requirement of the Rule, to permit a regulated entity, namely a qualified IDQS that meets the definition of an ATS, to conduct the information review that is currently only permitted to be conducted by broker-dealers that publish or submit quotations. A qualified IDQS or a national securities association also would be able to determine whether certain exceptions for broker-dealers are available. Finally, the proposed amendments would require that a broker-dealer, qualified IDQS, or registered national securities association keep records regarding the basis of its reliance on, or determination of availability of, any exception to the Rule

[7] Information about the issuer may include a prospectus; an offering circular; periodic reports; and various financial information regarding the issuer, such as the issuer's balance sheet, profit and loss statement, and retained earnings statement.

[8] *See* 1991 Adopting Release at 19152 n.43 (''Rule 15c2–11 was adopted under Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2), among other sections. Section 15(c)(2) provides the Commission with broad authority to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the over-the-counter securities markets.''). For purposes of this release the term ''information review requirement'' shall refer to the requirement for broker-dealers and other entities subject to the existing and proposed Rule to review certain issuer information, as described in the Rule, before publishing a quotation for a security, when no exception is available on which a broker-dealer may rely.

[9] For purposes of this release, ''company insider'' refers to any officer or director of the issuer, or persons that perform a similar function, as well as any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer.

to aid in Commission oversight of compliance with the Rule.

Finally, the Commission is proposing amendments to streamline the existing Rule, remove obsolete provisions without undermining the important investor protections of the Rule, and make technical, non-substantive changes. With respect to streamlining, the proposal would permit a broker-dealer to provide to an investor that requests issuer information appropriate instructions regarding how to obtain such information electronically. Finally, the Commission is proposing to remove paragraphs that have become obsolete. The proposal would remove an exception for quotations of Nasdaq securities because Nasdaq is now registered with the Commission as a national securities exchange. The Commission also proposes to remove a requirement that a broker-dealer send information to certain systems that disseminate quotation information because the Commission understands that such entities no longer rely on the broker-dealer sending such information. Further, the proposal would remove a requirement that a broker-dealer make an arrangement to receive certain issuer information that is now available on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'').

3. Intended Objectives

The proposed amendments are intended to promote investor protection, preserve the integrity of the OTC market, and promote capital formation for issuers that provide current and publicly available information to their investors. First, the proposed amendments are designed to provide the following benefits to investors, particularly retail investors. The proposed amendments would promote the public availability of current information about issuers with securities that are quoted in the OTC market. This should facilitate an investor's access to information about an issuer so that an investor is better able to understand and evaluate the issuer and the issuer's security prior to making an investment decision. The proposed amendments should also help promote a more level playing field so that all investors, not just company insiders and investors with a relationship with the issuer, have access to current issuer information. Further, the proposed amendments are intended to reduce the occurrence of investors making investment decisions based on false or misleading statements spread by fraudsters.

Second, the proposed amendments are intended to preserve the integrity of the OTC market. The proposed amendments would prohibit broker-dealers from continuing to quote a security in the absence of current and publicly available information about the issuer, which could reduce the risk of fraud and manipulation in this market. In addition, current and publicly available information about issuers would help to improve pricing efficiency in the OTC market.

Third, the proposed amendments are designed to promote capital formation for issuers that provide current and publicly available information to their investors. A hallmark of public markets in the United States is disclosure provided by issuers to investors. Investors that have access to current and publicly available issuer information are better equipped to make informed decisions about how to allocate their capital. Additionally, the proposed amendments broaden the type of entities that are permitted to conduct the information review required by the Rule while imposing requirements on those entities to help promote the accuracy of such information as well as help ensure that it is current. This may make it easier for issuers to identify a market participant that is willing and able to conduct the review in order to establish a quoted market for the issuer's securities. Further, as discussed above, the proposal would add certain specified exceptions from the requirement to conduct the information review under the proposed Rule and allow broker-dealers to start a quoted market for the securities of certain issuers where there is less concern regarding fraud or manipulation, which could reduce costs for broker-dealers seeking to establish a quoted market. These new exceptions would provide investors with more choices in the OTC market.

B. Summary of Proposed Amendments

The Commission proposes to strengthen the existing Rule as follows:

- Require the documents and information that a broker-dealer must obtain and review under the Rule to be current and publicly available; [10]
- Amend the ''piggyback exception,'' which is conditioned on continuous and frequent quotations, to:
  - Require issuer information to be current and publicly available;
  - Eliminate the ability of a broker-dealer to rely on the exception unless there are two-sided quotations that are published in an interdealer quotation system at specified prices;
  - Eliminate the ability of broker-dealers to rely on the exception during the first 60 calendar days after the termination of a Commission trading suspension under Section 12(k) of the Exchange Act;
  - Eliminate the ability of broker-dealers to rely on the exception for securities of ''shell companies;'' [11] and
  - Remove the requirement that a security be quoted for 12 business days during the previous 30 calendar days;
- Require that certain issuer information be current and publicly available for a broker-dealer to rely on the unsolicited quotation exception to publish quotations by or on behalf of company insiders; and
- Require documentation to support a broker-dealer's reliance on exceptions to the Rule.

The Commission also is proposing to reduce burdens on broker-dealers publishing quotations of securities of OTC issuers by providing new exceptions for broker-dealers to:

- Publish quotations for securities of well-capitalized issuers with actively traded securities;
- Publish quotations for securities where a qualified interdealer quotation system (''qualified IDQS''), conducts the proposed Rule's required review and makes known to others the quotation of a broker-dealer relying on the exception; [12]

[10] Currently, this information is required by existing paragraph (a), but the existing Rule does not require this information to be made publicly available. Under this proposal, the required information would be included in proposed paragraph (b) and would be known as ''proposed paragraph (b) information.'' Throughout this release, when the Commission references text from existing provisions of Rule 15c2–11, the Commission will use the terms ''paragraph,'' ''Rule,'' ''existing paragraph,'' or ''existing Rule.'' When the Commission references rule text that the Commission is proposing to adopt, the Commission will use the terms ''proposed Rule'' or ''proposed paragraph.''

[11] When used in this Release, the term ''shell company'' means an issuer, other than a business combination related shell company, as defined in Rule 405 of Regulation C, or an asset-backed issuer as defined in Item 1101(b) of Regulation AB, that has (1) no or nominal operations and (2) either (i) no or nominal assets, (ii) assets consisting solely of cash and cash equivalents, or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets. The Commission is proposing to add this definition of shell company in proposed paragraph (e)(8). *See* Proposed Rule 15c2–11(e)(8).

[12] The Commission is proposing to define a qualified IDQS as any interdealer quotation system that meets the definition of an alternative trading system under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Exchange Act. *See* Proposed Rule 15c2–11(e)(5). The Commission believes that the requirements of Regulation ATS, as applicable to qualified IDQSs, would provide investor protections through, for example, Commission oversight. *See infra* Part III.H.4.

• Rely on publicly available determinations by a qualified IDQS or a registered national securities association that the requirements of certain exceptions have been met; and

• Publish quotations for a security without complying with the information review requirement if that broker-dealer was named as an underwriter in the security's registration statement or offering circular.

The Commission is proposing amendments to streamline certain requirements of the existing Rule that would:

• Modify the requirement that a broker-dealer make the information that it obtained and reviewed ''reasonably available upon request'' to investors seeking such information to permit the broker-dealer to direct the investors to the publicly-available information upon which the broker-dealer relied to comply with the information review requirement;

• Remove the Nasdaq security exception in light of Nasdaq's registration as a national securities exchange;

• Provide new definitions and make other technical, non-substantive changes to the Rule; and

• Remove the paragraphs regarding furnishing information to an IDQS and how a broker-dealer obtains annual, quarterly, and current reports filed by an issuer with the Commission.

Finally, the Commission is seeking comment about information repositories and a possible regulatory structure for such entities.

II. Background

A. Regulatory Approaches To Combating Retail Investor Fraud

A core mission of the Commission is protecting investors. This proposal continues the Commission's focus on protecting retail investors from fraud and manipulation.[13] Over the past several years, the Commission has brought hundreds of enforcement actions involving OTC securities or their issuers, including for alleged violations of the antifraud, reporting, and registration provisions of the federal securities laws. Many of these cases have involved dozens of OTC securities and tens of millions of dollars in investor harm.

In addition to enhancing efforts to detect and address fraudulent conduct that has already occurred, such as through the Commission's examination and enforcement programs, the Commission has also been proactive in taking measures that are designed to prevent fraudulent activity before it occurs. Specifically, the Commission has developed initiatives that focus on investor education and research tools that can help investors to make better-informed investment decisions and avoid investing in fraudulent schemes.

For example, the Commission launched the ''SEC Action Lookup for Individuals'' (''SALI''), an online search feature that enables retail investors to research whether persons trying to sell them investments have a judgment or order entered against them in an enforcement action.[14] SALI is intended to help retail investors avoid financial fraud. The Commission also participates in a joint agency task force, spearheaded by the Department of Justice, on market integrity and consumer fraud,[15] and the Commission's Division of Enforcement formed the Retail Strategy Task Force as well. The Retail Strategy Task Force draws on expertise throughout the Commission to develop strategies and techniques for addressing the types of activities that harm retail investors, including microcap pump-and-dump schemes.[16]

Last year, the Commission's Division of Trading and Markets hosted a roundtable on ''Regulatory Approaches to Combating Retail Fraud'' (the ''Roundtable'').[17] The Roundtable featured panel discussions about schemes that target retail investors and possible approaches to combat retail investor fraud.[18] The effectiveness of Rule 15c2–11 was a topic of discussion at one panel where panelists stated that the current operation of the Rule in certain circumstances may result in retail investors having little or no information about a company.[19] This lack of current and publicly available information about a company particularly disadvantages retail investors in comparison to other market participants.[20]

Indeed, as the Chairman has stated, the lack of publicly available information about certain issuers ''can be fertile ground for fraud.'' [21] Studies have noted instances of fraud and manipulation in cases involving OTC securities.[22] A majority of the enforcement cases involving OTC securities has involved delinquent filings, which result in a lack of current, accurate, or adequate information about an issuer.[23] In fact, during the last four years, the SEC has issued orders suspending or revoking the registrations of over 1,100 issuers pursuant to its authority under Section 12(j) of the Exchange Act for issuers with delinquent filings.[24] The Commission has temporarily suspended trading in the securities of over 900 issuers under

[13] *See* Speech, Chairman Jay Clayton, Remarks on the Establishment of the Task Force on Market Integrity and Consumer Fraud (July 11, 2018), *https://www.sec.gov/news/speech/task-force-market-integrity-and-consumer-fraud* (''Serving and protecting Main Street investors is my main priority at the SEC.'').

[14] *See* Press Release, SEC Launches Additional Investor Protection Search Tool (May 2, 2018), *https://www.sec.gov/news/press-release/2018-78*.

[15] *See, e.g.,* Public Statement, Chairman Jay Clayton, Opening Remarks at the SEC Staff Roundtable on Regulatory Approaches to Combating Retail Investor Fraud (Sept. 26, 2018), *https://www.sec.gov/news/public-statement/clayton-opening-remarks-investor-fraud-roundtable*.

[16] *See* Press Release, SEC Launches Enforcement Initiative to Combat Cyber-Based Threats and Protect Retail Investors (Sept. 25, 2017), *https://www.sec.gov/news/press-release/2017-176*.

[17] *See, e.g.,* Press Release, SEC Staff to Host Roundtable on Regulatory Approaches to Combating Retail Investor Fraud (Sept. 18, 2018), *https://www.sec.gov/news/press-release/2018-200*.

[18] *See, e.g.,* Transcript of Roundtable on Regulatory Approaches to Combatting Retail Fraud (Sept. 26, 2018), *https://www.sec.gov/spotlight/equity-market-structure-roundtables/retail-fraud-round-roundtable-092618-transcript.pdf* (''Roundtable Transcript'').

[19] *See id; see also* Speech, Chairman Jay Clayton & Dir. Brett Redfearn, *Equity Market Structure 2019: Looking Back & Moving Forward,* Remarks at Gabelli School of Business, Fordham University, n.16 (Mar. 8, 2019) (''Equity Market Structure Speech'') *https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019*.

[20] *See* Equity Market Structure Speech, *supra* note 19.

[21] *Id.*

[22] For example, one study analyzed 142 stock manipulation cases, including pump-and-dump cases, in SEC litigation releases from 1990 to 2001 and found that 48 percent involved OTC securities, while 17 percent involved securities listed on national exchanges. *See* Rajesh Aggarwal & Guojun Wu, *Stock market manipulations,* 79 J. Bus. 1915 (2006). A more recent study looked at 150 pump-and-dump manipulation cases between 2002 and 2015 and found that 86 percent of these cases involved OTC securities. *See* Thomas Renault, *Market manipulation and suspicious stock recommendations on social media,* Université Paris I Panthéon-Sorbonne—Centre d'Economie de la Sorbonne, Working Paper (2018), *available at https://ssrn.com/abstract=3010850*.

[23] For instance, one study looked at a broad sample of securities cases between January 2005 and June 2011 and identified 1,880 cases involving OTC securities and 1,157 cases involving securities listed on exchanges in the United States. Of the OTC securities cases, the majority—1,148 cases, or 61 percent—were related to delinquent filings, 151 (eight percent) were related to a pump-and-dump scheme, 159 (eight percent) were related to financial fraud, 12 (one percent) were related to insider trading, and 212 (11 percent) were related to other fraudulent misrepresentation or disclosure. *See* Douglas J. Cumming & Sofia Johan, *Listing standards and fraud,* 34 Managerial & Decision Econ. 451–70 (2013).

[24] Administrative Proceedings (2019), *https://www.sec.gov/litigation/admin.shtml; Annual Report,* SEC, Div. Enforcement, 20 (2018), *https://www.sec.gov/files/enforcement-annual-report-2018.pdf; Addendum to Annual Report,* SEC, Div. Enforcement, 3 (2017), *https://www.sec.gov/files/enforcement-annual-report-2017-addendum-061918.pdf; Select SEC and Market Data Fiscal 2016,* 3 (2016), *https://www.sec.gov/files/2017–03/secstats2016.pdf*.

Section 12(k) of the Exchange Act because of potentially manipulative or deceptive activity or questions about the accuracy and adequacy of publicly disseminated information.[25]

B. OTC Market Developments

The OTC market provides numerous benefits for investors. For instance, some highly capitalized foreign securities are quoted on this market. Other foreign companies are also quoted on this market in the form of American Depository Receipts, providing investors with easy access to such foreign securities. The OTC market also can provide opportunities for retail investors to find securities of domestic issuers with future growth potential. Additionally, some larger U.S. companies may trade on the OTC market for various reasons.[26] Further, this market can offer a starting point for smaller issuers, as it may be difficult for a company just starting out to meet exchange listing requirements or pay listing fees. However, because stocks quoted on this market can be less liquid, have lower capitalization, and provide less transparency than exchange-listed securities, it can be easier for unscrupulous persons to find ways to abuse such securities.

When a broker-dealer publishes or submits a quotation for a security in a quotation medium, the broker-dealer may facilitate the creation or appearance of a market for the security, thereby increasing the security's availability and accessibility to investors. A broker-dealer's quotations could create the false appearance of an active market, including affecting the pricing, rather than an actual market that is based on independent forces of supply and demand. Thus, to help prevent fraud and manipulation,[27] existing Rule 15c2–11 prohibits broker-dealers from publishing or submitting quotations in OTC securities in the absence of accurate information about the issuers of such securities, unless an exception applies.[28]

Under existing Rule 15c2–11, a broker-dealer seeking to publish or submit a quotation in any quotation medium, including in an IDQS, must comply with the existing Rule's information review requirement for each quotation, unless it qualifies for an exception. Thus, generally, a broker-dealer must obtain and review information about the issuer enumerated in paragraph (a) of the existing Rule, such as basic financial information, and maintain records of the information that it reviewed. Certain exceptions to the Rule permit broker-dealers to publish or submit quotations without complying with the information review requirement. For instance, once a security has become eligible for the piggyback exception, any broker-dealer can quote the security without complying with the information review requirement so long as the requirements of the exception are met.[29]

The OTC market has changed significantly since the Rule was adopted in 1971 and was last substantively amended in 1991. For example, the existing Rule was last substantively amended prior to the widespread use of the internet, when it was significantly more difficult to obtain information on issuers of OTC securities and to continuously update and widely disseminate quotations for OTC securities. The internet and other forms of electronic communication have made it less costly and less burdensome to access, update, and disseminate information on a global scale. Marketplaces have developed platforms that collect and provide information to the public through easily accessible websites, including information regarding the risks involving certain quoted OTC securities.[30] In light of these developments, the Commission preliminarily believes that it is appropriate to update and modernize the Rule.

C. Prior Rule 15c2–11 Proposals

The Commission proposed to amend Rule 15c2–11 in February 1998[31] and re-proposed amendments to the Rule in February 1999.[32] Among other things, both the 1998 Proposing Release and the 1999 Reproposing Release would have eliminated the existing Rule's piggyback exception and required broker-dealers to publish priced quotations as well as obtain updated information about the issuer annually.[33]

Commenters on the 1999 Reproposing Release stated that the adoption of the proposed amendments, including elimination of the piggyback exception, would severely constrain liquidity in the OTC market resulting in less competitive pricing, impair access to capital by issuers, and increase compliance costs for broker-dealers. Commenters, however, were generally supportive of certain proposed new exceptions in the 1999 Reproposing Release. Specifically, commenters were in favor of proposed new exceptions to exclude larger issuers and more liquid securities that are not prone to the abuses that are more likely in the microcap market. The Commission did not take further action on the proposals.

III. Discussion of Proposed Amendments

A. Proposed Amendments to the Information Review Requirement

1. Existing Information Review Requirement

The existing Rule requires that a broker-dealer review certain information about the issuer of an OTC security prior to publishing a quotation for such security. The Rule requires that the broker-dealer form a reasonable basis for believing that such information about

[25] *See* Trading Suspensions (2019), *https://www.sec.gov/litigation/suspensions.shtml; Annual Report,* SEC, Div. Enforcement, 5 (2018), *https://www.sec.gov/files/enforcement-annual-report-2018.pdf; Addendum to Annual Report,* SEC, Div. Enforcement, 2 (2017), *https://www.sec.gov/files/enforcement-annual-report-2017-addendum-061918.pdf; Select SEC and Market Data Fiscal 2016,* 2 (2016), *https://www.sec.gov/files/2017-03/secstats2016.pdf.*

[26] *See, e.g.,* Peter Leeds, *Famous Companies Traded as Penny Stocks,* The Balance (June 25, 2019), *https://www.thebalance.com/famous-companies-traded-as-penny-stocks-2637058.*

[27] *See Initiation or Resumption of Quotations Without Specified Information,* Exchange Act Release No. 21470 (Nov. 8, 1984), 49 FR 45117 (Nov. 15, 1984) (''1984 Adopting Release''); *see also Publication or Submission of Quotations Without Specified Information,* Exchange Act Release No. 41110 (Feb. 25, 1999), 64 FR 11126 (Mar. 8, 1999) (''1999 Reproposing Release'') (''Rule 15c2–11 is intended to prevent broker-dealers from becoming involved in the fraudulent manipulation of OTC securities. However, even if a broker-dealer technically complies with the Rule's requirements, it could be subject to liability under other antifraud provisions of the securities laws, such as Rule 10b–5, if it publishes quotations as part of a fraudulent or manipulative scheme.'').

[28] *See* 1991 Adopting Release at 19149–52.

[29] The piggyback exception presumes that regular and frequent quotations for a security generally (1) reflect market supply and demand and the available information about the security and its issuer and (2) are based on independent, informed pricing decisions. *See* 1984 Adopting Release at 45121; *see also* 1999 Reproposing Release at 11126.

[30] At least one IDQS, OTC Markets Group, has voluntarily implemented measures to warn investors about the risks involving certain securities by using easy to identify symbols, such as stop signs and skull and crossbones, to indicate that specific securities present risks or there is a lack of information about them. *See* Compliance Flags, OTC Mkts. Grp. Inc., *https://www.otcmarkets.com/files/OTCM%20Compliance%20Flags.pdf* (last visited Sept. 23, 2019) (describing designators and flags ''to help identify opportunity and quantify risk'').

[31] *Publication or Submission of Quotations Without Specified Information,* Exchange Act Release No. 39670 (Feb. 17, 1998), 63 FR 9661 (Feb. 25, 1998) (''1998 Proposing Release'').

[32] 1999 Reproposing Release at 11124.

[33] The 1999 Reproposing Release also included an Appendix. The Appendix was intended to supplement the guidance from the 1991 Adopting Release (which was incorporated into the Rule through the Preliminary Note) by providing additional guidance on, among other things, ''red flags'' concerning the issuer that broker-dealers should consider as part of the information review requirement. *See id.,* 1999 Reproposing Release at 11145.

the issuer is accurate in all material respects and from a reliable source.

Currently, Rule 15c2–11(a) requires that, prior to initially publishing or submitting quotations for a security in a quotation medium when no exception to the information review requirement is available (the ''initial publication or submission''), a broker-dealer must have in its records the information and documentation specified in Rule 15c2–11(a)(1)–(5) (the ''paragraph (a) information'').[34] In addition, the broker-dealer must have a reasonable basis under the circumstances, based on a review of paragraph (a) information and any other supplemental information required by Rule 15c2–11(b) (the ''paragraph (b) information''), to believe that the information is accurate in all material respects and from a reliable source.[35]

The existing Rule requires particular information depending on the regulatory status of the issuer—*i.e.,* whether the issuer (1) filed a registration statement under the Securities Act of 1933 (''Securities Act'') (a ''prospectus issuer''), (2) filed a notification under Regulation A [36] (a ''Reg. A issuer''), (3) is subject to the Exchange Act's or Regulation A's periodic reporting requirements or is the issuer of a security covered by Section 12(g)(2)(B) or (G) of the Exchange Act (a ''reporting issuer''), (4) is a foreign private issuer that is exempt from registration under Exchange Act Section 12(g) pursuant to Rule 12g3–2(b) (an ''exempt foreign private issuer''), or (5) is an issuer that does not fall within one of these categories (a ''catch-all issuer'').[37] Depending on the circumstances, statutes or Commission rules also require the paragraph (a) information for prospectus issuers, Reg. A issuers, and reporting issuers to be made publicly available, either by prospectus, offering circular, or periodic reports.[38] Similarly, exempt foreign private issuers are required, among other things, to publish certain information in order to be exempt from the requirement to register a class of equity securities under Section 12(g) of the Exchange Act. In contrast, the information that is required under paragraph (a)(5) of the existing Rule for catch-all issuers generally is not subject to similar statutory or rule-based disclosure and reporting requirements.

Under the existing Rule, catch-all issuer information that a broker-dealer obtains and reviews for the information review requirement is not required to be publicly available. Instead, Rule 15c2–11(a)(5) requires a broker-dealer that publishes or submits quotations for a security of a catch-all issuer when no exception is available to make such information reasonably available upon request to a person expressing an interest in a proposed transaction in the security with that broker-dealer.[39] The Commission believes that enhancing the Rule's investor protections to require basic issuer information to be publicly available [40] in order for a broker-dealer to publish or submit a quotation when no exception to the information review requirement is available for an OTC security and to publish quotations throughout the life of the quoted market for the security could help investors to make better-informed investment decisions.[41]

2. Proposed Amendments to the Information Review Requirement

(a) Revisions to the Review Requirement

The Commission is proposing changes to the existing Rule's information review requirement, which requires broker-dealers to review certain information prior to publishing a quotation in an OTC security.[42] Specifically, the proposed Rule would (1) restructure the review requirement into paragraphs and re-letter such paragraphs accordingly, (2) require that certain issuer information be current and publicly available, and (3) permit additional market participants to perform the required review. Combined, these proposed amendments are intended to, among other things, promote better-informed investment decisions by increasing investors' opportunity for access to current information, and facilitate capital formation by allowing more market participants to perform the required review with respect to the proposed Rule so that quotations can be initiated and investors can buy and sell OTC securities.

The Commission is proposing to restructure the review requirement and include the requirement as applicable to broker-dealers in proposed paragraph (a)(1).[43] The Commission is proposing to separate each element of existing paragraph (a) into separate paragraphs and re-letter the paragraphs accordingly. Proposed paragraph (a)(1)(i) would contain the existing requirement that a broker-dealer have in its records the documents and information required by the Rule. Proposed paragraph (a)(1)(iii) would contain the existing requirement that the broker-dealer, based upon a review of certain required information,[44] together with any other required documents and any supplemental information,[45] have a

[34] Exchange Act Rule 15c2–11(a).

[35] *Id.* To simplify the structure of the existing Rule, the Commission proposes to separate the activities constituting the review requirement from the specific list of information to be reviewed.

[36] *See* Rules 251 through 263 of Regulation A.

[37] *See* Exchange Act Rule 15c2–11(a)(1) (an issuer that has filed an effective registration statement under the Securities Act), (a)(2) (an issuer that has filed a notification under Regulation A and was authorized to commence an offering), (a)(3) (an issuer that is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act or pursuant to Regulation A, or an issuer of a security covered by Section 12(g)(2)(B) or (G) of the Exchange Act), (a)(4) (a foreign private issuer that is exempt from registering a class of equity securities under Section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b) thereunder), (a)(5) (an issuer that does not fall within any paragraphs (a)(1) through (a)(4)). For example, the Rule sets out the specific information requirements for Reg. A issuers, but these information requirements are specific to Rule 15c2–11 and do not supplant the requirements in Rule 144(c) for adequate current public information. *See, e.g., Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A),* Securities Act Release No. 9741 (Mar. 25, 2015), 80 FR 21806, 28151 (Apr. 20, 2015).

[38] *See, e.g.,* Securities Act Section 7 (information required in registration statement); Securities Act Section 10 (information required in prospectus); Exchange Act Section 12(b) (information required to register a security on a national securities exchange); Exchange Act Section 13 (periodic and other reports); Securities Act Rule 257 of Regulation A (periodic and current reporting); Exchange Act Rule 13a–1 (annual reports); Exchange Act Rule 13a–13 (quarterly reports).

[39] Exchange Act Rule 15c2–11(a)(5).

[40] *See* Proposed Rule 15c2–11(e)(4). Publicly available would be defined to mean available on EDGAR or on the website of a qualified IDQS, a registered national securities association, the issuer, or a registered broker-dealer, so long as access is not restricted by user name, password, fees, or other restraints. As discussed below, this requirement also would apply to a qualified IDQS under proposed paragraph (a)(2).

[41] *See, e.g.,* Joshua T. White, *Outcomes of Investing in OTC Stocks,* 10 (Dec. 16, 2016), *https://www.sec.gov/files/White_OutcomesOTCinvesting.pdf* (''Academic studies point to a lack of information produced by OTC Companies as one determinant of negative and volatile OTC stock returns.'').

[42] *See infra* Part V.

[43] The term ''review requirement'' refers to the requirements under proposed paragraph (a).

[44] Note that, generally, the existing Rule's provisions would be re-lettered to conform with these changes, so that required information in existing paragraph (a) would be re-lettered to proposed paragraph (b). Proposed paragraph (b) information would include the information required to be reviewed by the regulated entity, such as a prospectus, an offering circular, periodic reports, or information specified in paragraph (b), to quote a security of different types of issuers, *i.e.,* prospectus issuers, Reg. A issuers, reporting issuers, exempt foreign private issuers, and catch-all issuers.

[45] Existing paragraph (b), which would be re-lettered to proposed paragraph (c), would include supplemental information (including information about the person on whose behalf the quotation is being submitted, trading suspensions within the prior 12 months, any other material information)

reasonable basis under the circumstances for believing that the information required to be reviewed is accurate in all material respects and from a reliable source.

As discussed below, the Commission is proposing a new paragraph (a)(1)(ii) to add a new requirement that the issuer information required to be reviewed (except for information required by proposed paragraphs (b)(5)(i)(N) through (P)) must be current and publicly available.[46]

The proposed Rule would not require a qualified IDQS to comply with the information review requirement as a condition to the qualified IDQS's making known to others the quotation of a broker or dealer that is published or submitted, unless it is published or submitted by a broker-dealer relying on paragraph (f)(7). The proposed Rule would permit a qualified IDQS to make known to others the publication or submission of quotations of a broker-dealer that relies on a qualified IDQS's compliance with the information review requirement pursuant to proposed paragraph (f)(7). The qualified IDQS requirements under proposed paragraph (a)(2) would mirror the requirements for broker-dealers under proposed paragraph (a)(1). The Commission is proposing to add this provision for qualified IDQSs because the Commission is proposing to except broker-dealers from the information review requirement where (1) a qualified IDQS complies with the information review requirement and (2) the broker-dealer relies on the qualified IDQS's review to publish or submit a quotation for that security.[47] Accordingly, the qualified IDQS would be required to have in its records proposed paragraph (b) information, excluding proposed paragraphs (b)(5)(i)(N) through (P) as explained below, except where the qualified IDQS has knowledge or possession of information set forth in proposed paragraphs (b)(5)(i)(N) through (P).[48] In addition, the proposed amendments would require that proposed paragraph (b) information, excluding proposed paragraphs (b)(5)(i)(N) through (P), be current and publicly available.

(b) Require Current and Publicly Available Issuer Information

The proposed Rule would require that issuer information relied upon by a broker-dealer be current and publicly available in order for a broker-dealer to publish or submit a quotation for that security. The proposed amendments to the Rule would provide an additional mechanism through which investors could have access to information about issuers with securities that are quoted by broker-dealers in the OTC market. Current and publicly available information could enable retail investors to make better-informed investment decisions and counteract misinformation. By requiring that certain issuer information be current and publicly available before a broker-dealer publishes or submits quotations in the OTC market without an exception, the proposed amendments could facilitate investors' research of issuers and their securities and help investors to be able to make better-informed investment decisions. The public availability of issuer information required under proposed paragraph (b) would help to alleviate concerns that limited or no information for certain issuers of quoted OTC securities exists or that such information is difficult for retail investors to find.[49]

Proposed paragraphs (a)(1)(ii) and (a)(2)(ii) would require that proposed paragraph (b) information be current and publicly available for all issuers, without regard to the regulatory category they fall into, prior to a broker-dealer providing the initial publication or submission of a quotation for an issuer's OTC security. The Commission is proposing to exclude from that requirement information identified in proposed paragraphs (b)(5)(i)(N) through (P) because those paragraphs refer to information about the quotations and the entities providing them, not issuer-specific information.[50]

The Commission is proposing to define the term ''publicly available'' to mean available on EDGAR or on the website of a qualified IDQS, a registered national securities association, the issuer, or a registered broker-dealer.[51] If such proposed paragraph (b) information is restricted by user name, password, fees, or other restraints, it would not be publicly available. The Commission is also proposing to define ''current'' to mean filed, published, or disclosed in accordance with the time frames identified in each paragraph (b)(1) through (b)(5).[52]

The Commission believes that many issuers already make publicly available proposed paragraph (b) information that is current because these issuers have a reporting obligation or voluntarily do so.[53] The Commission believes the proposal provides incentives for issuers of quoted OTC securities that do not currently make proposed paragraph (b) information publicly available or do not keep such information current to make such information publicly available and keep it current. Under the proposal, before a broker-dealer can initiate the publication or submission of a quotation for an issuer's securities in the OTC market, or rely on an exception to the information review requirement, proposed paragraph (b) information must be current and publicly available. The proposed amendments to the Rule would not preclude others, such as broker-dealers or investors, from making proposed paragraph (b) information publicly available, particularly when the information comes directly from the issuer.[54]

The Commission believes that requiring proposed paragraph (b) information to be current and publicly available in order for a broker-dealer to initiate and maintain a quoted market for OTC securities would impose costs but provide significant benefits to investors. In particular, retail investors, who might not have the same level of

that would also be required to be reviewed by a regulated entity.

[46] *See* Proposed Rule 15c2–11(a)(1)(ii).

[47] *See* Proposed Rule 15c2–11(f)(7).

[48] *See* Proposed Rule 15c2–11(a)(2). Proposed paragraphs (b)(5)(i)(N) through (P) would include information about whether the broker-dealer or its associated person is affiliated with the issuer; whether the quotation is being published or submitted on behalf of any other broker-dealer (if so, the name of such broker-dealer); and whether the quotation is being submitted or published (directly or indirectly) by or on behalf of the issuer or certain persons associated with the issuer and, if so, the name of such person, and the basis for any exemption. A qualified IDQS might not have knowledge or possession of information set forth in proposed paragraphs (b)(5)(i)(N) through (P) because this information pertains to individual quotations and broker-dealers and is not issuer-specific. A qualified IDQS would only be required to have proposed paragraph (b)(5)(i)(N) through (P) information that has come to its knowledge or that is in its possession.

[49] *See, e.g.,* Ulf Bruggemann *et al., The Twilight Zone: OTC Regulatory Regimes and Market Quality,* 31 Rev. Fin. Stud. 898, 907 (2018) (noting difficulties in accessing information about companies, even information filed with state regulators); Jeff Swartz, *The Twilight of Equity Liquidity,* 34 Cardozo L. Rev. 531, 573 (2012) (stating that this situation is particularly problematic because unsophisticated investors make up a large portion of OTC market participants); *see also* Roundtable Transcript, *supra* note 18, at 85, 192–93; Michael K. Molitor, *Will More Sunlight Fade the Pink Sheets? Increasing Public Information About Non-Reporting Issuers with Quoted Securities,* 39 Ind. L. Rev. 309, 311, 337 (2006).

[50] *See* Proposed Rule 15c2–11(b)(5)(i)(N) through (P).

[51] *See* Proposed Rule 15c2–11(e)(4).

[52] *See* Proposed Rule 15c2–11(e)(1).

[53] The Commission believes that there are some issuers that voluntarily make publicly available proposed paragraph (b) information through OTC Markets Group's Alternative Reporting Standard. *See infra* Part VIII.

[54] To the extent an issuer, underwriter, or dealer is providing consideration to a person to publish proposed paragraph (b) information, such person may have additional disclosure obligations under Section 17(b) of the Securities Act.

access to information available to other market participants, such as those that may have a relationship with the issuer, would benefit from having access to proposed paragraph (b) information that is current. The proposed amendments would also help prevent the potential use of a catch-all issuer as a vehicle to defraud investors by, for example, changing its business or ownership and ceasing to provide public information after a market has developed for its securities.

Q1. Should the proposed Rule allow other entities besides a broker-dealer or qualified IDQS to comply with the information review requirement? Why, or why not? If a commenter believes an entity should be added, what entity should be added, and why?

Q2. Should proposed paragraph (b) information meet the definition of ''publicly available'' if, for example, access to such information requires payment of a fee or registration and provision of customer data to be allowed access to such information? Are there any other potential barriers to accessibility that the Commission should address? If so, what are they and how should the Commission address them in this rulemaking?

(c) Reorganize the Reporting Issuer Information

The proposed Rule would simplify the organization of information regarding reporting issuers by addressing each type of issuer in a separate paragraph in order to improve readability. The Commission is proposing to reorganize how the information for reporting issuers is arranged in paragraph (a)(3) of the existing Rule to group the required information that a broker-dealer must obtain and review into paragraphs by the type of issuer. Additionally, the Commission is proposing to apply paragraph (a)(3), which would be re-lettered to proposed paragraph (b)(3), to qualified IDQSs that make known to others the quotation of a broker-dealer pursuant to proposed paragraph (a)(2), so that the requirements (1) regarding when to obtain reports, and (2) to have a reasonable basis under the circumstances for believing that the issuer is current in filing reports, would apply to the qualified IDQS.

The proposed change to the Rule is not intended to change any substantive obligations for a broker-dealer under the existing Rule. The reorganization would remove references to Section 12(g)(2)(B), which exempts from registration under Section 12 of the Exchange Act securities issued by investment companies registered pursuant to Section 8 of the Investment Company Act of 1940. Under the existing Rule, to the extent that an issuer covered by 12(g)(2)(B) has a reporting obligation under the Exchange Act, a broker-dealer would be required to comply with the information review requirement and conduct a review of such issuer's annual, quarterly, and current reports. Given proposed paragraph (b)(3)(i), which would apply to issuers with a reporting obligation under Section 13 or 15(d) under the Exchange Act, the removal of the reference to Section 12(g)(2)(B) would not be a substantive change.

(d) Current Reports

The Commission is proposing to incorporate into proposed paragraphs (b)(3)(i) through (iii), with some modification, paragraph (d)(2)(i) of the existing Rule, which provides a timing requirement for a broker-dealer to obtain current reports, such as Forms 8–K. The events triggering an issuer's filing of current reports with the Commission generally are material events affecting the issuer, such as a change in control, acquisition or disposition of assets, bankruptcy or receivership, change in accountants, or resignation of a director.[55] The existing Rule requires that a broker-dealer obtain all current reports filed with the Commission by the issuer from the earlier of five business days before the initial publication or submission of a quotation or the date of submission of paragraph (a) information pursuant to applicable rules of the Financial Industry Regulatory Authority (''FINRA'') or its successor[56] because the timing of an event that triggers the filing of a current report is variable and unknown.[57]

The proposed Rule would require that a broker-dealer or qualified IDQS obtain all current reports as of a date up to three business days prior to the initial publication or submission of a quotation.[58] At the time that the Commission adopted the existing requirement, it noted that providing five business days to obtain current reports prior to publishing a quote should alleviate uncertainties about available information, given the unpredictable timing of current reports.[59] The Commission, however, preliminarily believes that it is appropriate to shorten the window within which a broker-dealer or qualified IDQS must obtain current reports from five days to three days because, in contrast to 1991, current reports are more easily accessible by broker-dealers or qualified IDQSs on EDGAR and can be obtained in a more timely manner at low cost. The Commission is also proposing to remove from the Rule the provision regarding broker-dealers obtaining current reports five business days prior to the submission of information to FINRA pursuant to applicable FINRA rules. The Commission believes that the time period for a broker-dealer to obtain a current report should directly relate to the initial publication or submission of a quotation and should not be tied to the submission of information to FINRA because FINRA may require more time to complete its review of the proposed paragraph (b)(3) information. For example, a broker-dealer might file a Form 211 with FINRA that lacks the information that FINRA requires to process the form, which may delay FINRA's processing of the form.

(e) Expand Catch-All Issuer Information

The proposed Rule would require that information about certain issuers, including issuers that are not required to provide or file reports to the Commission, be current and publicly available, which is intended to benefit retail investors' decision-making process. Additionally, the Commission is proposing to revise some of the information required by the existing Rule to be reviewed by a broker-dealer. For example, compared to the existing Rule, the proposed Rule would require the identification of additional company officers as well as large shareholders of the company.

The Commission is proposing to amend existing paragraph (a)(5)(xi) (which would be re-lettered to proposed paragraph (b)(5)(i)(K)), to require the names of certain persons with relationships to the issuer, including the chief executive officer and members of the board of directors, to also require the names of officers or any person who is, directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of the issuer. The Commission proposes these additions to the list of persons that must be disclosed because the Commission believes that investors could benefit from knowing the identity of officers who manage the company as well as the identity of any large shareholders. For example, investors would be able to research the background of these persons to determine whether or not

[55] 1991 Adopting Release at 19154.

[56] *See* Exchange Act Rule 15c2–11(d)(2)(i).

[57] 1991 Adopting Release at 19154.

[58] *See* Proposed Rule 15c2–11(b)(3). Current reports filed with the Commission include (1) current reports on Form 8–K pursuant to Section 13 or 15(d) of the Exchange Act and (2) current reports on Form 1–U pursuant to Rule 257(b)(4) of Regulation A.

[59] 1991 Adopting Release at 19154.

they have a track record of success as an officer of a corporation, experience in the industry of the issuer, any criminal convictions, or any other problems that raise questions about their fitness to be an officer of the issuer of a quoted OTC security.[60]

The Commission is proposing to incorporate in proposed paragraph (b) the existing presumption regarding when catch-all issuer information is ''reasonably current,'' which is presently included in paragraph (g) of the existing Rule.[61] Proposed paragraph (b)(5)(i)(L), which pertains to the issuer's financials, would include the requirement that the issuer's balance sheet be as of a date that is less than 16 months before the publication of a quotation. Additionally, this paragraph would require that the issuer's profit and loss statement, as well as the retained earnings statement, cover the 12 months preceding the date of the balance sheet. If the balance sheet, however, is not as of a date less than six months before the publication of the quotation, the balance sheet would need to be accompanied by a profit and loss statement and a retained earnings statement, both for a period from the date of the balance sheet to a date less than six months before the publication of a quotation.

Similarly, the Commission is proposing to incorporate into proposed paragraph (b)(5) the existing presumption that ''all other information specified'' under the Rule for catch-all issuers is current if it is as of a date within 12 months prior to the publication or submission of the quotation.[62] Although the Commission is proposing to incorporate the presumption of ''reasonably current'' from existing paragraph (g), the Commission is proposing to use instead the term ''current'' in the context of proposed paragraph (b)(5). The Commission believes that the word ''reasonably'' is unnecessary in this context because the proposed Rule specifically enumerates what is current for purposes of catch-all issuers.

(f) Modify Requirement To Make Catch-All Issuer Information Available Upon Request

The proposed Rule would modernize the Rule to permit broker-dealers to direct retail investors to electronically available information, which could make information about an issuer easier to find, compared to investors locating the information on their own, as discussed below. Consistent with the Rule's existing requirements, the proposed Rule would still require that a broker-dealer that complies with the information review requirement make certain information available to investors that request such information.[63] The Commission believes that the broker-dealer initiating quotations should assist investors in obtaining catch-all issuer information because the information might be difficult to find when a quoted market first begins. However, this requirement would be modified to provide broker-dealers the flexibility to satisfy this obligation by providing the requesting person with appropriate instructions regarding how to obtain publicly available information electronically because the internet provides a cost-effective means to distribute catch-all issuer information to all investors, not just those that request such information. This proposed amendment would not limit other ways in which a broker-dealer could make information available.

In such instances, to the extent the broker-dealer has information regarding proposed paragraphs (b)(5)(i)(N) through (P), the broker-dealer would be required to make such information available to persons who request the information pursuant to proposed paragraph (b)(5)(ii).

(g) Clarify the Application of the Catch-All Issuer Provision

Consistent with the Commission's efforts to increase transparency about OTC securities for all investors, the proposed Rule would specify the required information that a broker-dealer must review depending on the circumstances and the type of issuer. In particular, the provisions of proposed paragraph (b)(5) for catch-all issuers would apply to the security of any issuer that is not included in proposed paragraphs (b)(1) through (b)(4). Accordingly, if a prospectus issuer, a Reg. A issuer, a reporting issuer, or an exempt foreign private issuer does not fit within the provisions of proposed paragraphs (b)(1) through (b)(4), the issuer would be, for purposes of the proposed Rule, a catch-all issuer.

The provisions of proposed paragraphs (b)(1) and (b)(2) include specific time frames during which certain issuer information (*i.e.,* the issuer's prospectus or offering circular) would be current, and the provisions of paragraphs (b)(1) and (b)(2) apply to an issuer only during the time frames that are identified in those paragraphs. For example, proposed paragraph (b)(1) applies only to an issuer with a registration statement that has become effective less than 90 calendar days prior to the day on which a broker-dealer publishes or submits a quotation. Similarly, proposed paragraph (b)(2) applies only to an issuer with an offering circular and that has been authorized to commence its offering less than 40 calendar days prior to the day on which a broker-dealer publishes or submits a quotation.

When proposed paragraph (b) information is as of a date outside of the time frames identified in proposed paragraph (b)(1) or (b)(2), such as when the offering is authorized to commence 100 calendar days before the publication of a quotation, the issuer is not a prospectus issuer or a Reg. A issuer under the proposed Rule. At that time, proposed paragraphs (b)(1) and (b)(2) are no longer applicable and the issuer may be a reporting issuer or a catch-all issuer, depending on the issuer's reporting obligation. For example, an issuer that does not have an ongoing reporting obligation, such as a Reg. A issuer that has conducted a Tier 1 offering, would be a catch-all issuer, and a broker-dealer or qualified IDQS would be required to review information required by proposed paragraph (b)(5) (''proposed paragraph (b)(5) information'') if the issuer's offering has been authorized to commence more than 40 calendar days prior to the day on which a broker-dealer publishes or submits a quotation. If, however, an issuer has an ongoing reporting obligation, such as an issuer that filed a prospectus more than 90 calendar days prior to the day on which a broker-dealer publishes or submits a quotation, that issuer would be a reporting issuer and a broker-dealer or qualified IDQS would be required to review proposed paragraph (b)(3) information.

Proposed paragraphs (b)(3) and (b)(4) apply to issuers that have ongoing disclosure obligations. If the reporting issuer or exempt foreign private issuer has not filed, published, or disclosed information that is current within the time frames identified in proposed paragraphs (b)(3) or (b)(4), respectively, the issuer would be, for purposes of proposed Rule 15c2–11, a catch-all issuer and, therefore, quotations of the

[60] As a conforming change and to reduce redundancy, the Commission is also proposing to amend paragraph (b)(5)(i)(P), which focuses on quotations published by or on behalf of certain company insiders, to remove the persons enumerated in the paragraph and cross-reference to paragraph (b)(5)(i)(K).

[61] *See* Exchange Act Rule 15c2–11(g).

[62] *See* Exchange Act Rule 15c2–11(g)(2).

[63] Rule 15c2–11(a)(4) and Proposed Rule 15c2–11(b)(4) include a similar requirement that broker-dealers make proposed paragraph (b)(4) information available upon request to a person expressing an interest in a proposed transaction in an exempt foreign private issuer's security.

securities of such an issuer would be subject to the provisions of proposed paragraph (b)(5) until the issuer complies with its Securities Act or Exchange Act disclosure requirements. Broker-dealers and qualified IDQSs that comply with the information review requirement for securities of these issuers would, therefore, need to review proposed paragraph (b)(5) information for the initial publication or submission of a quotation. For example, a broker-dealer that complies with the information review requirement for a reporting issuer that has a quarterly reporting obligation but has not been timely in its reporting obligations would need to review the issuer's proposed paragraph (b)(5) information.

As explained above, the proposed amendment—that the provisions of proposed paragraph (b)(5) would apply to the publication or submission by a broker-dealer of the securities of any issuer that is not included in proposed paragraphs (b)(1) through (b)(4)—would not change any issuer's statutory or rule-based disclosure obligation. Even if catch-all issuers are not subject to a statutory or rule-based disclosure obligation, the proposed Rule would require that catch-all issuer information be current and made publicly available for a broker-dealer prior to the initial publication or submission of a quotation for the security of a catch-all issuer. The proposed amendment to apply the provisions of proposed paragraph (b)(5) to an issuer that does not fit within the provisions of proposed paragraphs (b)(1) through (b)(4), if such issuer's information described in those paragraphs is not current, would not lead to a lower information review standard. Rather, a broker-dealer would still need to have a reasonable basis under the circumstances for believing that the proposed paragraph (b) information, based on a review of such information, together with any supplemental information required by proposed paragraph (c), is accurate in all material respects and from a reliable source. For example, regardless of whether a broker-dealer is complying with the information review requirement for the security of a reporting issuer under proposed paragraph (b)(3) or a catch-all issuer under proposed paragraph (b)(5), the required review standard is the same.

Under the existing Rule, an issuer's periodic report or statement is ''reasonably available'' when the report or statement is filed with the Commission.[64] The Commission proposes to delete the ''reasonably available'' provision because proposed paragraph (b)(5), and its application to any issuer that is not included in proposed paragraphs (b)(1) through (b)(4) due to a delinquent filing or otherwise, renders redundant the ''reasonably available'' provision.

Proposed paragraph (b)(5) would classify catch-all issuers the same way as does the existing Rule. Specifically, if a reporting issuer has timely filed reports with the Commission, the issuer is, for purposes of existing Rule 15c2–11, a reporting issuer. For purposes of the proposed Rule, if the issuer's periodic reports or statements are not timely filed with the Commission, the issuer would be a catch-all issuer and a broker-dealer would need to comply with proposed paragraph (b)(5).

While the Commission welcomes any public input on the proposed amendments, including input regarding the publication of proposed paragraph (b) information, the Commission asks commenters to consider the following questions:

Q3. Should the requirement to obtain current reports filed by a reporting issuer be less than, or more than, the three days as proposed in proposed paragraph (b)(3)? Why or why not? What would be the appropriate number of days for a broker-dealer or qualified IDQS to obtain current reports in advance of publishing or submitting a quotation or submitting paragraph (b)(3) information to a registered national securities association? Should the requirement to obtain current reports include reports furnished to, rather than solely filed with, the Commission?

Q4. Are there any advantages or disadvantages regarding the various permitted means of making proposed paragraph (b) information publicly available? If so, what are they? Are there other means of making proposed paragraph (b) information publicly available and easily accessible by investors, particularly retail investors, or should any of the proposed means be modified or eliminated? What are the potential costs to issuers, particularly small businesses, of requiring that information, including proposed paragraph (b)(5) information that is current, be made publicly available in a way that would be easily accessible to investors, particularly retail investors?

Q5. Are there any data privacy concerns the Commission should address with regard to issuers' proposed paragraph (b) information being made publicly available by someone other than the issuer? Please give examples of any concerns and how the Commission might address them in this rulemaking.

Q6. Are there any circumstances where proposed paragraph (b) information is unnecessary for an investor to be able to make an informed investment decision? What are they?

Q7. Do commenters agree that the Commission should remove references to Section 12(g)(2)(B) of the Exchange Act in proposed paragraph (b)(3)? Why or why not?

Q8. A person may violate the antifraud provisions of the securities laws by knowingly or recklessly disseminating, publishing, or republishing false or misleading information. This may include publicly available information (such as proposed paragraph (b) information), if the person knew, or was reckless in not knowing, that the information was materially false or misleading and nevertheless used that information to establish or maintain a quoted market for a security. Are there other alternatives, or additional or different approaches, that the Commission should adopt as a means reasonably designed to prevent persons from knowingly or recklessly using false information published or provided by another person to establish a quoted market for an OTC security? Commenters are invited to comment regarding any additional actions the Commission could take to further preserve the integrity of the OTC market.

Q9. Should proposed paragraph (b)(5) also require the ticker symbol of the security being quoted?

Q10. Currently, paragraph (a)(5)(ii) requires the address of the issuer's principal executive offices. Should proposed paragraph (b)(5)(i)(B) also require the address of the issuer's principal place of business if that address differs from the address of the issuer's principal executive offices?

Q11. Should proposed paragraph (b)(5)(i)(K) require additional information to help accurately identify individuals listed in proposed paragraph (b)(5)(i)(K), such as job title? Why or why not?

Q12. Should changes be made to proposed paragraph (b)(5)(i)(K) to include additional parties or persons, such as affiliates of the issuer, or promoters? For example, should proposed paragraph (b)(5)(i)(K) include the word ''affiliate'' as defined in Securities Act Rule 144(a)(1)? Please explain. Conversely, are there persons included in proposed paragraph (b)(5)(i)(K) that commenters believe should not be included? Please explain. Should the proposed Rule include a definition of beneficial owner? If so, how should the proposed Rule define beneficial owner? Should the definition

[64] Exchange Act Rule 15c2–11(a)(5).

of beneficial owner be defined by total voting power? If the proposed Rule used total voting power to define beneficial ownership, should the proposed Rule calculate total voting power to include all securities for which the person, directly or indirectly, has or shares voting power, which includes the power to vote or to direct the voting of such securities, and any shares or units of which the person has the right to acquire voting power within 60 days, including through the exercise of any option, warrant or right, the conversion of a security, or other arrangement, or, if securities are held by a member of the family, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the securities (or share in such direction or control as, for example, a co-trustee)? Should the method of determining the amount of beneficial ownership set forth in Exchange Act Rule 13d–3 be incorporated into paragraph (b)(5)(i)(K)? Please explain.

Q13. In addition to the information that is proposed to be required under proposed paragraph (b)(5), is there other information relating to an issuer or the trading of an issuer's security in the OTC market that could help investors to make better-informed investment decisions and, therefore, should be required to be made publicly available under proposed paragraph (b)(5)? If so, please describe this information and how it could be useful to investors.

Q14. Are there any concerns with the proposal to require that the information specified in proposed paragraph (b)(5)(i)(K) be publicly available, in particular, the name of any officer as well as any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer? Please explain. If yes, how should those concerns be resolved? Should proposed paragraph (b)(5)(i)(K) require a higher, or lower, percentage of beneficial ownership of the outstanding units or shares of any class of any equity security of the issuer? If so, what percentage of beneficial ownership should proposed paragraph (b)(5)(i)(K) use and why?

Q15. Is it useful to continue to require that the broker-dealer initiating the publication or submission of a quotation make the information it obtains and reviews reasonably available to an investor upon request even if such information must also be made publicly available, as proposed? Should this existing requirement be modified to require that any broker-dealer quoting the security must, upon request, instruct an investor as to how to access such information?

Q16. Are the time frames in proposed paragraph (b)(5)(i)(L) regarding when the balance sheet, profit and loss statement, and retained earnings statement would be current for purposes of this section clear? If not, how should the proposed Rule be modified to clarify the time frames for the balance sheet, profit and loss statement, and retained earnings statement? Please explain. How do broker-dealers calculate the dates for which the issuer's balance sheet, profit and loss statement, and retained earnings statement are reasonably current under existing paragraph (g)(1)? Is it difficult for broker-dealers to determine what information they need to review under existing paragraph (g)(1)? If so, please explain. Would the proposed Rule make it more difficult for broker-dealers to determine what information they need to review under proposed paragraph (b)(5)(i)(L)? Please explain.

Q17. Are there ways to reduce the administrative burdens associated with the proposed Rule? In particular, are there changes to proposed paragraph (b)(5)(i)(L) that would ease compliance with the proposed Rule without minimizing investor protection? If so, please explain.

Q18. Are there more streamlined requirements that could be used in the proposed Rule? In particular, could the financial statement requirements in proposed paragraph (b)(5)(i)(L) be simplified while remaining consistent with the Rule's objective? Should the timing requirements associated with the financial statements included in proposed paragraph (b)(5)(i)(L) be simplified (*e.g.,* all financial statements must be ''as of'' a date within 12 calendar months before the publication or submission of a broker-dealer's quotation)? If so, please explain.

Q19. How, and to what extent, would these proposed amendments affect liquidity, transparency, and capital formation, particularly for small issuers?

B. Proposed Amendments to Supplemental Information

1. Existing Supplemental Information Requirement

The existing Rule requires that a broker-dealer consider supplemental information about the issuer of an OTC security when evaluating whether the required information is materially accurate. In particular, paragraph (b) of the existing Rule requires a broker-dealer that complies with the information review requirement to have in its records (1) a record of the circumstances involved in the submission or publication of such quotation,[65] including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transactions provided to the broker-dealer by such person or persons; (2) a copy of any trading suspension order or public release announcing such suspension issued by the Commission pursuant to Section 12(k) of the Exchange Act during the 12 months preceding the date of the publication or submission of the quotation; and (3) a copy or a written record of any other material information (including adverse information) regarding the issuer which comes to the broker's or dealer's knowledge or possession before the publication or submission of the quotation.

2. Proposed Amendments to Supplemental Information

Existing paragraph (b) would be re-lettered to proposed paragraph (c) and further amended to (1) add qualified IDQSs to the list of market participants that must have in their records supplemental information as specified by the Rule, and (2) revise the supplemental information that broker-dealers and qualified IDQSs must have in their records of a transaction involving company insiders.

(a) Supplemental Information for Qualified IDQSs

The proposal would extend the existing obligations regarding consideration of supplemental information to cover all market participants that conduct the required review, including broker-dealers and qualified IDQSs. This proposal is intended to preserve the integrity of the OTC market and to promote investor protection by helping to ensure that market participants consider material information prior to the beginning of a quoted market.

In light of the proposed review requirement for qualified IDQSs contained in proposed paragraph (a)(2), the Commission is proposing to add qualified IDQSs to the list of market participants that are required to have in

[65] The existing Rule includes a typographical error, stating that the broker-dealer must keep a record of the circumstances involved in the ''submission of publication of such quotation.'' Exchange Act Rule 15c2–11(b)(1). The rule text should instead say ''submission or publication of such quotation.'' The Commission is proposing to correct this error as part of its proposed technical edits, as described further below. For purposes of discussion, the Commission will use ''or'' rather than ''of'' when discussing the provisions of proposed paragraph (c).

their records the supplemental documents required by proposed paragraph (c). Proposed paragraph (a) would require, therefore, that both broker-dealers and qualified IDQSs have a reasonable basis under the circumstances for believing, based on a review of proposed paragraph (b) information, together with any supplemental information required by proposed paragraph (c), that the proposed paragraph (b) information is accurate in all material respects.

Similar to the existing Rule, proposed paragraph (c) would not require a broker-dealer or qualified IDQS to affirmatively seek additional information about the issuer. The proposed Rule would require, however, the broker-dealer or qualified IDQS to retain a copy or a written record of material information, including adverse information, regarding the issuer that comes to the knowledge or possession of the broker, dealer, or qualified IDQS before the initial publication or submission of a quotation.[66]

In addition to applying to broker-dealers that provide the initial publication or submission of quotations for a an OTC security, proposed paragraph (c) would also apply to qualified IDQSs that make known to others the quotation of a broker-dealer pursuant to proposed paragraph (a)(2). If the provisions of proposed paragraph (c) were not to apply to a qualified IDQS, the qualified IDQS would not need to consider material information (including adverse information) of which it has knowledge or possession. This modification to the Rule is designed to help ensure that all market participants that comply with the information review requirement would be subject to the same requirements regarding supplemental information under the Rule, including any adverse information regarding the issuer in the market participant's knowledge or possession.

The Commission anticipates that, similar to a broker-dealer that conducts the required review, a qualified IDQS would be able to obtain the supplemental information required by proposed paragraph (c) for it to have in its records from several sources, including the issuer, broker-dealers, or investors that desire a quoted market for an OTC security. For example, a qualified IDQS might have a relationship with the issuer, such that it may obtain supplemental information directly from the issuer. Or, if a broker-dealer or investor requests that the qualified IDQS conduct the review in proposed paragraph (a)(2), the broker-dealer or investor could supply the qualified IDQS with supplemental information.

(b) Supplemental Information for Company Insiders' Transactions

The proposal would require that company insiders be identified. The knowledge that a quotation is by or on behalf of a company insider could aid investors by alerting the broker-dealer conducting the required review to the possibility that the quotation is being made on behalf of a person who may have a heightened incentive to manipulate the price of the security.

The Commission is proposing to require, in proposed paragraph (c)(1), that the broker-dealer or qualified IDQS have a record of instances when the person or persons for whom the initial publication or submission of a quotation is being published is the issuer, chief executive officer, a member of the board of directors, officer, or any person, directly or indirectly, who is the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer. The Commission believes that whether a quotation is being published or submitted by a broker-dealer on behalf of a company insider is important supplemental information for the broker-dealer or qualified IDQS to evaluate because a company insider might be able to influence or control the issuer of an OTC security.

Additionally, proposed paragraph (c)(1) would require broker-dealers and qualified IDQSs to retain a record of any information regarding the transactions provided to the broker-dealer or qualified IDQS by any person for whom the quotation is being published or submitted. Circumstances may arise in which a qualified IDQS does not have the supplemental information listed in proposed paragraph (c)(1) because such information is specific to a quotation or a transaction, and the qualified IDQS might not be involved in the publication or submission of a quotation or a transaction in such security. However, if a person provides this information to a qualified IDQS (*e.g.,* the person provides information to the qualified IDQS for the qualified IDQS to comply with the information review requirement), the qualified IDQS would be required to create a record of any information regarding such transactions.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q20. Proposed paragraph (c) would require that a broker-dealer submitting or publishing a quotation or any qualified IDQS that makes known to others the quotation of a broker-dealer pursuant to proposed paragraph (a)(2) have in its records documents and information concerning company insiders, trading suspensions, and any other material information regarding the issuer that comes to the knowledge or possession of the broker-dealer or qualified IDQS before the initial publication or submission of a quotation. Are there other documents and information that the broker-dealer or qualified IDQS should be required to have in its records? Please explain.

Q21. Currently, paragraph (b)(3) of the Rule requires that a broker-dealer submitting or publishing a quotation have in its records documents and information regarding material information (including adverse information) regarding the issuer which comes to the broker-dealer's knowledge or possession before the initial publication or submission of the quotation. We seek comment concerning the type of such information that most often falls within this existing paragraph and frequency of such occurrences.

Q22. Should proposed paragraph (c) require that a broker-dealer or qualified IDQS, affirmatively seek additional information about the issuer? Please explain. Should proposed paragraph (c)(3) use the terms ''actual knowledge'' or ''physical possession'' instead of the terms ''knowledge or possession''? Please explain.

C. Proposed Amendments to the Piggyback Exception

1. Existing Piggyback Exception and Fraudulent Activity

Currently, broker-dealers do not have to comply with the Rule's information review requirement if they can rely on the piggyback exception. Under the existing piggyback exception, the Rule's provisions do not apply when a broker-dealer publishes or submits, in an IDQS, a quotation for an OTC security that was already the subject of regular and frequent quotations in that IDQS (*i.e.,* quotations must have appeared on each of at least 12 days during the previous 30 calendar days, with no more than four consecutive business days in succession without a quotation).[67] Once

[66] Proposed Rule 15c2–11(c)(3); *see* 1991 Adopting Release at 19151 n.28.

[67] A broker-dealer may rely on the piggyback exception for a submission or publication concerning a security only where that submission or publication is made in an IDQS. Exchange Act Rule 15c2–11(f)(3). If a broker-dealer cannot rely on the piggyback exception or any other exception to the Rule, the broker-dealer must comply with the

these requirements are met, a broker-dealer can ''piggyback'' on either its own or other broker-dealers' previously published quotations.[68]

There are three ways that a broker-dealer can rely on the piggyback exception to publish or submit quotations under the existing Rule. First, a broker-dealer can rely on the exception if (1) the IDQS identifies unsolicited customer quotations for a security as such and (2) the security is continuously quoted on each of at least 12 days within the first 30 calendar days after the initial publication of quotations, with no more than four business days in succession without a quotation.[69] Second, a broker-dealer can rely on the exception if (1) the IDQS does not identify unsolicited orders for a security as such and (2) the security has been the subject of both bid and ask quotations at specified prices on each of at least 12 days within the first 30 calendar days after the initial publication of quotations, with no more than four business days in succession without a quotation.[70] Third, once eligibility for the piggyback exception is established, a market maker may continue to publish or submit quotations in the IDQS pursuant to the exception until it stops quoting or ceases acting as a market maker in that security.[71] Under the piggyback exception, in these three circumstances, broker-dealers may publish or submit quotations without complying with the existing Rule's information review requirement.

As a result of the piggyback exception, the first broker-dealer publishing or submitting a quotation for a security is the only one that has to comply with the Rule's information review requirement; thereafter, any other broker-dealer can publish or submit quotations for the security indefinitely, without complying with the information review requirement, so long as the security is quoted in an IDQS on each of at least 12 days within the previous 30 calendar days, with no more than four consecutive business days without any quotations.[72] Consequently, broker-dealers can rely on the piggyback exception to publish or submit quotations for a security of a company that no longer makes information publicly available or that has ceased operations and no longer exists.[73]

By relying on the existing piggyback exception to publish or submit quotations for securities of companies that no longer make information publicly available or that no longer exist, broker-dealers may sustain the false appearance of an active market in the securities of these issuers. In some cases, broker-dealers intentionally participate in improper activities. For example, unscrupulous company insiders may participate with a broker-dealer to publish quotations to perpetuate the company insiders' fraud, or fraudsters may usurp the identity of defunct or inactive publicly traded corporations.[74]

Another example of improper activity that arises in part due to broker-dealers' ability to rely indefinitely on the piggyback exception for these types of companies is the pump-and-dump scheme. By publishing quotations, a broker-dealer raises the public profile of a security and makes the security more accessible to investors.[75] A broker-dealer that publishes quotations in response to increased demand for the security may further facilitate the generation of fictitious demand, potentially helping perpetuate the fraud.[76] For example, unscrupulous market participants can create interest in a quoted OTC security by issuing false or misleading statements into the marketplace. Broker-dealers' continuous quotations for the security help create the appearance of an active market, seemingly ''validating'' the price of an essentially worthless or artificially inflated security.[77] As the security rises in price, the perpetrators of the fraud liquidate their stake at an inflated price. Once the perpetrators have cashed out and abandoned the security, the market price collapses, and innocent investors are left holding securities with little or no value.[78]

2. Proposed Amendments to the Piggyback Exception

The amendments that the Commission is proposing are designed to help curtail the use of the piggyback exception in connection with potential manipulative and fraudulent schemes that are facilitated through having false, stale, or misleading information in the OTC market. The proposed amendments seek to address, among other things, a particular vulnerability of the existing piggyback exception: Once publications or submissions of quotations for securities meet the requirements of the piggyback exception, broker-dealers may rely on the piggyback exception to publish or submit quotations for those securities in perpetuity, even in the absence of current or publicly available information about the issuer of those securities.

The Commission is proposing amendments to the piggyback exception that are narrowly tailored to assist in reducing fraudulent and manipulative activity while allowing broker-dealers to rely on the piggyback exception when certain additional criteria are met. The proposed amendments would permit broker-dealers to rely on the piggyback exception for securities of catch-all issuers only when information about the issuer is current and made publicly available. The proposed amendments would also (1) restrict broker-dealers' ability to rely on the piggyback exception by limiting the exception to securities that have been the subject of both priced bid and priced ask quotations in an IDQS, (2) require a cooling-off period following a trading suspension to establish piggyback eligibility, (3) eliminate broker-dealers' ability to rely on the piggyback exception to publish or submit quotations for securities of ''shell companies,'' and (4) revise the frequency of quotation requirement.

Rule for each quotation prior to publishing or submitting such quotation in a quotation medium.

[68] Exchange Act Rule 15c2–11(f)(3); 1991 Adopting Release at 19156.

[69] *See* Exchange Act Rule 15c2–11(f)(3)(i).

[70] *See* Exchange Act Rule 15c2–11(f)(3)(ii).

[71] *See* Exchange Act Rule 15c2–11(f)(3)(iii).

[72] *See* 1999 Reproposing Release at 11146.

[73] *See* Exchange Act Rule 15c2–11(f)(3)(i) and (ii); *see also* Order of Trading Suspension (May 14, 2012), *available at https://www.sec.gov/litigation/suspensions/2012/34-66980-o.pdf;* Press Release, SEC Microcap Fraud-Fighting Initiative Expels 379 Dormant Shell Companies to Protect Investors From Potential Scams (May 14, 2012), *https://www.sec.gov/news/press-release/2012-2012-91htm.*

[74] *See* Order of Suspension of Trading, Exchange Act Release No. 57486 (Mar. 13, 2008) (suspending securities of 26 companies). The Commission ordered the suspensions because of questions regarding the adequacy and accuracy of information pertaining to their status as publicly traded companies. Press Release, SEC Suspends Trading of 26 Companies to Combat Corporate Hijackings (Mar. 13, 2008), *https://www.sec.gov/news/press/2008/2008-41.htm* (describing how the Commission suspended trading in the securities of 26 companies that ''appear to have usurped the identity of defunct or inactive publicly-traded corporations using a tactic known as corporate hijacking'').

[75] Using data on daily dollar trading volume for quoted OTC securities, the Commission observes that securities with published two-way priced quotations were 3.34 times more likely to have reported a positive dollar trading volume on a given day in 2018 relative to securities with only one-way priced or unpriced published quotations. In addition, for those that were traded, quoted OTC securities with two-way priced quotations reported on average 3.05 times greater dollar trading volume than securities with only one-way priced or unpriced published quotations. See *infra* note 234 for a description of OTC securities data sources.

[76] *See* 1999 Reproposing Release at 11126.

[77] *See id.,* 1999 Reproposing Release at 11125.

[78] Tao Li *et al., Cryptocurrency Pump-and-Dump Schemes* (Feb. 2019), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3267041.*

(a) Current and Publicly Available Information for Catch-All Issuers

The proposal would condition reliance on the piggyback exception by requiring that information for certain issuers, including issuers that are not required to provide or file reports to the Commission, be current and publicly available. This additional transparency is intended to help retail investors make better-informed investment decisions and more easily evaluate the issuer, its security, and the market for the security.

The existing disclosure requirements for prospectus issuers, Reg. A issuers, reporting issuers, and exempt foreign private issuers specify that the type of information required by proposed paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) must be publicly available.[79] In contrast, no statute or rule provides that information required by proposed paragraph (b)(5) must be made publicly available. The Commission believes that it would be more difficult for pump-and-dump schemes to succeed if proposed paragraph (b)(5) information, excluding paragraphs (b)(5)(i)(N) through (P), were current and made publicly available within six months prior to a broker-dealer's publication or submission of a quotation in an IDQS in reliance on the piggyback exception. The public availability of catch-all issuer information that is current would allow investors, who would not otherwise have access to this information, the opportunity to review and analyze such information more easily.

The Commission is proposing to include a proviso in proposed Rule 15c2–11(f)(3)(ii) such that a broker-dealer may rely on the piggyback exception to publish or submit a quotation for a catch-all issuer only where proposed paragraph (b)(5) information, excluding paragraphs (b)(5)(i)(N) through (P), is current and has been made publicly available within six months before the date of publication or submission of such quotation. The Commission is proposing to exclude paragraphs (b)(5)(i)(N) through (P) from the required catch-all issuer information that must be current and made publicly available for a broker-dealer to rely on the piggyback exception because such information pertains to individual quotations and broker-dealers and is not issuer-specific. In this context, the Commission is specifically focusing on catch-all issuer information because reporting issuers and exempt foreign private issuers already are subject to ongoing disclosure requirements under the federal securities laws.[80]

As discussed above, however, an issuer that does not comply with its ongoing reporting or disclosure obligations would be, for purposes of proposed Rule 15c2–11, a catch-all issuer because that issuer would no longer fit within the provisions of proposed paragraphs (b)(3) or (b)(4). Thus, if a reporting issuer or exempt foreign private issuer fails to comply with its ongoing reporting or disclosure obligations, a broker-dealer may not rely on the piggyback exception to publish or submit quotations for a security of the issuer, unless the proposed paragraph (b)(5) information is otherwise current and made publicly available.[81] In this circumstance, a broker-dealer would need to ensure that proposed paragraph (b)(5) information were both current and made publicly available before it could rely on the piggyback exception.[82] A delinquent reporting issuer or an exempt foreign private issuer that has not made timely disclosure under Rule 12g3–2(b) would continue to be a catch-all issuer until the reporting issuer files or the exempt foreign private issuer timely publishes the required information within the time frames identified in proposed paragraph (b)(3) and (b)(4), respectively (*e.g.,* the reporting issuer is timely under the federal securities laws with respect to its obligation to file periodic and current reports after it has filed its most recent annual report).

Requiring that proposed paragraph (b)(5) information, excluding paragraphs (b)(5)(i)(N) through (P), be current and made publicly available within the six months before the date of publication or submission of a quotation in an IDQS for a broker-dealer to rely on the piggyback exception would effectively require the publication of proposed paragraph (b)(5) information semiannually. This proposed requirement would help to improve transparency of information about catch-all issuers and, therefore, should aid investors in making investment decisions. As proposed, if catch-all issuer information were no longer current or made publicly available, broker-dealers would no longer be able to rely on the piggyback exception to quote the security of that issuer. In such case, broker-dealers would need to comply with the proposed Rule for each and every publication or submission of a quotation, unless another exception to the Rule applies.

The Commission believes that investors would benefit from the information, and that the new requirement would not impose an undue burden on broker-dealers. To mitigate the potential costs and burdens that this proposal might have on broker-dealers, however, the Commission is also proposing a new exception that would permit broker-dealers to rely on third party determinations that the requirements of an exception are met.[83]

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q23. Certain issuers choose not to have reporting obligations for business purposes. The proposal, however, would require proposed paragraph (b)(5) information from a catch-all issuer, excluding paragraphs (b)(5)(i)(N) through (P), to be current and made publicly available within six months before the date of publication or submission of the broker-dealers' quotation in order for broker-dealers to rely on the piggyback exception to publish or submit quotations for the security of a catch-all issuer. Is six months the appropriate time frame within which a market participant must have published proposed paragraph (b)(5) information, excluding paragraphs (b)(5)(i)(N) through (P)? If so, why? If six months is too short or too long of a time frame, what should the time frame be and why? What are the potential costs and benefits to small issuers of this requirement? For reporting issuers that are delinquent in their reporting obligations (and are treated as catch-all issuers), should the piggyback exception require a shorter time frame, such as four months, for current information? Are there alternative methods that could be used that would protect investors while minimizing costs to issuers and broker-dealers?

Q24. Would the six month time frame place an undue burden on small issuers? Would the six month time frame discourage small issuers from raising capital in the public markets? What are the potential costs and benefits to small issuers of this six month time frame? What alternative methods could be used to encourage quoted public

[79] *See, e.g.,* Exchange Act Rule 12g3–2(b).

[80] *See* Proposed Rule 15c2–11(f)(3); *supra* note 38. As discussed above, the provisions of proposed paragraphs (b)(1) and (b)(2) include specific time frames during which certain issuer information (*i.e.,* the issuer's prospectus or offering circular) would be current, and the provisions of paragraphs (b)(1) and (b)(2) apply only during the time frames that are identified in those paragraphs. After such time has elapsed, the issuer would be either a reporting issuer or a catch-all issuer, for purposes of the Rule, depending on the issuer's regulatory status. *See supra* Part III.A.2.g.

[81] *See supra* Part III.A.2.g.

[82] *See supra* Part III.A.2.g.

[83] *See* Proposed Rule 15c2–11(f)(8).

markets for securities of start-ups while also distinguishing them from entities that are potential vehicles for fraudulent activity?

Q25. Are there alternatives to limiting reliance on the piggyback exception to publish or submit quotations for securities of catch-all issuers when information is no longer made publicly available or current that would benefit investors of quoted OTC securities? If so, what are they?

Q26. Should the piggyback exception not apply to publications or submissions of quotations for securities of issuers that have declared bankruptcy, filed for corporate dissolution, or otherwise taken steps to wind down their business? Why or why not?

Q27. Should the piggyback exception not apply to publications or submissions of quotations for securities of issuers that have undergone a re-organization, any major mergers and acquisitions, reverse mergers, or other significant restructuring that affects their business or management? Why or why not?

Q28. As proposed, a reporting issuer that is not current in its filing obligations would become subject to proposed paragraph (b)(5), and broker-dealers could continue to quote the issuer's security if the proposed paragraph (b)(5) information were current and made publicly available within six months of the date of the publication or submission of the quotation. Should broker-dealers be prohibited from relying on the piggyback exception to publish or submit quotations for the securities of delinquent reporting companies? Why or why not? Are there any circumstances that would make it difficult for a broker-dealer that relies on the piggyback exception to know the issuer's regulatory status and identify which provision of proposed paragraph (b) applies? Please explain.

(b) Two-Way Priced Quotations

To further the Commission's goal of enhancing investor protection, the piggyback exception would be available only for securities that have both an offer to buy and offer to sell at specified prices. The Commission believes this is a characteristic of an independent and liquid market. The Commission proposes to amend the piggyback exception in proposed paragraph (f)(3)(i)(A) to allow broker-dealers to piggyback only on quotations for securities that have been the subject of both bid and ask quotations in an IDQS at specified prices—two-way priced quotations—but not on unpriced quotations.[84] Because two-way priced quotations are evidence of market interest in a security,[85] the Commission believes that two-way priced quotations are appropriate to support broker-dealers' reliance on the piggyback exception (*i.e.,* by entering priced quotations, the broker-dealer provides substantive market information concerning its view about the value of the security).

The piggyback exception is premised on the recognition of supply and demand.[86] The Commission believes that unpriced quotations may signal only that a broker-dealer is interested in buying or selling the security, rather than that market demand for the security actually exists. This proposed amendment, therefore, would conform proposed paragraph (f)(3)(i)(A) to existing paragraph (f)(3)(ii) with respect to the requirement that the security be the subject of both bid and ask quotations in an IDQS at specified prices.

As proposed, once a broker-dealer publishes or submits the initial two-way priced quotations continuously for the requisite period of time, the initiating broker-dealer and other broker-dealers would be able to rely on the piggyback exception in proposed paragraph (f)(3)(i)(A) for priced quotations. Proposed paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) would require the security to have been the subject of both bid and ask quotations in an IDQS at specified prices. Although the exception would permit broker-dealers to quote on either side once piggyback eligibility is established, a security must be the subject of both bid and ask quotations at specified prices (*i.e.,* two-way priced quotations), in the IDQS, within the previous 30 calendar days, with no more than four business days in succession without such a quotation, for a broker-dealer to establish reliance on the piggyback exception.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q29. How, and to what extent, would these proposed amendments affect liquidity, transparency, and capital formation, particularly for small issuers?

Q30. Do unpriced quotations provide any market signals that would warrant the continued reliance on the piggyback exception based on unpriced quotations? If so, what are they?

Q31. Should broker-dealers be permitted to rely on the piggyback exception if only a priced bid or a priced ask (*i.e.,* only a one-sided quotation) is published? Why or why not?

(c) After a Trading Suspension

The Commission is proposing that the piggyback exception would not be available to a broker-dealer until 60 days after the expiration of a trading suspension. The proposal is intended to provide enough time for investors to consider new or additional information that may arise in the period following the conclusion of the issuer's trading suspension.

The Commission may suspend trading in any security for up to ten trading days if, in its opinion, the public interest and the protection of investors so require.[87] The Commission has, at times, suspended trading concurrently with instituting enforcement actions alleging that an issuer has failed to comply with periodic reporting requirements or engaged in deceptive or manipulative conduct.[88] The Commission has also suspended trading in the presence of rumors and speculation in the marketplace.[89] Temporary trading suspensions are a powerful tool for ''alert[ing] the investing public that there is insufficient public information about

[84] Paragraph (f)(3)(ii) of the Rule requires, and Proposed Rule 15c2–11(f)(3)(i)(B) would require, publications of quotations concerning a security to have been the subject of both bid and ask quotations in an IDQS at specified prices for a broker-dealer to rely on the piggyback exception. *See* Exchange Act Rule 15c2–11(f)(3)(ii); Proposed Rule 15c2–11(f)(3)(i)(B).

[85] *See* 1984 Adopting Release at 45121 (stating that the historical basis for the piggyback provision is that ''regular and continual priced quotations are an appropriate substitute for information about the issuer which would otherwise be relevant in establishing a quotation''); *see also* Therese H. Maynard, *What is an ''Exchange?''—Proprietary Electronic Securities Trading Systems and the Statutory Definition of an Exchange,* 49 Wash. & Lee L. Rev. 833, 847 (1992) (citing Norman S. Poser, *Restructuring the Stock Markets: A Critical Look at the SEC's National Market System,* 56 N.Y.U. L. Rev. 883, 900, 907–10, 920–21 (1981)) (explaining that publishing the prices at which broker-dealers are willing to buy and sell the stocks that they maintain in inventory is one of the principal ways that broker-dealers attract business in the form of a stream of orders for execution out of their inventory).

[86] *See* 1984 Adopting Release at 45121.

[87] *See* Exchange Act Section 12(k)(1).

[88] *See In re Bravo Enters. Ltd.,* Exchange Act Release No. 75775, 5 n.14 (Aug. 27, 2015); *see also SEC* v. *ZipGlobal Holdings, Inc.,* Litigation Release No. 23078, 2014 WL 4384124, at *2 (Sept. 4, 2014); *In re Vida Life Int'l Ltd.,* Release No. 72698, 2014 WL 3725012, at *1 (July 29, 2014).

[89] *See In re Bravo Enters. Ltd.,* Exchange Act Release No. 75775, 5 n.17 (citing *Andros Isle Dev. Corp.,* Exchange Act Release No. 57486, 2008 WL 762964, at *1 (Mar. 13, 2008) (''[c]ertain persons appear to have usurped the identity of 26 defunct or inactive publicly traded corporations''); *Power Conversion, Inc.,* Exchange Act Release No. 10002, 1973 WL 149518, at *21 (Feb. 12, 1973) (trader was ''involved in a scheme to defraud and manipulate the market'' in the issuer's securities)).

the issuer upon which an informed investment judgment can be made or that the market for the securities may be reacting to manipulative forces or deceptive practices.'' [90]

Further, the Commission has stated that ''information in trading suspension orders is important for broker-dealers because they will be apprised of questions the Commission has raised regarding the issuer or its securities that should be considered when they determine to publish quotations.'' [91] Among other things, a Commission trading suspension could indicate that there is a lack of information about the company (*e.g.,* the company is delinquent in its filings of required reports), uncertainty as to the accuracy of publicly available information, or questions about the trading in the stock.

A trading suspension that exceeds more than four successive business days (*e.g.,* five business days in succession without a quotation) will eliminate broker-dealers' ability to rely on the piggyback exception to publish or submit quotations for that security once the trading suspension ends.[92] Further, quoting activity under the piggyback exception does not automatically resume when a 10-day suspension ends. Under the existing Rule, a broker-dealer must comply with the information review requirement before it can re-establish the ability to rely on the piggyback exception, unless the broker-dealer can rely on another exception to the Rule.[93] However, the existing Rule permits a broker-dealer to begin the process of re-establishing piggyback eligibility immediately after the conclusion of the trading suspension if the broker-dealer complies with the information review requirement.[94]

The Commission proposes to amend the Rule by adding a proviso to proposed paragraph (f)(3)(ii) so that a broker-dealer would not be able to rely on the piggyback exception until 60 calendar days after the expiration of a trading suspension order issued by the Commission pursuant to Section 12(k) of the Exchange Act.[95] This means that, if a broker-dealer were to perform the required review and begin to publish or submit quotations upon the expiration of a Commission-ordered trading suspension (*e.g.,* on April 1), the 30 calendar days following the expiration of the trading suspension would not count toward establishing piggyback eligibility. Instead, the broker-dealer's quotations that are published on days 31 through 60 (*i.e.,* May 1 through May 30) would count toward meeting the piggyback exception's frequency of quotations requirement. In this scenario, on day 61 (*i.e.,* on May 31), after the expiration of the trading suspension, assuming that the frequency of quotation requirements have been satisfied, other broker-dealers would be able to rely on the piggyback exception to publish quotations.

The limitation of 60 calendar days in the proposed proviso is intended to incorporate the 30-day timing requirement of the existing piggyback exception and to reflect the specific policy rationale behind the piggyback exception: Regular and frequent quotations, including regular and frequent two-sided market making, reflect independent supply and demand forces, thereby indicating that sufficient information about the issuer of the quoted security is reaching the marketplace.[96] A trading suspension order issued by the Commission pursuant to Section 12(k) of the Exchange Act can serve as a signal of insufficient public information about the issuer upon which an informed investment judgment can be made. In the case of a formerly suspended security, adding 30 days to the piggyback exception's existing timing requirement of 30 days would help to ensure that regular and frequent quotations reflect independent supply and demand forces, thereby indicating that sufficient information about the issuer of the quoted security is reaching the marketplace.

Further, the Commission believes that a longer period of 60 calendar days should provide investors with a better opportunity to consider new or additional information that may arise in the period following the conclusion of the issuer's trading suspension. The Commission believes that this proposed limitation would help to ensure that regular and frequent quotations for the securities of formerly suspended issuers generally reflect market supply and demand and are based on informed pricing decisions rather than on pricing decisions that are based on information that is no longer accurate or that (potentially) had led the issuer to be suspended.

(d) Shell Companies

The proposed amendments to the piggyback exception would prohibit broker-dealers from relying on the piggyback exception for shell companies. This proposed amendment is intended to help retail investors by preventing shell companies, which can be used as vehicles for fraud, from maintaining a quoted market. Currently, the piggyback exception may result in broker-dealers contributing to a quoted market in securities of shell companies, which may collaterally facilitate fraudulent and manipulative schemes involving ''shell factories.'' [97] Specifically, offering documents or other filings for some shell companies may contain false or misleading statements regarding the company's business plan; its officers, directors, nominees, and shareholders; or control of the company. The Commission does not believe that securities of shell companies should be continuously quoted pursuant to an exception that presumes that sufficient information about the issuer of the quoted security is reaching the marketplace.[98] A continuously quoted market can increase the share price of a shell company that may have been promoted using inaccurate or misleading representations and could allow fraudsters to more easily fool new investors into believing there is an active and independent market for its security.

To become a company with a publicly quoted market, a private company may engage in a reverse merger with a publicly traded shell company. In this

[90] *Rules of Practice,* Exchange Act Release No. 35833 (June 9, 1995), 60 FR 32738, 32787 (June 23, 1995) (adoption of amendments).

[91] 1991 Adopting Release at 19154.

[92] *See* Exchange Act Rule 15c2–11(f)(3)(i) and (ii).

[93] *See* Exchange Act Rule 15c2–11(a) and (f).

[94] *See* Exchange Act Rule 15c2–11(a) and (f)(3)(i) through (ii).

[95] *See* Proposed Rule 15c2–11(f)(3)(ii). Commission orders pertaining to trading suspensions issued under Section 12(k) of the Exchange Act are available through the Commission's website at *https://www.sec.gov/litigation/suspensions.shtml.* While the Commission is not proposing to require that the broker-dealer obtain and review any trading suspension for a foreign security that was issued by a foreign financial regulatory authority, this information must be taken into account by the broker-dealer if it comes to the broker-dealer's knowledge or possession at the time that a review is required. *See* Proposed Rule 15c2–11(a)(1) and (c)(3).

[96] *See* 1984 Adopting Release at 45121. The existing piggyback exception has a timing requirement of 30 calendar days after initiation (or resumption) of quotations. *See* Exchange Act Rule 15c2–11(f)(3)(i) and (ii).

[97] In a shell factory scheme, fraudsters typically create and sell securities of numerous purportedly actual public companies that are, in fact, shams. In furtherance of such schemes, fraudsters file false and misleading registration statements that falsely depict startup companies' operations and expected profits to convince investors to purchase these companies' securities. To add value to the shell companies as reverse merger candidates, fraudsters solicit broker-dealers to file false Forms 211 with FINRA, without complying with the provisions of Rule 15c2–11, for the securities of the shell company to be quoted and traded in the OTC market. The fraudsters sell the startup companies as empty shells rather than implementing the business plans of such companies.

[98] *See* 1984 Adopting Release at 45121.

manner, the private company obtains the benefits of a public market for its securities. The company that emerges from a reverse merger could be a completely different company than the shell company that existed before the merger took place. Very often, when the shell company is not a reporting company, there is no or limited publicly available information about the post-merger company.[99]

Although reverse mergers can take place for valid, non-fraudulent purposes, the Commission has noted that unregistered ''reverse mergers'' between privately held companies and publicly traded shell companies ''commonly are used to develop a market for the merged entity's securities, often as part of a scheme to 'pump-and-dump' those securities.'' [100] Numerous enforcement actions over the past several years have involved fraud arising from shell companies, often in the context of reverse mergers.

The proviso in proposed paragraph (f)(3)(ii) would prohibit broker-dealers from relying on the piggyback exception to publish or submit quotations for securities of an issuer that meets the proposed definition of ''shell company'': Any issuer, other than a business combination related shell company as defined in Rule 405 of Regulation C, or an asset-backed issuer, as defined in Item 1101(b) of Regulation AB, that has (1) no or nominal operations and (2) either (i) no or nominal assets, (ii) assets consisting solely of cash and cash equivalents, or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.[101] The proposal should not prohibit reliance on the piggyback exception for quotations of startup companies or companies with a limited operating history.[102] When reliance on the piggyback exception initially is established to publish or submit quotations for the securities of a startup company, the company may, indeed, be a company with a limited operating history without meeting the proposed definition of ''shell company.'' Over time, however, that company might become a shell company within the definition under the proposed Rule if, for example, the issuer continues to have minimal assets and liabilities without conducting any operations. Under the proposed amendment, broker-dealers would need to remain vigilant regarding whether they may rely on, or continue to rely on, the piggyback exception if the issuer of that security becomes a shell company.

The Commission is mindful that the proposal could increase burdens for broker-dealers in determining whether the issuer has become a shell company within the proposed definition. To mitigate costs associated with this determination, the Commission proposes to allow broker-dealers to rely on a publicly available determination by a qualified IDQS or by a registered national securities association that the securities are eligible for the piggyback exception, as discussed further below.[103]

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q32. Should broker-dealers be prohibited from relying on the piggyback exception to publish or submit quotations for securities of shell companies? Why or why not?

Q33. Are there specific types of shell companies that participate in reverse mergers and act as the surviving company such that broker-dealers should be able to rely on the piggyback exception to publish or submit quotations for securities of these shell companies? If so, how should the Commission define such shell companies?

Q34. How, and to what extent, would these proposed amendments affect liquidity, transparency, and capital formation, particularly for small issuers?

Q35. Please describe alternative approaches, as well as their costs and benefits, to address the problems that may arise in the context of Rule 15c2–11 concerning mergers and acquisitions between shell companies and private operating companies.

Q36. Is the proposed definition of ''shell company'' appropriate? Please explain why or why not. Should a definition of ''shell company'' that is different from the one that is being proposed today be used? If so, please explain and provide examples.

(e) Frequency Requirements for the Piggyback Exception

The proposal would eliminate the 12-day requirement in the piggyback exception to modernize the existing Rule in alignment with the current electronic OTC trading market. Currently, a broker-dealer may rely on the piggyback exception without complying with the Rule's information review requirement if the publication or submission of a quotation for a security meets the frequency requirements and is published in an IDQS on each of at least 12 days within the previous 30 calendar days, with no more than four business days in succession without a quotation.[104] The Commission proposes to remove the quoting frequency requirement of ''12 business days'' in light of the evolution of the OTC market from a daily paper publication to a dynamic, electronic trading market. The Commission believes that the 12-day requirement is no longer necessary with the technological advances that have taken place since this provision was adopted because it is now easier for broker-dealers to continuously update and widely disseminate quotations and information about issuers to investors.[105] As proposed, for a broker-dealer to rely on the piggyback exception, the quoted OTC security would need to be the subject of two-way priced quotations within the previous 30 calendar days, with no more than four business days in succession without such a quotation.[106] The proposed amendment to remove the 12-day requirement would not alter the existing exception's provision relating to the absence of quotations, which is the requirement that no more than four consecutive business days elapse without a two-way quotation.[107] For example, if over a 30-calendar-day window, no quotations were published in an IDQS on Mondays through

[99] Item 5.06 of Form 8–K requires disclosure of the material terms of a completed transaction that has the effect of causing a company to cease being a shell company, and Items 2.01(f) and 9.01(c) together require filing Form 10 level information within four business days after completion of the transaction. In addition, entry into the agreement may trigger Form 8–K Item 1.01 (Entry Into a Material Definitive Agreement), and the completion of the transaction may trigger Form 8–K Item 5.01 (Changes in Control of Registrant). Exchange Act Rules 13a–19 and 15d–19 impose disclosure requirements comparable to Item 5.06 of Form 8–K on foreign private issuers that complete transactions in which they cease to be shell companies.

[100] *Registration of Securities on Form S–8,* Securities Act Release No. 7646 (Feb. 25, 1999), 64 FR 11103, 11106 (Mar. 8, 1999).

[101] *See infra* Part III.H.2; Proposed Rule 15c2–11(e)(8).

[102] *See Revisions to Rules 144 and 145,* Securities Act Release No. 8869 (Dec. 6, 2007), 72 FR 71546, 71557 n.172 (Dec. 17, 2007). The Commission has stated that startup companies that have limited operating history do not meet the condition of having ''no or nominal operations'' for the purposes of Rule 144(i)(1)(i). *See id.* The Commission also believes that this statement is appropriate in the context of broker-dealers determining whether a company fits within the meaning of ''shell company'' as defined in Proposed Rule 15c2–11(e)(8) when deciding whether they may rely on the piggyback exception.

[103] *See infra* Part III.F; Proposed Rule 15c2–11(f)(8).

[104] Exchange Act Rule 15c2–11(f)(3)(i) and (ii).

[105] *See infra* Part VIII.C.1.b (estimating that only nine of over 10,000 issuers had fewer than 12 days of published quotations within 30 previous calendar days, with no more than four business days in succession without a quotation).

[106] *See* Proposed Rule 15c2–11(f)(3)(i)(A) and (B).

[107] *See, e.g.,* 1984 Adopting Release at 45121.

Thursdays but two-way priced quotations were published on each of the Fridays, broker-dealers would be able to rely on the piggyback exception.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q37. Commenters are requested to provide views on whether maintaining the frequency requirements of 30 days and no more than four business days in succession without a quotation, as proposed, is necessary or effective to curtail fraud where the piggyback exception has been implicated. What are the costs and benefits of having these frequency requirements?

Q38. Should the 12-day requirement in the existing piggyback exception be retained? Please explain why or why not. What are the costs and benefits of continuing to require at least 12 days of quotations within the previous 30 calendar days?

Q39. Please discuss whether and how the elimination of the 12-day requirement could impact the integrity of the OTC market. In particular, please discuss whether the elimination of the 12-day requirement could contribute to a quoting environment that is more susceptible to fraudulent and manipulative schemes.

Q40. Are there alternative frequency requirements that would be more effective to achieve the objectives of the proposed Rule? Please explain.

Q41. We understand that quotations are often automated and can occur on a daily basis. Are there situations in which quotations that are published or submitted in reliance on the piggyback exception are not published or submitted on each trading day within the previous 30 calendar days? Please discuss.

Q42. Prior to the creation of electronic markets for OTC securities, a broker-dealer that complied with the information review requirement to initiate the publication or submission of quotations for a security, in essence, was the sole publisher of quotations for that security for 30 calendar days of publication, unless another broker-dealer also complied with the information review requirement for that security. The Commission understands that the process of initiating quotations before becoming eligible to rely on the piggyback exception has had the practical effect of incentivizing one broker-dealer to undertake the costs associated with initiating quotations for a security. Once reliance on the piggyback exception is established, other broker-dealers ride on the coattails of the broker-dealer that initiated quotations to comply with the Rule's provisions.[108] Such costs and effort should be greatly reduced with today's technological improvements that have streamlined the ability to obtain information about a company and publish quotations. In light of these considerations, should the 30-day requirement also be removed? What are the costs or benefits, if any, of removing the 30-day requirement while maintaining the no more than four business days in succession without a quotation requirement?

Q43. How, and to what extent, would the elimination of these frequency requirements help to facilitate or impede liquidity, transparency, and capital formation, particularly for small issuers?

(f) General Request for Comment Regarding the Piggyback Exception

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q44. Please discuss any concerns with the proposed paragraph (f)(3)(ii) proviso ''that this paragraph (f)(3) shall apply to a publication or submission of a quotation concerning a security of an issuer included in paragraph (b)(5) of this section only where the information required by paragraph (b)(5) (excluding paragraphs (b)(5)(i)(N) through (P)) is current and has been made publicly available *within six months before the date of publication or submission of such quotation*'' (emphasis added). In particular, please discuss whether there is a concern that investors may not have sufficient notice of a potential loss of a quoted market for a particular security where the piggyback exception becomes unavailable due to proposed paragraph (b)(5) information no longer being current and publicly available (*e.g.,* the information is not updated by the conclusion of the six-month period). Please discuss any ways to address the provision of such notice or any other concerns.

Q45. Should proposed paragraph (f)(3)(ii) permit a grace period during which a security could continue to be quoted in reliance on proposed paragraph (f)(3) for a certain number of days following the expiration of such six-month period? What is the appropriate length of such a grace period? For example, is 15 days an appropriate grace period, or should such period be longer or shorter? Please explain. If the piggyback exception were to permit such a grace period, should proposed paragraph (f)(3)(ii) also include in the proviso, for example, that ''proposed paragraph (f)(3) shall not apply to the publication or submission of a quotation concerning a security of an issuer included in proposed paragraph (b)(5) unless such quotation for such security is published or submitted in an IDQS that specifically identifies quotations concerning any security of an issuer for which proposed paragraph (b)(5) has not been made publicly available within six months before the date of publication or submission of such quotation''? Should such notice be in the form of a special ''tag'' on the quotation, similar to how unsolicited indications of interest are designated? Alternatively, should a notice be continuously and prominently posted on the IDQS's website throughout the grace period? Please explain.

Q46. Alternatively, instead of a grace period, should proposed paragraph (f)(3)(ii) include in the proviso that ''proposed paragraph (f)(3) shall not apply to the publication or submission of a quotation concerning a security of an issuer included in proposed paragraph (b)(5) unless such quotation for such security is published or submitted in an interdealer quotation system that specifically identifies that such proposed paragraph (b)(5) information must be made current and publicly available within 30 calendar days for this paragraph (f)(3) to continue to apply''? Please explain.

Q47. To promote consistency in the operation of the proposed Rule and the expiration of piggyback eligibility, should proposed paragraph (f)(3)(ii) also include in the proviso that ''proposed paragraph (f)(3) shall apply to the publication or submission of a quotation concerning a security of an issuer included in proposed paragraph (b)(5) until the end of the calendar month in which the proposed paragraph (b)(5) information ceases to be current and publicly available''? Please explain.

Q48. Please discuss the advantages or disadvantages of any of the above-discussed provisos to investors, issuers of OTC quoted securities, and other market participants. What, if any, impact would specifically identifying these types of quotations have on liquidity? Please explain. What would be the costs and benefits of including any of the above-discussed provisos? Please explain. Are any of these provisos workable? Are there suggestions to revise the proviso to improve workability; for example, should a broker-dealer be required to provide notice to the IDQS that the proposed paragraph (b)(5) information has not been made publicly available

[108] *See* 1998 Proposing Release at 9664.

and piggyback eligibility is about to expire? Please explain.

Q49. Is there a certain price threshold below which the piggyback exception should not apply? Why or why not? Commenters are requested to please provide any data they might have. If so, how should such a price threshold be measured? For example, should the threshold amount apply to the 30-day weighted average price of the security if the security is priced below a certain amount for more than 12 months?

Q50. It is the Commission's understanding that broker-dealers tend to rely on the exception to the Rule provided in existing paragraph (f)(3)(i) and that broker-dealers tend not to rely on the exception in existing paragraphs (f)(3)(ii) and (f)(3)(iii). Should existing paragraph (f)(3)(ii), which allows broker-dealers to rely on the piggyback exception to publish or submit quotations in an IDQS that does not identify unsolicited customer indications of interest, be eliminated from the Rule? Why or why not? How, and to what extent, would such elimination affect liquidity, and capital formation, particularly for small issuers? Should proposed paragraphs (f)(3)(i)(A) and (f)(3)(i)(B) be combined? Why or why not? Should existing paragraph (f)(3)(iii), which allows market makers to piggyback off of their own quotations, be eliminated from the Rule? Why or why not? How, and to what extent, would such elimination affect liquidity and capital formation, particularly for small issuers? How would investors be affected? How, and to what extent, do market participants rely on these exceptions? Do market participants anticipate relying on them given the other amendments the Commission is proposing today? Why or why not?

D. Proposed Amendments to the Unsolicited Quotation Exception

1. Existing Unsolicited Quotation Exception

Currently, broker-dealers can publish quotations for unsolicited customer quotations without complying with the information review requirement. The existing Rule excepts from the information review requirement the publication or submission of quotations by a broker-dealer where the quotations represent unsolicited customer orders.[109] When the exception was adopted, the Commission stated its belief that quotations representing unsolicited customer interest presented little potential for manipulative abuse[110] because such trading interest was not initiated by the broker-dealer, and thus the broker-dealer would not have had a motive to affect the price for the security involved.[111] However, this may no longer be the case today. The Commission is concerned that certain persons may have the incentive to use the unsolicited quotation exception to avoid the Rule's information review requirement for improper purposes. As discussed below, the proposed amendments to the unsolicited quotation exception are designed to reduce the potential for misuse of this exception.

2. Proposed Amendments to the Unsolicited Quotation Exception

Under the proposal, the unsolicited quotation exception would not be available for company insiders if the information required to be reviewed under the Rule was not current and publicly available. This proposed amendment is intended to help retail investors by encouraging corporate insiders to make publicly available current information about the company.

To rely on the proposed unsolicited quotation exception, a broker-dealer would need to determine whether proposed paragraph (b) information is current and publicly available. If so, a broker-dealer would not need to determine whether the quotation would be published or submitted by or on behalf of a company insider (*i.e.,* the chief executive officer, members of the board of directors, officers, or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer). However, if a broker-dealer that seeks to rely on the proposed unsolicited quotation exception determines that proposed paragraph (b) information is not current and publicly available, such broker-dealer would need to determine whether the quotation would be published or submitted by or on behalf of a company insider. As proposed, a broker-dealer may not rely on the unsolicited quotation exception when (1) the quotation would be published or submitted by or on behalf of a company insider and (2) proposed paragraph (b) information is not current and publicly available.

(a) Current and Publicly Available Information

Proposed paragraph (f)(2)(ii) would permit a broker-dealer to publish or submit a quotation by or on behalf of certain company insiders in reliance on the unsolicited quotation exception only if proposed paragraph (b) information is current and publicly available, as defined under proposed paragraphs (e)(1) and (e)(4), respectively. This proposed requirement is intended to help prevent the potential misuse of the unsolicited quotation exception by company insiders who may take advantage of access to information about the company that is not available to non-insiders by, for example, creating the appearance of an active market in quoted OTC securities to entice new investors to invest, or to facilitate pump-and-dump schemes.

Further, the proposal should encourage greater transparency for investors. For instance, a company insider may be incentivized to use his or her status within the company to encourage the issuer to provide or publish information so that a broker-dealer could rely on the unsolicited quotation exception. In addition, the proposed amendments to the Rule would not preclude a company insider from engaging in trading activity; Rule 15c2–11 applies only to the publication and submission of quotations in a quotation medium. Thus, the Rule, as proposed, would not prevent a company insider's purchases or sales in response to quotations.

(b) Company Insiders

For purposes of proposed paragraph (f)(2)(ii), quotations published or submitted by or on behalf of company insiders would include quotations published or submitted, directly or indirectly, by or on behalf of the chief executive officer, members of the board of directors, officers, or any person, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer. Such company insiders may have a heightened incentive to engage in misconduct to artificially affect the price and trading volume of an OTC security; for example, company insiders may stand to profit by selling the company shares they own during a pump and-dump scheme. Such company insiders may also have the ability to control or influence the amount and type of information that an issuer provides to the public.

The chief executive officer, members of the board of directors, and officers

[109] Exchange Act Rule 15c2–11(f)(2).

[110] *See* 1984 Adopting Release at 45120.

[111] *Id.; see also Initiation or Resumption of Quotations Without Specified Information,* Exchange Act Release No. 19673 (Apr. 14, 1983), 48 FR 17111, 17113 (Apr. 21, 1983).

have the ability to influence, and, in some cases, control the issuer's activities, including the extent and use of information it makes available to the public. The ability to influence or control the issuer's activities potentially provides persons exercising such influence or control with both the incentive to use such information to artificially affect the price of the company's securities as well as the ability to make information available to investors. Beneficial ownership of more than 10 percent of an issuer's equity securities indicates a concentration of ownership that may increase a person's control over the issuer. Such control may give a person the ability to influence whether and to what extent there is public information about the issuer.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q51. How frequently do broker-dealers rely on the unsolicited quotation exception? Commenters are requested to please provide data to support their answer if possible.

Q52. Please discuss whether, and to what extent, the proposed amendments to the unsolicited quotation exception, if adopted, would impact liquidity, capital formation, investor protection, and the integrity of the OTC market or other markets.

Q53. Please discuss whether, and to what extent, the proposed amendments to the unsolicited quotation exception, if adopted, would impact company insiders. Please discuss ways to mitigate any undue impact on company insiders while preventing misuse of the exception to facilitate fraudulent and manipulative schemes.

Q54. Should the Rule retain the unsolicited quotation exception in its existing form? Please explain why or why not.

Q55. Is there an alternative way to modify the exception that would help to prevent misuse of the exception to facilitate fraudulent and manipulative schemes? If so, please describe specific modifications to the exception and any resulting benefits and costs.

Q56. Please discuss any advantages and disadvantages of rescinding the unsolicited order exception.

Q57. The proposed amendments would make the unsolicited quotation exception unavailable for publications of quotations by or on behalf of certain persons—the chief executive officer, members of the board of directors, officers or any person, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of equity security of the issuer—unless proposed paragraph (b) information is current and publicly available. Are there additional persons that should be included in this list (*e.g.,* an affiliate of the issuer) with respect to the unsolicited quotation exception? If yes, should such terms be defined? Are there existing definitions in other rules or regulations that could be used in this context? Why would the use of such other definitions be appropriate? Should the limitation of the unsolicited quotation exception for quotations of beneficial owners be a higher, or lower, percentage of beneficial ownership of the outstanding units or shares of any class of any equity security of the issuer? If so, what percentage of beneficial ownership should the unsolicited quotation exception use and why? Please explain.

Q58. Please describe how a broker-dealer would determine that a quotation is made by or on behalf of the chief executive officer, members of the board of directors, officers or any person, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of equity security of the issuer.

Q59. Should beneficial ownership of an issuer's convertible bonds be included in the calculation of the percentage of ownership for purposes of determining whether a person is a company insider for purposes of the proposed unsolicited quotation exception? Please explain.

E. Proposed New Exceptions To Reduce Burdens

Currently, paragraph (f) of Rule 15c2–11 provides conditional exceptions to the Rule's information review requirement.[112] The Commission is proposing to add three new exceptions to the Rule to reduce burdens on broker-dealers where the Rule's goals can be achieved through alternative means, for example, where adequate issuer information is current and publicly available, or where a regulated entity performs a similar review of the issuer in connection with an offering or otherwise complies with the Rule's proposed information review requirement.[113] The Commission preliminarily believes that applying the Rule in these three cases does not further its policy goals and investor protections.

1. ADTV and Asset Tests

The Commission is proposing to add an exception to the Rule to except a broker-dealer from conducting the information review if the security is highly liquid and the issuer is well capitalized. This amendment may provide retail investors with greater price transparency because securities of issuers that may currently meet the exception, but are not quoted, may develop a quoted market. Furthermore, this proposed exception could facilitate capital formation by removing the required review for securities that are less susceptible to fraud and manipulation based on liquidity of the securities and size of the issuer. In addition, fraudulent and manipulative schemes, such as pump-and-dump schemes, or other abusive activities involving OTC securities, generally do not involve issuers with substantial assets.[114]

The first proposed exception, contained in proposed paragraph (f)(5), is conditioned on an OTC security satisfying a two-prong test based on (1) the security's average daily trading volume (''ADTV'') value during a specified measuring period (the ''ADTV test''); and (2) the issuer's total assets and unaffiliated shareholders' equity (the ''asset test''). To rely on the proposed new exception from complying with the Rule's information review requirement, a broker-dealer would need to determine that both prongs of the exception are met.[115] Proposed paragraph (f)(5)(ii) would also include a proviso that limits the availability of the new exception to

[112] The existing exceptions to the Rule include (1) quotations of a security admitted to trade on a national securities exchange; (2) quotations representing a customer's unsolicited indication of interest; (3) quotations for a security that meets the requirements of the piggyback exception; (4) quotations for a municipal security; or (5) quotations of a security that is traded on the Nasdaq Stock Market, which exception the Commission is proposing to eliminate. *See* Exchange Act Rule 15c2–11(f)(1) through (5).

[113] *See* Proposed Rule 15c2–11(f)(5) through (7).

[114] For example, the typical pump-and-dump scheme most often involves issuers with limited assets and thinly traded securities. *See infra* note 124.

A 2018 analysis of 318 quoted OTC securities that were the subject of recent Commission-ordered trading suspensions showed that the issuers, on average, had approximately $86.14 million in total assets, with a median of approximately $1.04 million of total assets. They also had an average of $10.42 million in shareholders' equity, with a median of approximately negative $0.26 million. Although the average total assets and shareholders' equity amounts are higher than the proposed thresholds for the asset test, as of the date of this proposal, no issuer subject to a trading suspension satisfied both the ADTV test and the asset test, the combination of which the Commission is proposing herein.

[115] However, as noted below, the excepted broker-dealer would still be subject to the recordkeeping requirement in proposed paragraph (d)(2) of the Rule. Additionally, the broker-dealer could rely on the determination made by an appropriate third party pursuant to proposed paragraph (f)(8), as discussed below.

those quoted OTC securities where proposed paragraph (b) information is current (*i.e.,* in accordance with the proposed definition of current, which would incorporate time frames identified in proposed paragraphs (b)(1) through (b)(5)) and publicly available. While the proposed exception is intended to ease burdens on broker-dealers publishing quotations for quoted OTC securities, the proviso is designed to limit the exception to those OTC securities that have greater transparency and are less likely to be involved in fraudulent and manipulative conduct in the OTC market.

(a) ADTV Test

The first prong of the new exception in proposed paragraph (f)(5)(i)(A) would except publishing or submitting a quotation for a security with a worldwide ADTV value of at least $100,000 during the 60 calendar days immediately before the date of publishing such quotation.[116] This $100,000 ADTV value threshold, which would need to be calculated daily using the ADTV value over the preceding 60-calendar-day measuring period, is intended to mirror the threshold that is used in Rules 101 and 102 of Regulation M, which, similarly, is designed to prevent manipulative activities but in connection with a distribution of securities.[117] The ADTV value threshold and 60-calendar-day measuring period also are designed to focus the proposed exception on the types of securities that typically are not the subject of Commission-ordered trading suspensions or the subject of fraudulent and manipulative conduct, including the type of short-term manipulation that is frequently seen in connection with microcap securities, as a result of their greater level of OTC market liquidity.[118]

The Commission believes that the majority of quoted OTC securities of U.S. companies without a published quotation in an IDQS trade infrequently and are unlikely to have an ADTV value of $100,000 or more during the 60-calendar-day measuring period to satisfy the first prong under proposed paragraph (f)(5)(i)(A). The Commission understands that quoted OTC securities involved in fraud and manipulation often are thinly traded and that the ADTV for such securities rarely reaches a value of $100,000 over an extended period of time. Thus, the Commission believes that the ADTV test should help to narrowly tailor the exception to exclude securities that are more likely to be involved in short-term price manipulation in the OTC market.

To satisfy the proposed ADTV test, a broker-dealer generally would be able to determine the value of a security's ADTV from information that is publicly available and that the broker-dealer has a reasonable basis for believing is reliable.[119] Generally, any reasonable and verifiable method may be used (*e.g.,* ADTV value could be derived from multiplying the number of shares by the price in each trade).[120]

(b) Asset Test

In addition to the ADTV test (first prong), the Commission is proposing to include a second prong to the exception in proposed paragraph (f)(5)(i)(B) that would limit the availability of the proposed exception to quoted OTC securities of issuers that have at least $50 million in total assets *and* unaffiliated shareholders' equity of at least $10 million (as reflected on the issuer's publicly available audited balance sheet issued within six months of the end of the issuer's most recent fiscal year).[121] The second prong's proposed combined thresholds (*i.e.,* OTC securities of issuers having at least $50 million in total assets and unaffiliated shareholders' equity of at least $10 million) are based on an analysis of quoted OTC securities that had been the subject of Commission-ordered trading suspensions.[122] The asset test is intended to narrowly tailor the proposed Rule to apply to those securities that the Commission believes are more likely to be involved in fraudulent or manipulative schemes in the OTC market. Using ''unaffiliated'' shareholder equity (*i.e.,* equity that is not owned by shareholders that are affiliated with the issuer) is intended to further reduce the likelihood of the exception being applied in cases where there may be a heightened incentive to engage in fraudulent or manipulative conduct.

To determine whether publishing or submitting a quotation for a quoted OTC security of a particular issuer would meet the required asset test under proposed paragraph (f)(5)(i)(B), a broker-dealer would need to look to an audited balance sheet issued by the issuer (within six months of the end of the issuer's most recent fiscal year) that has been audited by an independent public accountant who has prepared a report in accordance with the provisions of Rule 2–02 of Regulation S–X. For exempt foreign private issuers, a broker-dealer would make this determination using the balance sheet that is prepared in accordance with a comprehensive body of accounting principles, audited in compliance with requirements of the country of incorporation, and reported on by an accountant in good standing under the regulations of that jurisdiction.[123]

A broker-dealer would be permitted to rely on this exception only where the issuer's recent publicly available audited balance sheet was issued within six months from the end of the issuer's most recent fiscal year. A broker-dealer could use an issuer's audited balance sheet from the prior fiscal year (*i.e.,* the year before the most recent fiscal year) until either (1) the issuer issued an audited balance sheet from the most

[116] *See* Proposed Rule 15c2–11(f)(5)(i)(A). The proposed threshold of securities with an ADTV value of $100,000, as well as $50 million in total assets and $10 million in shareholders' equity, as discussed below, was suggested by commenters on the Rule's 1999 release and others, including IDQS operators. *See, e.g.,* Letter from Lee B. Spencer, Jr. & R. Gerald Baker, Securities Secs. Indus. Ass'n, to Jonathan G. Katz, Sec'y, SEC (May 6, 1999), *available at https://www.sec.gov/rules/proposed/s7599/spencer2.htm* (''SIA Letter''). Commenters on the 1999 Reproposing Release also suggested reducing the previously proposed ADTV measuring period from six full calendar months to 60 days as in Regulation M. *See id.*

[117] The Commission believes using Regulation M as a model is appropriate because Regulation M's ADTV standard is relevant for determining which securities are more difficult to manipulate. *See, e.g., Anti-Manipulation Rules Concerning Securities Offerings,* Exchange Act Release No. 38067 (Dec. 20, 1996), 62 FR 520 (Jan. 3, 1997). Under Regulation M, a security's ADTV value is determined based solely on information that is publicly available and from a reasonable source. *See supra* note 116 and accompanying text. Regulation M uses a similar ADTV test to support a shorter (one business day) restricted period for securities with an ADTV value of at least $100,000 as measured over a 60-day period, if the issuer has a public float value of at least $25 million. *See* Rule 100 of Regulation M. While Regulation M is intended to prevent manipulative activities during a ''distribution,'' as that term is defined in Regulation M, the proposed exception would use a similar ADTV value threshold over a 60-calendar-day measuring period in order to focus the Rule on more thinly traded, microcap securities that are more likely to be involved in a short-term price manipulation in the OTC market. However, the assets prong of the proposed exception, discussed below, does not use Regulation M's public float test because public float is based on market prices, which can be volatile. The asset prong instead uses shareholder equity, which is book value and is based on information included in the issuer's audited balance sheet.

[118] *See infra* note 254 and accompanying text.

[119] For instance, a broker-dealer could rely on trading volume as reported by self-regulatory organizations (''SROs'') or comparable entities. Electronic information systems that regularly provide information regarding securities in markets around the world also provide a reliable means to determine worldwide trading volume in a particular security.

[120] This is similar to the guidance in Regulation M regarding how to calculate ADTV value. *See Anti-manipulation Rules Concerning Securities Offerings,* Exchange Act Release No. 38067 (Dec. 20, 1996), 62 FR 520, 527 (Jan. 3, 1997).

[121] *See* Proposed Rule 15c2–11(f)(5)(i)(B).

[122] *See infra* note 124 and accompanying text.

[123] This balance sheet may be found in filings with the Commission on Forms 20–F or 6–K, or publications by the issuer pursuant to Exchange Act Rule 12g3–2(b) or elsewhere.

recent fiscal year, or (2) six months have passed after the end of the issuer's most recent fiscal year, if the issuer still has not issued a more recent audited balance sheet. The six month period following the end of the issuer's most recent fiscal year is intended to provide sufficient time for the issuer's audited balance sheet to be prepared and issued.

To qualify for the proposed exception, proposed paragraph (b) information must also be current and publicly available. These timing requirements should help to ensure that information available to investors is not stale, and the requirements align with existing industry standards with respect to when audited balance sheets must be issued. At the same time, because the typical pump-and-dump scheme often involves issuers with limited assets (in addition to having thinly traded securities), the Commission believes that the proposed two-prong exception (*i.e.,* based on a security's ADTV value and the issuer's total assets and unaffiliated shareholders equity), should help to ensure that the Rule's policy goal—of deterring broker-dealers from commencing quotations for quoted OTC securities that may facilitate a fraudulent or manipulative scheme—is not undermined.[124]

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q60. How would market participants generally calculate ADTV value for the purposes of this exception? What data sources would they use, and what is the reliability and availability of these data sources? Please be specific. Is ADTV value an appropriate measure to use in the context of measuring a security's susceptibility to fraudulent or manipulative practices? Why or why not?

Q61. Should proposed paragraph (f)(5) include an additional requirement that the security that is the subject of the publication or submission of a quotation meet a certain minimum bid price? Why or why not? For such a requirement, what would be the appropriate minimum bid price?

Q62. Should the proposed exception's ADTV test prong, contained in proposed paragraph (f)(5)(i)(A), also include the ADTV value of convertible securities where the underlying security satisfies the proposed ADTV threshold? If so, commenters should explain their rationale. Should the proposed exception's ADTV test prong, contained in proposed paragraph (f)(5)(i)(A), exclude trading volume outside the U.S.? Please explain.

Q63. Should the dollar value of the ADTV test prong of the proposed exception be higher than $100,000 (*e.g.,* $500,000 or $1 million), or should it be a lower amount (*e.g.,* $50,000)? Commenters should specify what the dollar value should be and provide any relevant data or analysis to support their response. If the proposed exception's ADTV test prong were adopted, should it be adjusted for inflation going forward? If yes, how often? Please explain.

Q64. Should the proposed ADTV test measuring period be longer than 60 calendar days (*e.g.,* six months) or shorter (*e.g.,* 30 days)? Should the length of the measuring period depend on the amount of the value of ADTV threshold (*i.e.,* should a higher dollar value of ADTV threshold be allowed but require a shorter measuring period)? Would a shorter measuring period (*e.g.,* 30 days) be less effective in measuring a security's susceptibility to fraudulent or manipulative practices? Why or why not?

Q65. To meet the proposed exception, a broker-dealer would need to determine the value of a security's worldwide ADTV by doing a daily calculation over a 60-calendar-day measuring period. Should this calculation be less frequent? For example, should the proposed exception be modified to require a calculation done once a month? Would this alternative ADTV measuring standard be significantly less burdensome? Would this alternative ADTV measuring standard be as effective as a daily calculation over a longer period in determining which securities are less likely to be the subject of a Commission-ordered trading suspension or involved in manipulative conduct in the OTC market? Please explain.

Q66. Because a broker-dealer generally would be able to determine the value of a security's worldwide ADTV from information that is publicly available and that the broker-dealer has a reasonable basis for believing is reliable, as discussed above, should the proposed exception in paragraph (f)(5) be modified so as not to include the proviso that would limit the availability of the exception to those quoted OTC securities where proposed paragraph (b) information is current and publicly available? Would including the proviso render the exception less effective in focusing the proposed Rule on the more thinly traded microcap securities that are more likely to be involved in manipulative conduct in the OTC market? Why or why not?

Q67. Rule 101 of Regulation M includes an exception from the trading prohibitions in Regulation M for ''actively-traded'' securities (*i.e.,* securities with a value of ADTV of $1 million or more, using a two-full calendar month measuring period, if the issuer has a public float value of at least $150 million). As an alternative, should the Commission propose an ADTV prong of the exception in proposed paragraph (f)(5)(i)(A) to parallel the $1 million ADTV threshold of Regulation M's actively-traded securities exception? Please explain.

Q68. If a quoted OTC security ceases to meet the requirements of either of the proposed ADTV test or the assets test, and if a broker-dealer may not rely on the piggyback exception, should the proposed exception continue for a period of time, such as 10 business days, to allow for a broker-dealer to review the required issuer information?

Q69. Should the threshold amount for the unaffiliated shareholders' equity test be higher than $10 million (*e.g.,* $20 million)? If so, please explain. Are there circumstances under which it may be appropriate to permit a lower threshold amount? If so, please explain.

Q70. Should the exception in proposed paragraph (f)(5)(i)(B) be modified to include a public float value test, similar to that contained in Regulation M, instead of the combined asset test proposed? If so, should the public float value use Regulation M's $25 million threshold (for ''actively-traded'' securities) or some higher or lower amount? Would public float information be easy or difficult to obtain for broker-dealers trying to rely on this proposed exception?

Q71. Should the unaffiliated shareholders' equity test accommodate equity that is owned by shareholders that are affiliated with the issuer? Please explain why or why not. Would including equity that is owned by shareholders that are affiliated with the issuer increase the likelihood of the exception being misused or applied in cases where there may be a greater potential for fraudulent and manipulative conduct? In making the proposed unaffiliated shareholders' equity calculation, how difficult or burdensome would it be to identify equity that is owned by shareholders

[124] *See, e.g.,* Andreas Hackethal *et al., Who Falls Prey to the Wolf of Wall Street? Investor Participation in Market Manipulation* (ECGI, Working Paper No. 446, 2019), *available at https://ecgi.global/sites/default/files/working_papers/documents/finalleuzmeyermuhnsolteshackethal.pdf* (stating that in ''pump-and-dump'' schemes, promoters often target thinly traded ''penny'' stocks for which limited liquidity leads to fast price increases when demand rises); *see also* Michael Hanke & Florian Hauser, *On the effects of stock spam emails,* 11 J. Fin. Mkts. 57, 60 (2008).

that are affiliated with the issuer? Please explain.

Q72. Would a balance sheet, particularly a balance sheet for a catch-all issuer, contain sufficient information to permit broker-dealers to make the proposed unaffiliated shareholders' equity calculation?

Q73. Should the use of balance sheets of an exempt foreign private issuer be limited to balance sheets prepared in accordance with U.S. generally accepted accounting principles (''GAAP'')?

Q74. Should the exception in proposed paragraph (f)(5)(i)(B) be available to securities that may satisfy the ADTV test, but where the issuer of the security is a domestic issuer, that is not a prospectus issuer, Reg. A issuer, or a reporting issuer and there are no publicly available U.S. GAAP financials (*i.e.,* for purposes of meeting the proposed assets test in proposed paragraph (f)(5)(i)(B))? Please explain why or why not.

Q75. The Commission acknowledges that an exception conditioned on certain value thresholds could induce arbitrage for accounting purposes. Should the use of balance sheets of an exempt foreign private issuer that are not prepared in accordance with U.S. GAAP be limited to balance sheets prepared in accordance with the International Financial Reporting Standards (''IFRS'') issued by the International Accounting Standards Board (''IASB'' or ''IFRS–IASB'')? Is there a way to ensure that a broker-dealer does not ''cherry pick'' from accounting standards to take only the most beneficial figures from what is available so that the broker-dealer can rely on an exception conditioned on an asset test?

Q76. In evaluating foreign currency balance sheets, should the Commission modify the proposed assets prong of the exception in proposed paragraph (f)(5)(i)(B) to specify whether the equity balance is to be measured using today's current exchange rates or the rates in effect at the balance sheet date? Please explain why or why not. Commenters are requested to please also explain in their response whether it is more appropriate to use rates based on balance sheet date, or date of quotation publication.

Q77. For 20–F issuers filing IFRS–IASB or balance sheets under another standard that are reconciled to U.S. GAAP, should the proposed asset test in proposed paragraph (f)(5)(i)(B) be modified to specify whether the home country numbers or the reconciled numbers may be used for purposes of determining eligibility under the proposed exception? Please explain. If not, why not?

Q78. Alternatively, for those issuers not using IFRS–IASB but that have to reconcile to U.S. GAAP, should the asset test in proposed paragraph (f)(5)(i)(B) be modified to require such issuers to use the reconciled number for purposes of determining eligibility under the proposed exception? Please explain why or why not.

Q79. With respect to issuers that are not prospectus issuers or reporting issuers, for purposes of determining whether such issuers would meet the requirements of the proposed assets and the unaffiliated shareholders' equity prongs in proposed paragraph (f)(5)(i)(B) of the exception, should the Commission specify that the audit of the balance sheet may be performed in accordance with either the auditing standards applicable to such issuers (*e.g.,* the standards of the American Institute of Certified Public Accountants (''AICPA'') for domestic issuers or applicable home country standards, which may be the standards of the International Auditing and Assurance Standards Board for a foreign issuer) or the standards of the Public Company Accounting Oversight Board? Please explain why or why not.

Q80. With respect to issuers that are not prospectus issuers or reporting issuers, should the independence requirements of Rule 2–01 of Regulation S–X apply to the exception in proposed paragraph (f)(5)(i)(B)? For example, if a certain issuer is currently only required to obtain an audit that is subject to the audit and independence standards of the American Institute of Certified Public Accountants, should ''independent'' for purposes of this proposed exception also be determined by the AICPA's independence standards (*i.e.,* not Rule 2–01)? Please explain why or why not. Commenters should include in their response whether the proposed exception should explicitly require the auditor's report, in particular, to be publicly available.

Q81. Should reliance on the exception be limited to those quoted OTC securities that satisfy the requirements of just one instead of both prongs of the proposed exception? Please explain why or why not. Are there alternative tests that should be considered? If so, please explain.

Q82. Should the exception be unavailable for securities of reporting issuers that are delinquent in their reporting obligations?

2. Underwritten Offerings

The proposal would add an exception to the Rule to allow a broker-dealer to publish a quotation of a security, without conducting the required information review, for an issuer with an offering that was underwritten by that broker-dealer. This proposal may potentially expedite the availability of securities to retail investors in the OTC market following an underwritten offering, which may facilitate capital formation.

Broker-dealers that act as underwriters in registered offerings or offerings conducted pursuant to Regulation A are subject to potential liability for misstatements and omissions in the related prospectus or offering circular. In a registered offering, they are subject to potential liability under Section 11 of the Securities Act for untrue statements of material facts or omissions of material facts required to be included in a registration statement or necessary to make the statements in the registration statement not misleading at the time the registration statement became effective. In registered offerings and Regulation A offerings, they are subject to potential liability under Section 12(a)(2) of the Securities Act for any prospectus or oral communication that includes an untrue statement of material fact or omits to state a material fact that makes the statements made, based on the circumstances under which they were made, not misleading.

Because of the liability attached to underwriting activity, an underwriter typically conducts a due diligence review to mitigate potential liability associated with underwriting an offering of securities. Depending on its breadth and quality, this review may permit an underwriter to assert a defense to liability under Section 11 or Section 12(a)(2).[125] As a result, underwriters of registered and Regulation A offerings are incentivized to confirm that the information provided to investors in the prospectus for a registered offering and offering circular for a Regulation A offering is materially accurate and obtained from reliable sources.

Proposed Rule 15c2–11(a)(1) would prohibit the publication or submission for publication of a quotation unless (1) the broker-dealer has in its records the

[125] Securities Act Section 11(b) provides a defense from liability to an underwriter, with respect to non-expertized portions of the registration statement, only if the underwriter ''had, after reasonable investigation, reasonable ground to believe and did believe . . . that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.'' Securities Act Section 11(b). Under Section 12(a)(2), an underwriter may claim a defense if the underwriter ''sustain[s] the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission.'' Securities Act Section 12(a)(2).

required proposed paragraph (b) information; (2) the proposed paragraph (b) information is current and publicly available; and (3) based on a review of the proposed paragraph (b) information and any other documents and information required by proposed paragraph (c), the broker-dealer has a reasonable basis under the circumstances for believing that the proposed paragraph (b) information is accurate in all material respects and that the sources of the proposed paragraph (b) information are reliable.

With respect to quotations published or submitted less than 90 calendar days following effectiveness of a registration statement for a registered offering or less than 40 calendar days following qualification of the offering statement for offerings conducted pursuant to Regulation A, the required proposed paragraph (b) information would consist of the final prospectus for the registered offering or the offering circular for the Regulation A offering. Underwriters of such offerings would typically have in their records the final prospectus or offering circular, which would also be publicly available on the Commission's EDGAR system. In addition, given the liability underwriters assume under Section 12(a)(2) and, for registered offerings, Section 11, the Commission believes they would likely have a reasonable basis for believing, particularly for a limited period of time following effectiveness of the registration statement or qualification of the related Form 1–A, that the prospectus or offering circular is accurate in all material respects and that the sources of that information are reliable.

Thus, the Commission is proposing to add proposed paragraph (f)(6), which would except the publication or submission of a quotation concerning a security by a broker-dealer that is named as an underwriter in a registration statement for an offering of that class of security referenced in proposed paragraph (b)(1) of the Rule or in an offering circular for an offering of that class of security referenced in proposed paragraph (b)(2) of the Rule.[126] The proposed exception would also include a proviso that states that the exception would apply only to the publication or submission of quotations concerning a class of security included in the registered or Regulation A offering within the time frames identified in proposed paragraphs (b)(1) or (b)(2).[127]

Because of a broker-dealer's involvement in the registered or Regulation A offering, including their assumption of liability for misstatements or omissions in the prospectus or offering circular and public availability of the proposed paragraph (b) information on EDGAR, the Commission believes that a subsequent information review requirement would be redundant and, thus, unnecessary. The public availability of the proposed paragraph (b) information is consistent with the policy goals of the Rule in addressing the heightened potential for fraudulent and manipulative conduct involving securities of little or lesser-known issuers or for which information is not publicly available.

Accordingly, the Commission believes that the proposed underwriter exception is appropriate and would provide comparable—if not greater—protections to investors as the review conducted by broker-dealers under Rule 15c2–11. While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q83. Are the liability standards and professional obligations of underwriters in registered and Regulation A offerings a sufficient basis for providing the proposed exception? Please explain.

Q84. An underwriter in a Regulation A offering is subject to a different liability standard than an underwriter in an offering registered under the Securities Act (*i.e.,* Section 12(a)(2) applies for a Regulation A offering, while Section 11 imposes strict liability in a registered offering). In view of the different liability standards, the Commission seeks comment on whether it is appropriate to provide this exception in connection with securities issued in Regulation A offerings.

Q85. Should underwritten shelf offerings also be included in the exception for publications or submissions of quotations for securities issued in underwritten offerings, even though it is possible that the shelf takedown could occur up to three years after the effectiveness of the shelf registration statement? Please explain why underwritten shelf registration statements should be included in the exception or excluded from the exception.

Q86. Are there other categories of issuers or potentially other categories of securities, not otherwise discussed in this release, that are unlikely to be involved in fraud in the OTC market for which publications or submissions of quotations of their securities also should be excepted from the Rule's provisions? Please explain.

Q87. Are there publications or submissions of quotations for other securities (*e.g.,* debt securities, non-participatory preferred stock, or investment grade asset-backed securities) that have characteristics similar to those of the securities set forth above that should also be excepted from the Rule's provisions? If so, please explain.

3. Qualified IDQS Complies With the Information Review Requirement

The Commission is proposing to add an exception to the Rule that would except a broker-dealer from conducting the information review if a regulated third party conducts such review. This should increase the number of securities that are available to be quoted in the OTC market, providing retail investors with greater choices of securities in which to invest. The exception also may facilitate capital formation by reducing burdens on broker-dealers that are able to begin a quoted market in reliance on the exception.

In particular, the Commission is proposing to add a new exception in which a qualified IDQS may undertake to comply with the Rule's information review requirement and broker-dealers may rely on the review performed by the qualified IDQS.[128] The proposed exception is intended to reduce burdens on broker-dealers while maintaining an appropriate level of investor protection. Specifically, proposed paragraph (f)(7) would except from the Rule's information review requirement a broker-dealer that publishes or submits a quotation in a qualified IDQS where the qualified IDQS complies with the information review requirement and also makes a publicly available determination of such compliance with the information review requirement.[129]

To rely on the proposed exception, a broker-dealer would need to commence a quoted market by publishing or submitting a quotation within three business days after the qualified IDQS makes its determination (of compliance)

[126] *See* Proposed Rule 15c2–11(f)(6). The Commission is not proposing that the exception in proposed paragraph (f)(6) alter or create an exception to Regulation M.

[127] While the proposed exception in proposed paragraph (f)(6) would operate to except publications of quotations concerning these securities from the Rule's application entirely, the proposed proviso would clarify that reliance on the exception is only permitted for a limited period of time following effectiveness of the registration statement or qualification of the Regulation A offering statement.

[128] *See* Proposed Rule 15c2–11(f)(7).

[129] *Id.*

publicly available.[130] The window of three business days is designed to help ensure that there are a limited number of days between the information review conducted by the qualified IDQS and the first quotation by a broker-dealer in reliance on this proposed new exception.[131] The three-business-day window also is designed to provide certainty to a qualified IDQS regarding the timing of its obligation to review additional current reports, such as Forms 8–K and Forms 1–U. Under the proposal, a qualified IDQS would not need to review current reports filed after the qualified IDQS publishes its determination that it complied with the information review requirement. The three-business-day window is also designed to encourage the commencement of a quoted market close in time following a qualified IDQS's information review and publicly available determination of the qualified IDQS's compliance with the review requirement.

The proposed exception, however, would not be available if the issuer of the security to be quoted is a shell company, or 30 calendar days after a broker-dealer first publishes or submits such quotation, in the qualified IDQS, in reliance on this paragraph (f)(7).[132]

The Commission does not believe that it would advance the Rule's purpose to allow broker-dealers to rely on this exception to publish or submit quotations for securities of shell companies or to rely on the exception indefinitely. The Commission believes that limiting the availability of the exception is appropriate where there is an increased risk for potential fraud and manipulation.[133]

As discussed above, proposed paragraph (a)(2) would set forth the review requirement for a qualified IDQS to be able to make known to others the quotation of a broker-dealer that publishes or submits a quotation for a security. Thus, once the qualified IDQS has complied with the Rule's information review requirement and made a publicly available determination that the requirements of the proposed paragraph (f)(7) exception are met, any broker-dealer would be able to publish or submit quotations for the security without any delay. In other words, unlike the 30-day timing requirement under the piggyback exception, there would be no delay for this exception to apply, such that a broker-dealer would be able to rely on the exception immediately.

Moreover, broker-dealers would only be able to rely on the exception in proposed paragraph (f)(7) during the 30 calendar days after the *first* quotation is submitted or published under proposed paragraph (f)(7). The Commission believes that 30 calendar days should provide sufficient time for broker-dealers to publish or submit quotations in order to establish the frequency of quotations that would be required for them to be able rely on the piggyback exception (30 calendar days with no more than four business days in succession without a quotation). As discussed above, the exception in proposed paragraph (f)(7) is not available for shell companies. Additionally, a qualified IDQS would not be able to complete the required review if proposed paragraph (b) information were not current and publicly available.[134] Accordingly, when a broker-dealer is no longer able to rely on the exception in proposed paragraph (f)(7) and may begin to rely on the piggyback exception, the broker-dealer will not have to determine if the issuer is a shell company or if there is current and publicly available proposed paragraph (b) information. If, however, the security has been the subject of a trading suspension pursuant to Section 12(k) of the Exchange Act, a broker-dealer might not be able to rely on the piggyback exception. In such case, 30 calendar days may not be sufficient to establish broker-dealer reliance on the piggyback exception.

If, however, after 30 days, broker-dealers have not begun to publish or submit quotations on a continuous basis, there could be a break in quotations that would prevent broker-dealers from then being able to rely on the piggyback exception.[135] Should such a break in quotations occur, the qualified IDQS would be required to comply with the Rule's information review requirement before broker-dealers would be able to publish or submit quotations pursuant to this proposed exception.[136]

Similar to the other two new proposed exceptions (*i.e.,* the ADTV/asset test and underwriter exceptions), the proposed exception is intended to provide an initial ''on ramp'' for certain securities to be quoted in the OTC market that are able to meet the requirements of the exception. The proposed exception recognizes that, currently, certain IDQSs meet the definition of an ATS and operate pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Exchange Act.[137] The proposed exception would allow these qualified IDQSs (and any future qualified IDQS) to play a greater role in the Rule 15c2–11 compliance process by allowing broker-dealers to rely on a qualified IDQS's review of the required information of issuers of certain securities that are less likely to be targeted for fraudulent activity (*e.g.,* securities of large cap foreign issuers).

The Commission believes that by providing this initial on ramp, broker-dealers will have the flexibility to rely on a qualified IDQS in complying with the Rule's provisions. The proposed exception is designed to reduce burdens on broker-dealers without undermining investor protections under the Rule.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q88. How, and to what extent, would the proposed exception appropriately protect investors? Please explain.

Q89. How, and to what extent, would the limitation of the proposed exception regarding shell companies appropriately (or unduly) limit the application of the exception? Should broker-dealers also be permitted under the exception to rely on qualified IDQSs to comply with the Rule's requirements when publishing or submitting quotations for securities of shell companies? Please explain.

Q90. Should broker-dealers also be permitted under the exception to rely on qualified IDQSs to comply with the Rule's requirements when publishing or submitting quotations for securities of blank check companies? If so, what would be an appropriate definition for ''blank check company'' in this circumstance? Please explain.

Q91. The Commission seeks specific comment on whether the 30-calendar-day restriction in proposed paragraph

[130] *Id.*

[131] *See* Proposed Rule 15c2–11(b)(3)(i) through (iii). This three-business-day period establishes a similar limitation to the requirement that a broker-dealer review current reports of an issuer, such as a Form 8–K for a reporting issuer or Form 1–U for a Reg. A issuer, that have been filed with the Commission three business days before the publication or submission of a quotation under the proposed amendments to the Rule. *See supra* Part III.A.2.d.

[132] *See* Proposed Rule 15c2–11(f)(7)(i) through (ii).

[133] *See, e.g.,* Douglas Cumming *et al., Financial market misconduct and agency conflicts: A synthesis and future directions,* 34 J. Corp. Fin. 150 (2015).

[134] *See* Proposed Rule 15c2–11(a)(2)(ii).

[135] *See* Proposed Rule 15c2–11(f)(3)(i)(A) and (B).

[136] *See id.*

[137] *See infra* notes 160–162 and accompanying text. As discussed in greater detail in Part III.H.4 *infra,* the Commission believes that limiting the Rule to qualified IDQSs, which are required to be regulated as ATSs (which are registered broker-dealers), would allow for greater Commission oversight because non-ATS IDQSs may not be required to be registered with the Commission.

(f)(7)(ii) is appropriate or, if not, how it should be modified. The Commission seeks specific comment on whether the three-business-day window is appropriate or, if not, how should it be modified.

Q92. Should broker-dealers be able to rely upon any entities other than qualified IDQSs to perform the Rule's information review requirement? Please explain.

Q93. Should the proposed exception under proposed paragraph (f)(7) limit broker-dealers to only publishing or submitting quotations in the qualified IDQS that makes the publicly available determination that the requirements of an exception are met? Please explain. Would having only regulated entities that meet the definition of a ''qualified IDQS'' create an unfair competitive disadvantage in the OTC market? Why or why not?

Q94. Should the Commission place additional limitations on the proposed exception's availability, such as prohibiting application of the proposed exception to quotations for a security that is a penny stock? If so, please explain why such limitation would be appropriate.

Q95. Please discuss potential benefits or disadvantages to investors or other market participants if a qualified IDQS undertakes to perform the information review requirement. Please discuss whether and how any such benefits or disadvantages change if one qualified IDQS undertakes such action or if multiple qualified IDQSs undertake such action. Would having a regulated third party conduct the required review increase the number of OTC securities that could be quoted in the OTC market? In what way, if any, would this benefit investors, particularly retail investors? Please explain.

F. Proposed New Exception for Relying on Determinations by a Qualified IDQS or a Registered National Securities Association

The Commission is proposing to allow broker-dealers to rely on determinations by regulated third parties that certain exceptions are available for a security or an issuer. This proposal is designed to make it easier for broker-dealers to maintain a market in securities, while at the same time providing the benefits that would result from such third party determinations, thereby providing retail investors with greater opportunity to buy and sell securities.

The Commission is proposing to amend the Rule by adding a new exception in proposed paragraph (f)(8) to allow a broker-dealer to rely on publicly available determinations by a qualified IDQS or a registered national securities association that (1) proposed paragraph (b) information is current and publicly available or (2) that a broker-dealer may rely on an exception contained in proposed paragraphs (f)(1), (f)(3)(i)(A), (f)(3)(i)(B), (f)(4), (f)(5), or (f)(7). Thus, for example, new proposed paragraph (f)(8) would permit broker-dealers to rely on a publicly available determination by a qualified IDQS or a registered national securities association that an issuer's proposed paragraph (b) information is current and publicly available for purposes of a proposed exception to the Rule, such as the piggyback exception or the unsolicited quotation exception. In this circumstance, to facilitate a broker-dealer's reliance, the qualified IDQS or registered national securities association must represent in a publicly available determination that it has reasonably designed written policies and procedures to determine whether proposed paragraph (b) information is current and publicly available, and that the conditions of an exception under proposed paragraph (f) are met.

The Commission anticipates that broker-dealers may encounter some additional costs in determining whether an exception would apply to the publication or submission of a quotation for an OTC security. For example, while there are certain situations in which a broker-dealer can readily know whether an exception applies (*e.g.,* exchange traded securities under proposed paragraph (f)(1)), there are other circumstances in which a broker-dealer could be required to use additional resources to determine whether an exception to the proposed Rule applies (*e.g.,* whether the issuer meets the $10 million unaffiliated shareholder equity threshold under proposed paragraph (f)(5)(i)(B) or whether the broker-dealer can rely on the piggyback exception under proposed paragraphs (f)(3)(i)(A) and (B)). Proposed paragraph (f)(8) is intended to mitigate such costs and burdens by allowing broker-dealers to rely on the determinations of certain appropriate third parties.

The Commission believes that allowing broker-dealers to rely on a publicly available determination by a qualified IDQS that a broker-dealer may rely on an exception to the Rule strikes an appropriate balance between mitigating costs to broker-dealers in complying with the proposed Rule's provisions and promoting investor protection. In particular, a qualified IDQS should have an interest in facilitating a fair and efficient market to encourage more activity on such IDQS. The Commission does, however, recognize that profit motives might create an incentive for a qualified IDQS to make a determination that an exception applies to a particular publication or submission of a quotation for a security even when the determination is not appropriate, assuming that the IDQS would collect fees associated with quoting activity or transactions that occur after it makes the exception determination. In complying with the requirements of Regulation ATS, a qualified IDQS (which would be required to be an ATS) would have notice and reporting requirements, which would contribute to the Commission's ability to effectively oversee and effectively examine qualified IDQSs.[138]

Similarly, the Commission believes that allowing broker-dealers to rely on a registered national securities association's determination that a broker-dealer may rely on an exception to the proposed Rule strikes an appropriate balance between mitigating costs to broker-dealers in complying with the Rule's provisions and promoting investor protection. A registered national securities association has obligations under Section 19 of the Exchange Act ''to comply with provisions of the [Exchange Act], the rules and regulations thereunder, and its own rules, and . . . absent reasonable justification or excuse enforce compliance . . . with such provisions.'' [139] Additionally, a registered national securities association is subject to inspections by the Commission, which contributes to the Commission's ability to effectively oversee a registered national securities association.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q96. Should a broker-dealer's reliance be limited to a determination by a registered national securities association and not a qualified IDQS? Why or why not? Should a broker-dealer's reliance be limited to a determination by a qualified IDQS and not a registered national securities association? Why or why not?

Q97. Are there concerns that would discourage a qualified IDQS from undertaking to comply with the proposed Rule's information review requirement? Please explain. If so, please describe how such concerns could be addressed.

[138] *See infra* Part III.H.4.

[139] *See* Exchange Act Section 19(g).

Q98. Should proposed paragraph (f)(8) be expanded to allow broker-dealers to rely on publicly available determinations by entities other than qualified IDQSs or registered national securities associations? If so, what entities should be added to proposed paragraph (f)(8) and why?

Q99. How, and to what extent, do the proposed Rule's requirements that a qualified IDQS make a publicly available determination that it has reasonably designed written supervisory procedures, in conjunction with the Commission's oversight of the qualified IDQS as an ATS, appropriately mitigate the conflicts of interest that might arise based on a qualified IDQS's profit motives? If not, how should the Commission address such conflicts of interests?

Q100. How, and to what extent, would the exception in proposed paragraph (f)(8) impact liquidity for quoted OTC securities?

Q101. Should certain exceptions enumerated in proposed paragraph (f)(8) be removed from the paragraph? If so, which ones and why? Should certain exceptions not enumerated in proposed paragraph (f)(8) be added to the paragraph? If so, which ones and why?

G. Proposed Amendments to the Recordkeeping Requirement

1. Existing Recordkeeping Requirement

Currently, the Rule requires broker-dealers to preserve the documents and information required under paragraphs (a) and (b) of the Rule for a period of not less than three years, the first two years in an easily accessible place.[140] Because under the existing Rule a broker-dealer may not rely on a qualified IDQS's information review, as would be permitted pursuant to proposed paragraph (a)(2), the existing Rule does not include a recordkeeping requirement for qualified IDQSs that make known to others the quotation of a broker-dealer. Additionally, the existing Rule does not require that broker-dealers, qualified IDQSs, and registered national securities associations maintain documents and information that support reliance on an exception to the Rule.

2. Proposed Amendments to the Recordkeeping Requirement

The Commission is proposing that market participants keep certain records that support their information review or reliance on an exception. Providing the Commission with information to oversee this market would assist in maintaining the integrity of the OTC market.

(a) Recordkeeping Requirement Upon Publication or Submission of Quotations

Proposed paragraph (d)(1)(i)(A) would require broker-dealers that comply with the review requirement of proposed paragraph (a)(1) to preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information that are required under proposed paragraphs (a), (b) and (c) of the Rule.[141] In addition, proposed paragraph (d)(1)(i)(B) would require any qualified IDQS that makes known to others the quotation of a broker-dealer pursuant to proposed paragraph (a)(2) to preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information that are required under proposed paragraphs (a), (b) and (c) of the Rule.[142]

The proposed recordkeeping requirement tracks the text of paragraph (c) of the existing Rule but adds a recordkeeping requirement for any qualified IDQSs that make known to others the quotation of a broker-dealer pursuant to proposed paragraph (a)(2). The Commission is adding this recordkeeping requirement to make clear that a qualified IDQS that makes known to others the quotation of a broker-dealer pursuant to proposed paragraph (a)(2) has the same recordkeeping requirement as a broker-dealer that complies with the information review requirement in proposed paragraph (a)(1).

If a broker-dealer or qualified IDQS obtains and reviews proposed paragraph (b) information that is available on EDGAR, the broker-dealer or qualified IDQS will not be required to preserve that information. The broker-dealer or qualified IDQS need only document the proposed paragraph (b) information that it reviewed. The Commission does not believe that it is necessary to require broker-dealers or qualified IDQSs to preserve records that are available on EDGAR because doing so would create redundant recordkeeping obligations.

(b) Recordkeeping Requirement for Relying on an Exception

Although the existing Rule does not contain a recordkeeping requirement for a broker-dealer that relies on an exception to the Rule, the Commission believes that most broker-dealers maintain records of their reliance on a particular exception to the Rule. There have been instances during examinations, however, where broker-dealers have not had records regarding the basis of their reliance on an exception to the existing Rule. The proposed recordkeeping requirement is intended to aid the Commission in its oversight of brokers-dealers that rely on exceptions to the Rule by requiring them to make, retain, and keep current records that support their reliance on that exception. Accordingly, any broker-dealer that relies on an exception to publish or submit a quotation would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information that demonstrate that the requirements of the relevant exception are met.

Further, as discussed above, the Commission is proposing to add the exception contained in proposed paragraph (f)(8), which would allow broker-dealers to publish or submit quotations for a security in reliance upon the publicly available determination of a qualified IDQS or a registered national securities association that the requirements of certain exceptions are met.[143] Proposed paragraph (f)(8) also would permit a broker-dealer to rely on publicly available determinations by a qualified IDQS or registered national securities association that proposed paragraph (b) information is current and publicly available. If a qualified IDQS or a registered national securities association makes such a determination pursuant to proposed paragraph (f)(8), it would need to preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information that demonstrate that the requirements of certain exceptions are met.[144]

A broker-dealer that relies on a determination pursuant to proposed paragraph (f)(7) by a qualified IDQS or proposed paragraph (f)(8) by a qualified IDQS or a registered national securities association, however, is required only to document the exception upon which the broker-dealer is relying and the name of the qualified IDQS or registered national securities association that determined that the requirements of that exception

[140] Exchange Act Rule 15c2–11(c).

[141] *See* Proposed Rule 15c2–11(d)(1).

[142] *See id.*

[143] *See supra* Part III.F.

[144] *See* Proposed Rule 15c2–11(d)(2). The Commission acknowledges that the proposed recordkeeping requirement is shorter than the current five year retention period under Exchange Act Rule 17a–1(b) for a registered national securities association. The Commission, however, believes that it is appropriate for purposes of Rule 15c2–11 to align the recordkeeping requirement for all participants in the OTC market to avoid creating different requirements for market participants engaged in the same activity.

are met.[145] In such circumstance, the Commission believes that it is appropriate to limit the records that a broker-dealer must make and keep because the qualified IDQS or registered national securities association would have an independent recordkeeping obligation regarding its determination that the requirements of an exception are met. The Commission, therefore, would be able to obtain documents supporting such determinations directly from the qualified IDQS or registered national securities association.

The proposed amendments do not require a broker-dealer to retain records supporting that every condition of an exception is met each time the broker-dealer publishes or submits a quotation. The various requirements of each exception likely would involve different types of records that would need to be created to establish reliance on an exception. However, many of these records may not need to be created every time a broker-dealer publishes or submits a quotation relying on an exception.[146]

For example, making and keeping records to support reliance on one prong of an exception (*e.g.,* whether the asset test prong under the proposed paragraph (f)(5) exception is met by retaining an electronic copy of the audited balance sheet) would require the creation and retention of a record once every year, whereas making and keeping current records of reliance on another part of the same exception (*e.g.,* whether the ADTV test prong under proposed paragraph (f)(5) is met by retaining a screen shot of a website that demonstrates the ADTV value over the 60-calendar-day period on the day the quotation was published) would require a record to be created every trading day. Rather than specifically directing that market participants would need to document every condition of the basis of their reliance on an exception for each quotation, the proposed Rule would instead require broker-dealers, qualified IDQSs, and registered national securities associations to preserve documents and information ''that demonstrate that the requirements for an exception under paragraph (f)'' are met. Broker-dealers should consider facts and circumstances, such as the nature of their business as it relates to the particular paragraph or exception to the proposed Rule, in determining when and how they should create records to support reliance on an exception, and the content of such records.

Additionally, a broker-dealer, qualified IDQS, or registered national securities association would not need to preserve records under proposed paragraph (d)(2) for reliance on exceptions under proposed paragraphs (f)(1) or (f)(4). These exceptions can be demonstrated without the need for a broker-dealer, qualified IDQS, or registered national securities association to preserve a separate record. With respect to proposed paragraph (f)(1), whether or not a security is traded on an exchange and thus subject to the proposed paragraph (f)(1) exception is widely known. Additionally, whether or not a security is a municipal security for purposes of reliance on the municipal securities exception in proposed paragraph (f)(4) is also widely known. Proposed paragraph (d)(2)(ii) would also include a proviso such that a broker-dealer, qualified IDQS, or registered national securities association would not be required to preserve records under proposed paragraph (d)(2) if such records are available on EDGAR.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q102. What, if any, impact would the recordkeeping requirement have on liquidity in the secondary market for quoted OTC securities?

Q103. Is the preservation of records required by proposed paragraph (d) for a period of three years appropriate? If not, how long should the period be under proposed paragraph (d) to preserve records under proposed paragraph (a), (b), and (c) and why? Should proposed paragraph (d)(1) contain requirements specifying when the record preservation period begins for the records required to be preserved in proposed paragraph (d)? What are broker-dealers' current practices for deciding when to begin preserving the records required to be preserved under the existing rule? Would these practices need to be modified to comply with proposed paragraph (d)(1)? Is a recordkeeping requirement necessary, or will broker-dealers maintain the records of their own accord or pursuant to other regulatory recordkeeping obligations?

Q104. Are the preservation requirements regarding proposed paragraph (b) information and proposed paragraph (c) supplemental information under proposed paragraph (d)(1) unduly burdensome on broker-dealers or qualified IDQSs or overly costly? If so, in what ways could the proposed Rule reduce these burdens and costs? What are the costs to a broker-dealer to preserve proposed paragraph (b) information?

Q105. In addition to printing or electronically saving proposed paragraph (b) information and proposed paragraph (c) supplemental information, are there other ways that a broker-dealer or qualified IDQS would be able to document its review of proposed paragraph (b) information and proposed paragraph (c) supplemental information, including whether such proposed paragraph (b) information is current and publicly available? If so, what methods or means could a broker-dealer or qualified IDQS implement to document compliance with the information review requirement under proposed paragraph (a)? Should a broker-dealer, qualified IDQS, or registered national securities association be able to preserve a memorandum or other document contemporaneous to the review showing that it performed a review, rather than the documents it reviewed (so long as there is not otherwise a requirement, such as a Commission or SRO rule, that the entity make and keep such documents)?

Q106. Should a broker-dealer or qualified IDQS be able to document its review of proposed paragraph (b) information that is publicly available on the website of an issuer, broker-dealer, registered national securities association, or qualified IDQS by recording the website where the broker-dealer or qualified IDQS obtained such information? If so, how would a broker-dealer know that such information would continue to be publicly available for the required recordkeeping retention period, even after the date at which the broker-dealer or qualified IDQS complied with the review under proposed paragraph (a)?

Q107. Should broker-dealers publishing or submitting quotations in reliance on proposed paragraphs (f)(7) and (f)(8) be required to document information in addition to the proposed required documentation (*i.e.,* documenting the exception that the broker-dealer is relying upon and the name of the qualified IDQS or registered national securities association that made a determination that the conditions of the exception have been met)? If so, what additional documentation and information should a broker-dealer preserve to demonstrate its reliance on a determination pursuant to proposed paragraphs (f)(7) and (f)(8)?

Q108. Should proposed paragraph (d)(2) contain requirements enumerating the frequency of recordkeeping or any other specific measures? Should broker-dealers specifically be required to preserve documents and information pursuant to proposed paragraph (d)(2) on a quotation by quotation basis for

[145] *See id.*

[146] *See infra* Part VII.C.2.

purposes of the unsolicited quotation exception? Why or why not? If not, is there another alternative approach that could be used? Please identify any alternative approach and explain why it is preferable. For example, would the proposed recordkeeping requirement in proposed paragraph (d)(2) and the requirements of FINRA Rule 6432 be sufficient to help prevent misuse of the exception?[147] Please explain.

Q109. Are there certain exceptions under proposed paragraph (f) that should be included in the proviso and not be subject to the recordkeeping requirement in proposed paragraph (d)(2)? If so, which ones and why? Are there certain requirements concerning exceptions under proposed paragraph (f) that should be added to the proviso under proposed paragraph (d)(2)(ii)? If so, what additional requirements should be considered and what are the characteristics of such requirements that would warrant its inclusion in the proviso?

Q110. Taken together, would the proposed changes described above regarding proposed paragraph (f) go far enough to mitigate the potential for fraud and other abuses, including the potential for broker-dealers' use of the piggyback exception to facilitate fraud and other abuses (whether intentional or inadvertent)? Are there other changes that the Commission should make to address the risk of fraud and abuse? For instance, should the piggyback exception be eliminated entirely? Please explain why or why not. How would elimination of the piggyback exception affect small issuers?

[147] Supplemental Material .01 to FINRA Rule 6432 requires broker-dealers initiating or resuming quotations in reliance on the exception provided by Rule 15c2–11(f)(2) (*i.e.,* the unsolicited quotation exception) to ''be able to demonstrate eligibility for the exception by making a contemporaneous record of: (a) The identification of each associated person who receives the unsolicited customer order or indication of interest directly from the customer, if applicable; (b) the identity of the customer; (c) the date and time the unsolicited customer order or indication of interest was received; and (d) the terms of the unsolicited customer order or indication of interest that is the subject of the quotation (*e.g.,* security name and symbol, size, side of the market, duration (if specified) and, if priced, the price). Any member displaying a quote representing an unsolicited customer order or indication of interest that was received from another broker-dealer must contemporaneously record the identity of the person from whom information regarding the unsolicited customer order or indication of interest was received, if applicable; the date and time the unsolicited customer order or indication of interest was received by the member displaying the quotation; and the terms of the order that is the subject of the quotation.''

H. Proposed Amendments to the Rule's Definitions

In light of the amendments that the Commission is proposing today, as discussed above, the Commission is also proposing to add definitions of certain terms that are referenced throughout these amendments.

1. Current

The Commission proposes to define ''current'' as filed, published, or disclosed in accordance with the time frames identified in each of proposed paragraphs (b)(1) through (b)(5) of the Rule.[148] For example, with respect to prospectus issuer information, a copy of the issuer's prospectus that is specified by Section 10(a) of the Securities Act, other than a registration statement on Form F–6, would be current for purposes of proposed Rule 15c2–11 if the prospectus became effective less than 90 calendar days prior to the day on which a broker-dealer publishes or submits a quotation for a security of the prospectus issuer. With respect to Reg. A issuer information, the offering circular required by proposed paragraph (b)(2) would be current for purposes of proposed Rule 15c2–11 if the Reg. A issuer that filed a notification under Regulation A became authorized to commence its offering less than 40 calendar days prior to the day on which a broker-dealer publishes or submits a quotation for the issuer's security.

Determining whether reporting issuer information is current for purposes of proposed Rule 15c2–11 would depend on the issuer's regulatory status and its obligation to file or publish information pursuant to a statutory or rule-based requirement under the federal securities laws (*i.e.,* not pursuant to any of the Rule's provisions). For example, for a reporting issuer that files annual reports pursuant to Section 13 or 15(d) of the Exchange Act, the reporting issuer's information would be current if it were the issuer's most recent annual report and any periodic or current reports that the issuer has filed subsequent to that annual report. If that issuer has yet to file its first annual report, the registration statement that the issuer filed under the Securities Act or under Section 12 of the Exchange Act would be current if it became effective within the prior 16 months.

For a reporting issuer that files annual reports pursuant to Regulation A, the reporting issuer's information would be current if it were the issuer's most recent annual report and any periodic and current reports that the issuer has filed under Regulation A subsequent to that annual report. If the issuer has yet to file its first report, the offering circular that the issuer filed under Regulation A would be current if it were qualified within the prior 16 months.

For an insurance company that files an annual statement referred to in Section 12(g)(2)(G)(i) of the Exchange Act because it is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, the insurance company's information would be current if it were the issuer's annual statement and any periodic or current reports that the issuer has filed subsequent to that statement. If the insurance company has yet to file its first annual statement, the registration statement that the issuer filed under the Securities Act or Section 12 of the Exchange Act would be current if it became effective within the prior 16 months. Finally, information for an insurance company that is exempted from Section 12(g) of the Exchange Act would be current if it were the issuer's annual statement referred to in Section 12(g)(2)(G)(i) of the Exchange Act.

Exempt foreign private issuer information (*i.e.,* information that the issuer has published pursuant to Rule 12g3–2(b) under the Exchange Act) would be current for purposes of the proposed Rule if it were published since the beginning of the exempt foreign private issuer's last fiscal year. Catch-all issuer information would be current if it were dated within 12 months prior to the broker-dealer's publication or submission of a quotation for the catch-all issuer's security. The issuer's balance sheet would not be current if it were older than 16 months and did not include a profit and loss statement and retained earnings statement for 12 months preceding the date of the balance sheet.[149] If the balance sheet, however, were not as of a date within six months before the publication of the quotation, the balance sheet would need to be accompanied by a profit and loss statement, as well as a retained earnings statement, that are as of a date within six months before the publication of a quotation.[150]

This definition would provide clarity to market participants as to the time frames within which issuer information must be filed, published, or disclosed for the issuer's information to be current solely for purposes of broker-dealer and qualified IDQS compliance with proposed Rule 15c2–11. The proposed definition of ''current'' does not change the requirements of any issuer to file or

[148] *See* Proposed Rule 15c2–11(e)(1).

[149] *See* Proposed Rule 15c2–11(b)(5)(i)(L).

[150] *See supra* Part III.A.2.e.

publish information pursuant to a statutory or rule-based requirement under the Exchange Act or the Securities Act.

2. Shell Company

The Commission proposes to define ''shell company'' as any issuer, other than a business combination related shell company as defined in Rule 405 of Regulation C, or an asset-backed issuer as defined in Item 1101(b) of Regulation AB, that has (1) no or nominal operations and (2) either (i) no or nominal assets, (ii) assets consisting solely of cash and cash equivalents, or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.[151] This definition of shell company closely tracks the definition of shell company in Rule 405 of Regulation C and in Rule 12b–2,[152] the provisions of which apply to registrants.[153] In addition, the proposed definition of shell company comports with the provisions of Rule 144(i)(1)(i)[154] regarding availability of that safe harbor for the resale of securities initially issued by certain issuers.[155]

The proposed definition of a shell company for purposes of Rule 15c2–11, however, is not limited to companies that have filed a registration statement or have an obligation to file reports under Section 13 or Section 15(d) of the Exchange Act. Rather, the proposed definition of a shell company under Rule 15c2–11 would cover all issuers of securities because the provisions of Rule 15c2–11 apply to publications and submissions of quotations for securities of reporting issuers as well as catch-all issuers. Accordingly, the Commission is proposing a definition of a shell company for purposes of Rule 15c2–11 that applies more broadly, to a greater breadth of issuers, than do the definitions in Rule 405 of Regulation C and Rule 12b–2.

The Commission believes that the proposed definition of a shell company is appropriate in the context of Rule 15c2–11 because it would capture the breadth of issuers of quoted OTC securities. The Commission has stated that startup companies that have limited operating history do not meet the condition of having ''no or nominal operations'' for the purposes of the public resale of restricted and control securities, and the Commission also believes that this approach is appropriate in the context of broker-dealers determining whether a company fits within the meaning of ''shell company'' as defined in proposed paragraph (e)(8) when deciding whether they may rely on the piggyback exception.[156] Further, consistent with the definition of the term ''shell company'' in Rule 405 of Regulation C and Rule 12b–2, the Commission preliminarily believes that defining the term ''nominal'' with reference to quantitative thresholds would be unworkable in this context.[157]

3. Publicly Available

The Commission is proposing a definition of the term ''publicly available'' that is intended to be broad and to account for the ease with which investors or other market participants can obtain issuer information. The Commission proposes to define the term ''publicly available'' to mean available on EDGAR or on the website of a qualified IDQS, a registered national securities association, the issuer, or a registered broker-dealer. Further, publicly available shall not mean where access to proposed paragraph (b) information is restricted by user name, password, fees, or other constraints; this language is included as a proviso to the definition of ''publicly available.''[158] The Commission believes that incorporating into the proposed definition of ''publicly available'' specific locations where regulated market participants must publish information would help investors and other market participants to locate the information. Additionally, the Commission believes that it is appropriate to include the issuer's website in the definition of publicly available because the issuer should be a reliable source for proposed paragraph (b) information.

4. Qualified Interdealer Quotation System

The Commission proposes to define the term ''qualified interdealer quotation system'' to mean any IDQS that meets the definition of an ATS as defined under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Exchange Act. Accordingly, the proposed definition would exclude any IDQS that is not an ATS (a ''non-ATS IDQS'').[159]

As proposed, the Rule would permit a qualified IDQS to comply with the information review requirement to determine if the requirements of an exception are met, allowing a broker-dealer to publish or submit quotations in reliance on that qualified IDQS's determination.[160] Since the Rule was last substantively amended in 1991, IDQSs have evolved to operate as marketplaces for bringing together the orders of multiple buyers and sellers of OTC securities in addition to regularly disseminating quotations of identified broker-dealers. Today, the vast majority of broker-dealer quotation activity for OTC securities occurs on certain ATSs,[161] which, in practice, have become repositories for information about the issuers of securities that are quoted in their market. These ATSs generally provide facilities and set criteria for broker-dealers to display quotations for OTC securities to subscribers and for the orders of subscribers to interact, match, and execute with broker-dealers' quotes.

The Commission believes that the regulatory requirements for an IDQS that operates as an ATS under the Exchange Act—and the concomitant Commission oversight—would help to ensure investor protection and to prevent fraud and manipulation. The notice and reporting requirements under Regulation ATS contribute to the Commission's effective oversight of ATSs, which helps to prevent fraud and manipulation. For example, ATSs, including those that make known to others broker-dealers' publications of quotations concerning quoted OTC

[151] *See* Proposed Rule 15c2–11(e)(8).

[152] Exchange Act Rule 12b–2.

[153] ''Registrant'' is defined in Rule 405 as the issuer of the securities for which a registration statement is filed, and in Rule 12b–2 as an issuer of securities with respect to which a registration statement or report is to be filed.

[154] Securities Act Rule 144(i)(1)(i).

[155] Another difference between the definition of shell company in the proposed amendment to Rule 15c2–11(e)(8) and the definitions of shell company in Rules 405 and 12b–2 is that the proposed definition in Rule 15c2–11 does not include a note indicating how assets are determined for purposes of the definition as do Rules 405 and 12b–2. The proposed definition of a shell company for purposes of Rule 15c2–11 does not include such a note; Rules 405 and 12b–2 require U.S. GAAP compliance while Rule 15c2–11 does not. While the amendments to Rule 15c2–11 that the Commission is proposing are intended to provide, among other things, increased transparency of issuer information, the Rule does not address how issuers maintain their financial records. More specifically, the proposed amendments do not require U.S. GAAP compliance, and the proposed amendments would permit broker-dealers, qualified IDQSs, and registered national securities associations to determine whether an issuer is a shell company based on their review of the issuer's information.

[156] *See supra* note 102.

[157] *See Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies,* Exchange Act Release No. 52038 (July 15, 2005), 70 FR 42234 (July 21, 2005); *see also supra* Part III.C.2.d (discussing how a determination of whether an issuer is a shell company is based on facts and circumstances).

[158] *See* Proposed Rule 15c2–11(e)(4).

[159] *See* Proposed Rule 15c2–11(e)(5).

[160] *See* Proposed Rule 15c2–11(a)(2), (f)(7), and (f)(8).

[161] *See, e.g.,* OTC Markets Stock Screener, *supra* note 5.

securities, are required to file an initial operation report on Form ATS with the Commission to disclose, among other things, information about the types of securities traded and procedures for entering and displaying orders, matching buyers and sellers, and executing, clearing, and settling trades on the ATS. ATSs are required to disclose on Form ATS classes of subscribers and differences in access to the services offered by the ATS to different groups or classes of subscribers. ATSs are required to disclose on a quarterly basis to the Commission on Form ATS–R information about subscribers who participated on the ATS, the securities that the ATS traded, and the transaction volume for securities traded.[162] The Commission believes that the existing Regulation ATS requirements would provide relevant information to the Commission about the qualified IDQS's operations, including quoting and trading activity in the ATS, and therefore contribute to Commission oversight of qualified IDQSs.[163]

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q111. Are the proposed definitions accurate? Please explain. What alternative definitions might be more effective in light of the purpose of the Rule?

Q112. Company insiders are described in proposed paragraphs (b)(5)(i)(K), (c)(1), and (f)(2)(ii). Should we add a definition for ''company insiders'' that would include such persons or different persons? Please explain. Should any other terms be defined? If so, are there existing definitions in other rules or regulations that could be used in this context? Why would the use of such other definitions be appropriate?

Q112. Should non-ATS IDQSs be permitted to conduct the review under the proposed amendments, or should the review be limited to qualified IDQSs as proposed? Why or why not? Commenters are requested to please include any data and analysis that they have to support their response.

Q114. Are there concerns with not proposing a definition of ''nominal'' in the context of the proposed definition of ''shell company''? Please explain any concerns and provide examples.

[162] *See Regulation of Exchanges and Alternative Trading Systems,* Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844, 70905 (Dec. 22, 1988).

[163] *See, e.g.,* Rule 301(b)(9) of Regulation ATS.

I. Proposed Amendment to the Nasdaq Security Exception

Currently, Rule 15c2–11(f)(5) excepts from the provisions of the Rule the publication or submission of a quotation for a Nasdaq security where such security's listing is not suspended, terminated, or prohibited.[164] This exception, known as the Nasdaq security exception, was designed to make it clear that then-Nasdaq qualification standards superseded those of other IDQSs.

The Nasdaq security exception is obsolete in light of Nasdaq's registration as a national securities exchange. The publication or submission of quotations by a broker-dealer for securities listed on a national securities exchange are covered already by a separate exception under existing Rule 15c2–11(f)(1). Thus, the Commission proposes to rescind the Nasdaq security exception.

J. Proposed Amendments to the Furnishing Requirement and Annual, Quarterly, and Current Reports of Reporting Issuers

1. Proposed Amendment To Remove Furnishing Requirement for Catch-All Issuer Information

The existing Rule requires that broker-dealers that publish or submit quotations for securities of catch-all issuers provide the Rule's required information to the IDQS at least three business days before the quotation is published or submitted.[165] The Commission is proposing to remove the requirement that broker-dealers furnish catch-all issuer information to an IDQS. The purpose of this requirement is to afford the IDQS and regulators sufficient time to obtain and review the information in advance of a broker-dealer's publication of quotations.[166] The Commission believes that requiring broker-dealers to furnish catch-all issuer information to an IDQS is outdated and no longer necessary because, as a practical matter, IDQSs no longer independently review a broker-dealer's compliance with the information review requirement. Today, FINRA, a registered national securities association, regulates broker-dealer compliance with Rule 15c2–11 by requiring its members to demonstrate compliance with Rule 15c2–11 by filing a form (Form 211) with FINRA, which must be received at least three business days before the member's quotation is published or displayed in a quotation medium. Accordingly, it is redundant to require broker-dealers both to submit information to an IDQS and to comply with the requirements imposed by a registered national securities association.

[164] Exchange Act Rule 15c2–1(f)(5). The Commission adopted 15c2–11(f)(5) in 1984 as an exception to the Rule for securities that were quoted on ''an inter-dealer quotation system sponsored and governed by the rules of a registered securities association.'' 1984 Adopting Release at 45123. At the time, this description referred only to the IDQS operated by the NASD. The Rule was amended in 1991 to specifically refer to quotations concerning a ''Nasdaq security'' because other IDQSs arose since 1985, namely OTC Service and PORTAL system, that fit the exception as adopted in 1985, and the Commission wished to limit the exception only to the particular IDQS operated by NASD in 1985. *See* 1991 Adopting Release at 19155. Once Nasdaq became a national securities exchange in 2006, however, the rationale for the exception became anachronistic.

[165] Exchange Act Rule 15c2–11(d)(1).

[166] 1991 Adopting Release at 19155.

2. Proposed Amendments To Obtain Annual, Quarterly, and Current Reports Directly From the Issuer

The existing Rule provides that a broker-dealer complies with the requirement to obtain annual, quarterly, and current reports filed by the issuer if the broker-dealer has made arrangements to receive such reports when they are filed by the issuer and it has regularly received reports from the issuer on a timely basis.[167] This provision, which was added to the Rule in 1991, is outdated because it does not take into account that periodic and current reports can be obtained by broker-dealers through EDGAR, without obtaining such reports from the issuer. Accordingly, given technological developments and access to annual, quarterly, and current reports on EDGAR, the Commission believes that it is appropriate to remove this provision from the Rule because access to periodic and current reports precludes the need to obtain such reports directly from the issuer.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q115. Rule 15c2–11(d)(1) requires that a broker-dealer publishing or submitting a quotation for a security of a catch-all issuer furnish to an IDQS, at least three business days before the quotation is published or submitted, the required information regarding the security and the issuer. Should this requirement be retained? Why, or why not?

Q116. Should the Commission retain Rule 15c2–11(d)(2)(ii)? Why, or why not?

[167] Exchange Act Rule 15c2–11(d)(2)(ii).

K. Proposed Amendment to Commission Exemptions From Rule 15c2–11

The Commission is proposing modifications to existing paragraph (h), which would be re-lettered to proposed paragraph (g), regarding the Commission's grant of exemptions from the Rule to correspond to Section 36 of the Exchange Act.[168] Section 36 was enacted after the most recent substantive amendments to this Rule were adopted. The proposed amendment explicitly states that consistent with Exchange Act Section 36(a), the Commission may grant an exemption from the Rule for any class of security under specified circumstances.[169] In particular, the Commission is removing the requirement that before granting an exemption, the Commission must find that the exempted quotation will not ''constitut[e] a fraudulent, manipulative, or deceptive practice comprehended within the purpose of this section'' [170] and replacing it with a public interest finding, consistent with Section 36(a).[171] The Commission believes that the appropriate standard for granting an exemption from Rule 15c2–11 should mirror the standard that is articulated in Section 36 of the Exchange Act.

Q117. Should the existing requirement that, before granting an exemption, the Commission find that the quotation will not ''constitut[e] a fraudulent, manipulative, or deceptive practice comprehended within the purpose of this section'' be retained? Why or why not?

L. Proposed Amendment To Remove Preliminary Note

Currently, the Rule includes a ''Preliminary Note'' that incorporates guidance issued with the Rule in the 1991 Adopting Release. Specifically, the Preliminary Note advises that broker-dealers ''may wish to refer to Securities Exchange Act Release No. 29094 (April 17, 1991), for a discussion of procedures for gathering and reviewing the information required by [Rule 15c2–11] and the requirement that a broker-dealer have a reasonable basis for believing that the information is accurate and obtained from reliable sources.'' The Commission is proposing to remove the Preliminary Note from the Rule and instead reiterate the guidance, with targeted updates, to accompany the proposed Rule. The proposed guidance is discussed in Part V below.

Q118. Should the Preliminary Note be retained in its current form, in the form of guidance as proposed, or in a different form?

M. Technical Amendments to Rule Text

The Commission is proposing technical, non-substantive amendments to the Rule that do not change the meaning or operation of any of the Rule's provisions. As discussed above, because the Commission is proposing to separate the review requirement from the Rule's required information provisions, the Commission is proposing to re-letter the Rule's provisions and make conforming edits to all cross-references within the Rule to reflect the proposed re-lettering. The Commission is also proposing to alphabetize defined terms under the Rule's definitional section and to re-letter the Rule's definitional provisions.

In addition, the Commission is proposing grammatical edits to the Rule. For example, the Commission is proposing to (1) amend the Rule's definition of ''quotation'' in proposed paragraph (e)(6) by replacing the word ''he'' with ''its,'' (2) replace the word ''which'' with the word ''that'' where appropriate, (3) add and delete commas in proposed paragraph (b)(5)(i)(P) to provide clarity, and (4) fix typographical errors. In addition, the Commission is proposing to spell out all numbers that are less than 10 (*e.g.,* the number 4 in the existing piggyback exception would be spelled out as the word ''four'').

Further, the Commission is proposing amendments to aid in the Rule's readability. For example, the Commission is proposing to amend the Rule by adding headings before certain of the Rule's provisions and by addressing instances of inconsistent letter capitalization (*e.g.,* by ensuring that all phrases such as ''*Provided, however,* That'' are written consistently throughout the Rule). In addition, the Commission is proposing to add the term ''that is'' in proposed paragraph (f)(1) when referring to a security that is admitted to trading on a national securities exchange. The Commission also is proposing amendments to replace the word ''shall'' with ''must'' where appropriate (*e.g.,* proposed paragraph (b)(5), addressing the public availability of catch-all issuer information), and is proposing to replace the word ''respecting'' with the word ''concerning'' (*e.g.,* proposed paragraph (f)(3), in the provisions of the piggyback exception). To be consistent with other rules under the Exchange Act, the Commission is proposing to replace any references to the Financial Industry Regulatory Authority, Inc. with a reference to a registered national securities association. In addition, the Commission proposes to add the phrase ''of the broker or dealer'' in proposed paragraph (b)(5)(i)(N) to clarify that the required information refers to any associated person of the broker-dealer. In addition, the Commission is proposing conforming changes to begin each paragraph of proposed paragraph (b) in the same manner to be consistent in listing the issuer information that the Rule would require.

The Commission also is proposing amendments to streamline and clarify the Rule's text. For example, the Commission is proposing to replace the phrase ''a record of the circumstance involved in'' with the phrase ''records related to'' in proposed paragraph (c)(1). The Commission also proposes to replace ''customer's indication of interest and does not involve the solicitation of the customer's interest'' in paragraph (f)(2) with ''customer's unsolicited indication of interest'' in proposed paragraph (f)(2). Finally, the Commission proposes to delete the word ''exact'' from existing paragraphs (a)(5)(i) and (iv) and replace the phrase ''the nature'' with the phrase ''a description'' in paragraphs (a)(5)(viii), (ix), and (x).

The Commission also is proposing amendments to avoid redundancy in the Rule's text. For example, the Commission is proposing to remove from the Rule all instances of the phrase ''as defined in this section'' because the text of the Rule's definitional section, proposed paragraph (f), makes it sufficiently clear that all instances where a particular defined term is mentioned are for the purposes of the Rule, unless as otherwise specified. In addition, the Commission is proposing to delete the word ''said'' from existing paragraph (d)(1) because the words ''of this section'' also would appear in the text of the proposed Rule.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following question:

Q119. Are there other technical amendments that would be appropriate? Please explain. Are there additional technical edits that the Commission should make to improve the effectiveness and clarity of the proposed Rule? For example, should the requirement regarding information about an issuer's address be modified to require the issuer's ''physical'' address to differentiate it from a post office box or other possible mailing or alternative addresses that issuers may have, such as addresses of branch offices, prior or obsolete addresses, or other non-

[168] *See* Exchange Act Section 36.

[169] *See* Proposed Rule 15c2–11(g).

[170] *See* Exchange Act Rule 15c2–11(h).

[171] *See* Proposed Rule 15c2–11(g).

physical addresses such as a service of process address?

Q120. Is there language in the proposed Rule that should be revised to improve the effectiveness and clarity of the Rule? In particular, we seek commenters' input regarding whether there is language in proposed paragraph (b) that should be revised. If so, how? For example, proposed paragraphs (b)(4) and (b)(5) would keep the existing requirement that information be made available upon the request of ''a person expressing an interest about a proposed transaction in the issuer's security.'' Is there alternative language that would be more clear or effective in light of the purpose of the Rule? For example, should the language be replaced with ''a person seeking information about the issuer's security'' or ''a person inquiring about an issuer's security''? Please explain. Is it clear what type of information that a broker-dealer must provide to any person expressing an interest in the security of an exempt foreign private issuer or catch-all issuer where it is required to provide ''appropriate'' instructions? If not, what alternative standard would be clear and effective, if any? Please explain.

IV. Conforming Rule Change and General Request for Comment

A. Proposed Conforming Amendments to Cross-References in Rule 144(c)(2)

Currently, Rule 144(c)(2) [172] cross-references Rule 15c2–11(a)(5)(i) to (xiv) and Rule 15c2–11(a)(5)(xvi). Because the Commission is proposing to re-letter the provision addressing catch-all information to Rule 15c2–11(b)(5), the Commission is proposing to make conforming amendments to these cross-references in the provisions of Rule 144(c)(2) that cite to Rule 15c2–11(a)(5). The Commission is proposing to amend Rule 144(c)(2) to cross-reference Rule 15c2–11(b)(5)(i)(A) to (N) and Rule 15c2–11(b)(5)(P), and the Commission is proposing to remove the cross references to Rule 15c2–11(a)(5)(i) to (xiv) and Rule 15c2–11(a)(5)(xvi).

B. General Request for Comment

The Commission solicits comment on all aspects of the proposed amendments to Rule 15c2–11 and any other matter that might have an impact on the proposal discussed above. In particular, the Commission asks commenters to consider the following questions:

Q121. Are there additional or different ways to amend the Rule that would help reduce fraud and manipulation in the OTC market? Please explain.

Q122. Should the Rule be limited to only equity securities? Please explain.

Q123. How might the proposal positively or negatively impact investor protection, the maintenance of a fair, orderly, and efficient OTC market, and capital formation?

Q124. Should each exception to the Rule require that a broker-dealer establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent violations of the Rule by the broker-dealer? Please explain why or why not.

Q125. We seek commenters' views about the potential for changes to Rule 15c2–11 to help investors track quoted OTC issuers through corporate events such as reverse mergers and reorganizations. For example, should Rule 15c2–11's publicly available information requirement for a quoted OTC security issuer's name and its predecessor (if any) also require the public availability of such issuer's unique entity identifiers (if any)? What would the costs and benefits associated with such a requirement be? Please discuss whether such a requirement should be limited to certain types of issuers, *e.g.,* catch-all issuers? Please quantify answers, to the extent possible.

Comments are of greatest assistance to the Commission's rulemaking initiative if they are accompanied by supporting data and analysis of the issues addressed in those comments and if they are accompanied by alternative suggestions to the proposal where appropriate.

V. Proposed Guidance

The Commission is proposing the following guidance to accompany the proposed Rule and intends to include such guidance in any adopting release.[173] If the Commission includes this new guidance in an adopting release, the guidance provided in the 1991 Adopting Release and referenced in the Preliminary Note to the Rule would be superseded. Broker-dealers and qualified IDQSs complying with the information review requirement under the proposed Rule must have a reasonable basis under the circumstances for believing, based on a review of proposed paragraph (b) information, together with any supplemental information required by proposed paragraph (c), that (1) the proposed paragraph (b) information is accurate in all material respects and (2) the sources of the paragraph (b) information are reliable.[174] Accordingly, the Commission proposes to provide the following basic principles to guide broker-dealers or qualified IDQSs in complying with the information review requirement.

A. Source Reliability

The proposed Rule requires that the broker-dealer or qualified IDQS must have a reasonable basis for believing that any source of the proposed paragraph (b) information is reliable. In the absence of any red flag (*e.g.,* information that, under the circumstances, reasonably indicates that the source is unreliable), a broker-dealer or qualified IDQS could satisfy the proposed Rule's requirements regarding the reliability of the information source if that information were provided by the issuer of the security or its agents, including its officers and directors, attorney, or accountant, or was obtained from an independent information service, a document retrieval service, or standard research sources such as reputable and commonly used internet websites used to research information related to securities issuers.

Occasionally, a broker-dealer or qualified IDQS may receive Rule 15c2–11 information about an issuer from another broker-dealer, someone other than the issuer or its agents, or an independent information service. In these situations, while the broker-dealer or qualified IDQS might be aware of the identity of the immediate source of the specified information, it might not have any knowledge about the person that compiled the Rule 15c2–11 information. However, to comply with the proposed Rule's requirements regarding source reliability, the broker-dealer or qualified IDQS is required to ascertain the reliability of the sources of the Rule 15c2–11 information.

Where the broker-dealer or qualified IDQS receives the information, however, from an independent and objective source that represents that it received the information directly from the issuer, the broker-dealer or qualified IDQS typically could rely on that representation absent countervailing information. When a red flag regarding the source's reliability exists, the broker-dealer or qualified IDQS should conduct the inquiry called for by the circumstances to reasonably assess

[172] Securities Act Rule 144(c)(2).

[173] The Commission's 1999 Reproposing Release included proposed guidance in an Appendix that was intended to supplement the 1991 guidance with greater detail concerning, among other things, red flags. However, the Commission took no further action on the 1999 Reproposing Release, including the Appendix. The 1999 Appendix is not included in the Commission's proposed new guidance.

[174] Proposed Rule 15c2–11(a)(1)(iii)(A) and (B). The Commission would make conforming changes to this guidance as needed in the adopting release; for example, by removing the word ''proposed'' wherever it appears in this guidance.

whether the source of the information is reliable.

B. Information Review Requirement

Once the broker-dealer or qualified IDQS has a reasonable belief as to the source's reliability, it should examine the materials in its records to make certain that all of the required information has been obtained. Next, the broker-dealer or qualified IDQS should review the proposed paragraph (b) information in the context of all other information, including supplemental information under proposed paragraph (c), about the issuer that it has in its knowledge or possession. Ordinarily, the broker-dealer or qualified IDQS need not take any further steps (for example, there would be no requirement to look behind the financial statements or any other information required to be obtained). However, in its review, the broker-dealer or qualified IDQS, consistent with proposed paragraphs (a)(1)(iii) and (a)(2)(iii), respectively, must be alert to any red flags (*e.g.,* information under the circumstances that reasonably indicates that one or more of the required items of information may be materially inaccurate or from an unreliable source). Red flags would be indicated, for example, by material inconsistencies in the proposed paragraph (b) information or material inconsistencies between that information and other information in the broker-dealer's or qualified IDQS's knowledge or possession. In the absence of red flags, a broker-dealer does not have an obligation to seek out supplemental information to investigate statements in the proposed paragraph (b) information. In forming a reasonable basis under the circumstances for believing that proposed paragraph (b) information is accurate in all material respects, a broker-dealer would only need to consider supplemental information that has come to its knowledge or that is in its possession.

Examples of red flags would include a qualified auditor's opinion resulting from management's failure to provide all of the information relevant to prepare the financial statements, or financial statements of a development stage issuer that lists as the principal component of its net worth an asset wholly unrelated to the issuer's lines of business. Warning signs such as these may call into question whether the accuracy of the information can be relied upon by a broker-dealer or a qualified IDQS to satisfy the proposed Rule's requirements.

Where no red flags appear during this review process, the broker-dealer or qualified IDQS could have a reasonable basis for believing that the information is accurate. If red flags appear, the broker-dealer or qualified IDQS could attempt to reasonably address any red flags. The specific efforts by the broker-dealer or qualified IDQS to satisfy the proposed reasonable basis standard with respect to the accuracy of the information and the reliability of sources can vary with the circumstances and may require the broker-dealer or qualified IDQS to obtain additional information or seek to verify the accuracy of existing information. For example, the broker-dealer or qualified IDQS may have a reasonable basis to believe that the information is accurate in all material respects after questioning the issuer directly. When information from the issuer is not adequate, or raises reasonable doubts to the broker-dealer or qualified IDQS, the broker-dealer or qualified IDQS may wish to consult independent sources, such as an attorney or accountant.

The proposed Rule would require that a broker-dealer or qualified IDQS have a reasonable basis under the circumstances for believing that proposed paragraph (b) information, in light of any other documents and information required by the proposed Rule, such as proposed paragraph (c) information, is accurate in all material respects. However, the requirements of the proposed Rule amendments do not contemplate that, before submitting or publishing quotations for a security, a broker-dealer or qualified IDQS must conduct any independent ''due diligence'' investigation concerning the issuer or its business operations and financial condition such as the investigation expected to be conducted by an underwriter. A broker-dealer or qualified IDQS publishing quotations may have no relationship with the issuer of the security. The proposed Rule would not demand that the broker-dealer or qualified IDQS develop such a relationship to obtain information about the issuer. Rather, as described above, the proposed Rule specifies the information that must be gathered, and the proposed Rule's requirements would be satisfied if the broker-dealer or qualified IDQS had a reasonable basis for believing that the information is accurate in all material respects and obtained from a reliable source, after reviewing that information. In short, a reasonable basis for belief in the accuracy of the proposed paragraph (b) information can be founded solely on a careful review of the proposed paragraph (b) information together with proposed paragraph (c) information, provided that the proposed paragraph (b) information was obtained from sources reasonably believed to be reliable and there are no red flags. When red flags are initially present, the broker-dealer or qualified IDQS may, upon inquiry, obtain additional information that provides a reasonable basis for believing that the information is accurate in all material respects and that the sources are reliable.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q126. Are further substantive changes needed to ensure this guidance reflects the current state of technology and industry practice? Should the substance of this guidance be incorporated into the rule text and, if so, are there any changes that should be made?

Q127. Are changes to this guidance needed to address the specific responsibilities with respect to the information review requirement of a qualified IDQS that makes known to others the quotation of a broker-dealer?

Q128. In 1999, the Commission re-proposed amendments to Rule 15c2–11.[175] In response to comments that the Commission received regarding the 1998 Proposing Release expressing concerns about broker-dealers' review obligations, the Commission also included an Appendix in the 1999 Reproposing Release (''1999 Appendix'') that provided guidance to broker-dealers on the scope of the review required by the Rule and provided examples of red flags that broker-dealers should look for when reviewing issuer information.[176] The 1999 Appendix, which was not adopted by the Commission, would have confirmed and supplemented earlier guidance on Rule 15c2–11 issues.[177] Should the Commission incorporate the 1999 Appendix as part of guidance included in any adopting release? If so, should the guidance from the 1999 Appendix be modified, updated or expanded? Are there additional examples of red flags that should be discussed in any such modified, updated or expanded guidance? Are there red flags that should be removed from the guidance? What current topics or issues would commenters like to see addressed in an updated or expanded version of the guidance on Rule 15c2–11? Should the Commission provide guidance on the proposed amendments to the Rule and

[175] 1999 Reproposing Release at 11124.

[176] *Id.,* 1999 Reproposing Release at 11145.

[177] *Id.,* 1999 Reproposing Release at 11146 n.7.

if so, for which amendments to the Rule would guidance be most helpful?

VI. Concept Release

This section discusses regulatory, policy, and other issues (in addition to those discussed above), and seeks comment to identify, where appropriate, possible regulatory actions to address those issues.

A. Information Repositories

The amendments the Commission is proposing today would require that proposed paragraph (b) information be current and publicly available, prior to the initial publication or submission of a quotation regarding a security, in order for a broker-dealer to: Rely on the unsolicited quotation exception in certain instances, rely on certain new exceptions under proposed paragraph (f), and continue to rely on the piggyback exception. In the 1999 Reproposing Release, the Commission proposed to establish a mechanism to designate as an information repository an entity that retains and provides access to paragraph (a) information [178] while eliminating the piggyback provision.[179] As stated in the 1999 Reproposing Release, ''the elimination of the piggyback provision and the potential for increased costs of compliance suggest the desirability of having a database of information about the non-reporting issuers of quoted OTC securities.'' [180] Although the Commission is not proposing to eliminate the piggyback exception, it would eliminate reliance on the exception when proposed paragraph (b)(5) information is not current and made publicly available within six months prior to the date the broker-dealer publishes or submits a quotation for the security in the IDQS.

Significant developments in the OTC market have taken place since the publication of the 1999 Reproposing Release. For example, certain IDQSs have developed information repositories that provide access to proposed paragraph (b) information to the investing public.[181] Additionally, the internet, which provides an easy way for investors to locate more, relevant information about issuers, has become much more accessible to the public.[182] Such developments have allowed issuers to directly reach the investing public and potential customers for their products or services. Given market developments and the ability for issuers to communicate more easily and directly with the investing public, the Commission questions whether it, at this point, should impose a regulatory structure around information repositories. In the 1999 Reproposing Release,[183] the Commission articulated the following considerations when determining whether an entity should be designated an information repository:

- Collects information about a substantial segment of issuers of securities subject to the Rule;
- Maintains current and accurate information about such issuers;
- Has effective acquisition, retrieval, and dissemination systems;
- Places no inappropriate limits on the issuers from or about which it will accept or request information;
- Provides access to the documents deposited with it to anyone willing and able to pay the applicable fees; and
- Charges reasonable fees.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q129. Would access to proposed paragraph (b) information on an issuer's website provide sufficient access and notice to investors? What if the issuer does not maintain the information on its website for the requisite recordkeeping period?

Q130. Would investors and other market participants benefit from having access to proposed paragraph (b) information solely through a centralized location, such as an information repository?

Q131. Have any entities that currently publish proposed paragraph (b) information engaged in any actions that would warrant Commission intervention? If so, what activities has the entity engaged in and what would the appropriate regulatory action be?

Q132. The Commission is committed to ensuring that all investors and market participants can access the information necessary to make informed financial decisions. One way that the Commission lowers the burden of accessing and analyzing issuer data is through the use of structured data. Machine-readable disclosures provide easily accessible financial statement information that investors and other market participants can use to compare and analyze issuers, whether they elect to analyze condensed data sets themselves or analyze data downstream through a data aggregator service. Regarding actions that the Commission might propose at a later date, the Commission is interested in commenters' views on whether or not the financial information required by proposed paragraph (b)(5)(i)(L) regarding an issuer's balance sheet, profit and loss statement, and retained earnings statement should be published in a machine readable format? Is there other proposed paragraph (b) information that should be machine-readable, if the Commission were to propose to require that proposed paragraph (b) information be machine-readable at a later date? How burdensome and costly would it be for a broker-dealer, qualified IDQS, or an issuer to provide such information in a machine-readable format? What are the additional burdens or costs associated with providing such information in a machine-readable format? For example, would there be additional costs with respect to complying with documentation and recordkeeping requirements, specifically those included in the proposed amendments to the Rule, as a result of information being machine-readable? How significant are those potential costs relative to the potential benefits in facilitating an analysis of an issuer's financial data by investors or other market participants? Please quantify your answers, to the extent feasible.

The Commission is also interested in the public's views on the following question regarding short selling in the OTC market:

Q133. At least one commenter to the SEC Investor Advisory Committee has suggested that amending Regulation SHO to extend the time period required to close out fails to deliver would enhance liquidity in the OTC market.[184] Would extending the Regulation SHO close-out period for certain market participants enhance price discovery that could result from short selling without also increasing the potential for abusive short selling in this market? [185] Please provide any data to show that amending Regulation SHO would enhance short selling in the OTC market

[178] *Id.,* 1999 Reproposing Release at 11134.

[179] *Id.,* 1999 Reproposing Release at 11127.

[180] *Id.,* 1999 Reproposing Release at 11134.

[181] *See* Company News & Financial Reports, OTC Mkts. Grp. Inc. (last visited Aug. 13, 2019), *https://www.otcmarkets.com/market-activity/news.*

[182] *See* Camille Ryan & Jamie M. Lewis, *Computer and Internet Use in the United States: 2015,* U.S. Census Bureau (Sept. 2017), *available at https://www.census.gov/content/dam/Census/library/publications/2017/acs/acs-37.pdf* (''Among all households, 78 percent had a desktop or laptop, 75 percent had a handheld computer such as a smartphone or other handheld wireless computer, and 77 percent had a broadband internet subscription.'').

[183] 1999 Reproposing Release at 11134.

[184] *See, e.g.,* Submission of Cromwell Coulson, OTC Mkts. Grp. Inc., SEC Investor Advisory Committee: Regulatory Approaches to Combat Retail Investor Fraud, 1–2 (Mar. 8, 2018), *available at https://www.sec.gov/comments/265-28/26528-3213626-161999.pdf.*

[185] *See* Rule 204 of Regulation SHO.

versus other possible reasons that may affect short selling in quoted OTC securities, such as margin or capital rules or Regulation T. What types of market participants should be provided such an extension of time (*e.g.,* market makers)? Would such an extension increase the potential for manipulative ''naked'' short selling? Would such an extension increase the incidence of fails to deliver in quoted OTC securities? How could the Commission provide such an extension without increasing the potential for abuses or increased fails to deliver? For example, should an extension only be provided for certain types of market makers and not others? What criteria or standards should apply to eligible market makers to reduce the potential for increased manipulation from an extension of the Regulation SHO close-out period? How would amending rules to increase short selling in the OTC market protect retail investors?

VII. Paperwork Reduction Act Analysis

A. Background

Certain provisions of the Rule and proposed amendments impose ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[186]

The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[187] The title for the information collection is ''Publication or submission of quotations without specified information.'' OMB has assigned control number 3235–0202 to the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

The Rule is intended to prevent broker-dealers from publishing or submitting quotations for quoted OTC securities that may facilitate a fraudulent or manipulative scheme. Subject to certain exceptions, the Rule prohibits broker-dealers from publishing or submitting a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the issuer. The Commission is proposing amendments that would focus the Rule more closely on those quoted OTC securities that the Commission believes are more likely to be prone to fraud and manipulation by addressing the lack of transparency of some issuers. The Commission is also proposing amendments to reduce regulatory burdens on broker-dealers for quotations concerning OTC securities that appear to present lower risk.

B. Respondents Subject to the Rule

Generally, the Rule applies to broker-dealers that participate in the quoted market for OTC securities. The proposed amendments would modify some of the existing information collection burdens on broker-dealers and create new record retention obligations on broker-dealers that rely on exceptions to the Rule. The Commission believes that approximately 32 broker-dealers would be subject to the burdens associated with the publishing or submitting a quotation without an exception,[188] and approximately 89 broker-dealers would be subject to the burdens associated with documenting reliance on an exception in proposed paragraph (f).[189] Additionally, the Commission estimates that one qualified IDQS [190] and one registered national securities association [191] would be subject to burdens associated with making publicly available determinations under proposed paragraph (f)(8).

Proposed paragraph (f)(7) would permit a qualified IDQS to comply with the information review requirement in certain circumstances. A qualified IDQS must meet the definition of an alternative trading system under Rule 300(a) of Regulation ATS and operate pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Act. As such, a qualified IDQS must be registered as a broker-dealer.[192] This proposed paragraph would modify only the allocation of burden from existing paragraphs (a), (b), and (c) between qualified IDQSs and broker-dealers that are not qualified IDQSs, rather than create new and distinct burdens. Therefore, burdens of the proposed amendments on qualified IDQSs have not been analyzed in a manner that is distinct from those of broker-dealers below. The analysis of burdens for qualified IDQSs and registered national securities associations are separated from those of broker-dealers in the section discussing proposed paragraph (f)(8) below.

For the purposes of this analysis, as described below, the Commission has made assumptions regarding how respondents would comply with the proposed amendments.

C. Summary of Collections of Information

The information collections associated with the initial publication or submission of a quotation is intended to prevent broker-dealers from publishing or submitting quotations for OTC securities that may facilitate a fraudulent or manipulative scheme. Additionally, under the proposed amendments, the information collections are intended to alleviate the potential for quoted OTC Securities to be used as vehicles to defraud investors and to help ensure compliance with the Rule's exceptions.

1. Burden Associated With the Initial Publication or Submission of a Quotation in a Quotation Medium

Absent an exception, broker-dealers under the existing Rule must comply with the information review requirement of the Rule prior to initiating the publication or submission of a quotation for an OTC security. The Commission believes that the information collections associated with the information review requirement and recordkeeping requirement under the Rule, as well as the proposed Rule, involve conducting a review of and maintaining the required information.[193]

FINRA Rule 6432 requires broker-dealers to file a Form 211 when the Rule requires them to comply with the information review requirement. Given the alignment of this FINRA requirement and the Rule, the Commission believes that the number of Forms 211 filed with FINRA in 2018 provides a reasonable baseline from which to estimate the burdens associated with the information review

[186] 44 U.S.C. 3501 *et seq.*

[187] *See* 44 U.S.C. 3507; 5 CFR 1320.11.

[188] Thirty-two broker-dealers submitted Forms 211 to FINRA in 2018. The Commission uses this number as a proxy for broker-dealers that comply with the information review requirement under paragraphs (a), (b), and (c) of the existing Rule.

[189] As of July 2, 2019, there are 89 broker-dealers that trade on OTC Markets Group's systems. The Commission believes that this number reasonably estimates the number of broker-dealers that would engage in the activity that would subject them to the requirements discussed in the section ''Other Burden Hours'' below because they are the only broker-dealers that are publishing or submitting quotations for OTC securities.

[190] Based on the current structure of the market for quoted OTC securities, the Commission preliminarily believes that only one qualified IDQS would engage in a review pursuant to proposed paragraph (f)(7) or make publicly available determinations under proposed paragraph (f)(8).

[191] As of July 15, 2019, only one registered national securities association exists.

[192] *See* Rule 301(a) of Regulation ATS.

[193] As described above, the Commission is proposing to remove the disclosure requirement in Exchange Act Rule 15c2–11(d)(1). This disclosure requirement previously has been discussed as a component of the estimated burden under Rule 15c2–11 for all issuers, and, as a result, is included in the existing burden estimates for the Rule.

requirement under the current Rule and as proposed to be amended. Based on information provided by FINRA, broker-dealers submitted a total of 538 Forms 211 to initiate the publication or submission of quotations of OTC securities in 2018. FINRA counted that 91 of these Forms 211 concerned securities of prospectus issuers, Reg. A issuers, and reporting issuers; 391 concerned securities of exempt foreign private issuers, and 56 concerned securities of catch-all issuers. The Commission estimates that it takes about three hours to review, record, and retain the information pertaining to prospectus issuers, Reg. A issuers, and reporting issuers, and seven hours to review, record, and retain the information pertaining to exempt foreign private issuers and catch-all issuers.[194] As a starting point, therefore, absent the proposed amendments, the estimated annual burden of the information collection would be 3,402 hours.[195]

The proposed amendments change the information review requirement only by re-lettering the applicable paragraphs [196] and by adding the requirement that proposed paragraph (b) information be current and publicly available prior to the initial publication or submission of a quotation.[197] The Commission believes that these two proposed changes would not modify the burden hours for completion of the information review requirement that are estimated above. Additionally, it is not expected that the proposed changes to the information review requirement would create any initial one-time burden as it is unlikely that broker-dealers would need to modify their systems or their training practices to comply with the information review requirement under the proposed amendments.[198]

(a) Proposed Amendments to the Piggyback Exception

As discussed above, the proposed amendments would modify the piggyback exception in various ways, and these amendments would, in turn, impact the burdens associated with the information review requirement.

Proposed paragraph (f)(3)(i)(A) would limit broker-dealers' reliance on the piggyback exception to both bid and ask quotations at specified prices in an IDQS, which could reduce the number of securities that are eligible for the piggyback exception. Broker-dealers would be required to comply with the information review requirement prior to the initial publication or submission of quotations on securities that would lose piggyback eligibility due to this provision. According to estimates based on data from OTC Markets Group for 2018, the securities of 879 issuers, out of 9,912 issuers, would lose piggyback eligibility under this proposed amendment because they did not have both bid and ask quotations for four business days in succession on one or more occasions during that year. Based on the lack of quotes by broker-dealers, it is unclear whether broker-dealers would conduct the required review for most of these securities that would lose piggyback eligibility due to the adoption of this proposed requirement.

It is possible, however, that broker-dealers would begin to publish both bid and ask quotations for some of these securities to ensure that they remain piggyback eligible. While, as stated above, it is unclear whether broker-dealers would comply with the information review requirement as proposed for these issuers, the Commission is estimating that broker-dealers would comply with the information review requirement once annually for each security that would lose piggyback eligibility to make the most conservative estimate of burden that may arise under this proposed amendment.[199] Therefore, it is estimated that broker-dealers would comply with the information review requirement 879 additional times annually. The Commission estimates that the ratio of prospectus, Reg. A, and reporting issuers to exempt foreign private and catch-all issuers would roughly be consistent with the 2018 numbers for each type of security based on the proposed amendments; therefore, 402 of these affected issuers would be prospectus, Reg. A, or reporting issuers, 187 would be exempt foreign private issuers, and 290 would be catch-all issuers, leading to an increase in the total annual burden of 4,545 hours.[200]

The Commission is increasing the estimated overall burdens related to the information review requirement based on the proviso in proposed paragraph (f)(3)(ii), which would allow broker-dealers to rely on the piggyback exception for the securities of catch-all issuers if proposed paragraph (b)(5) information is current and has been made publicly available within six months prior to the date of publication or submission of the quotation. Proposed paragraphs (a)(1)(ii) and (a)(2)(ii) would require that proposed paragraph (b) information be current and publicly available as a component of the review requirement, and thus a broker-dealer would not conduct the required review of the proposed Rule for these securities after they lose piggyback eligibility based on the lack of proposed paragraph (b) information that is current and publicly available.

On the one hand, to the extent proposed paragraph (b) information becomes current and publicly available after the loss of the piggyback exception, pursuant to proposed paragraph (a), a broker-dealer or qualified IDQS would need to comply with the information review requirement for a broker-dealer to be able to publish or submit a quotation for such OTC security. On the other hand, if there is no current and publicly available proposed paragraph (b) information for a security after the loss of the piggyback exception, the broker-dealer or qualified IDQS would

[194] The Commission believes that these burden hour estimates reasonably measure the time required to comply with the information review requirement and recordkeeping requirement utilizing available technology and include additional time to review information about exempt foreign private issuers and catch-all issuers because the information required to be reviewed concerning these issuers may not be as readily available as the required information concerning prospectus, Reg. A, and reporting issuers.

[195] (91 prospectus, Reg. A, and reporting issuers × 3 hours) + (391 exempt foreign private issuers × 7 hours) + (56 catch-all issuers × 7 hours review and recordkeeping) = 3,402 hours.

[196] Under the proposed amendments, the information review requirement would be contained in proposed paragraphs (a), (b), and (c).

[197] Proposed paragraph (f)(8) would allow a broker-dealer to rely on publicly available determinations by a qualified interdealer quotation system or a registered national securities association that proposed paragraph (b) information is current and publicly available, as well as whether a broker-dealer may rely on an exception contained in proposed paragraphs (f)(1), (f)(3)(i)(A), (f)(3)(i)(B), (f)(4), (f)(5), or (f)(7). This new paragraph is intended to mitigate costs and burdens of certain of the proposed exceptions by allowing broker-dealers to rely on determinations of third parties. While, as discussed below, proposed paragraph (f)(8) impacts the recordkeeping requirement unrelated to the information review requirement, the Commission does not believe that this proposed change would impact the hourly burden attributable to completion of the information review requirement.

[198] The Commission does not attribute an initial burden of the proposed amendments to the information review requirement; an initial burden has been attributed to determining whether proposed paragraph (b) information is current and publicly available, discussed below. *See infra* Part VII.C.2.

[199] The Commission believes that this conservative estimate is reasonable because it accounts for all securities that may lose piggyback eligibility under this proposed amendment. While broker-dealers may not comply with the information review requirement for every security that loses piggyback eligibility, broker-dealers may comply with it multiple times concerning the same issuer. Therefore, the Commission believes that this reasonably approximates the impact of the proposed amendments industry-wide.

[200] (402 prospectus, Reg. A, or reporting issuers × 3 hours) + (187 exempt foreign private issuers × 7 hours) + (290 catch-all issuers × 7 hours review and recordkeeping) = 4,545 hours.

not be able to conduct the required review due to the lack of current and publicly available proposed paragraph (b)(5) information. There were 3,211 issuers of quoted OTC securities in 2018 without current and publicly available information subject to the requirements of paragraph (b)(5). Similar to the proposed change discussed above concerning bid and ask quotations, it is unclear whether broker-dealers would conduct the required review for these securities if they lose piggyback eligibility. This lack of clarity exists because these securities would be subject to the proviso in proposed paragraph (f)(3)(ii) and the Commission is estimating that broker-dealers would comply with the information review requirement once annually for each security that would lose piggyback eligibility. Accordingly, this proposed amendment would increase burdens by 22,477 hours.[201]

The Commission is not revising the estimates of current burdens of the information review requirement based on the proviso in proposed paragraphs (f)(3)(ii), which eliminate piggyback eligibility for shell companies and eliminate piggyback eligibility for 60 calendar-days following a trading suspension under Section 12(k) of the Act. With respect to shell companies, as noted in the Economic Analysis, the Commission believes that there are roughly 421 shell companies that are quoted in the OTC market. Since broker-dealers would not be able to rely on the piggyback exception for shell companies, the Commission believes broker-dealers would not conduct the required review for shell companies. As such, the Commission does not believe that the proposed elimination of a broker-dealer's ability to rely on the piggyback exception for shell companies would change the burdens of the information review requirement. With respect to securities that have been subject to a trading suspension under 12(k) of the Act, this proposed amendment would impact when a broker-dealer may conduct the required review, but it would not affect the substance of the information review requirement itself.

In summary, the proposed amendments to the piggyback exception would impact the burdens associated with the information review requirement in various ways. The proposed amendment to proposed paragraph (f)(3)(i)(A) would allow broker-dealers to piggyback only on bid and ask quotations at specified prices and the Commission estimates that this amendment would increase the annual burden by 4,545 hours. The proviso in proposed paragraph (f)(3) would allow broker-dealers only to piggyback quotations of the securities of catch-all issuers if proposed paragraph (b)(5) information is current and has been made publicly available within six months prior to the date of publication or submission of the quotation and the Commission estimates that this proposed amendment would increase the annual burden by 22,477 hours.

(b) Other Proposed Amendments

Proposed paragraph (f)(5) would create a new exception to the Rule that is intended to reduce burdens related to publishing or submitting quotations for OTC securities the Commission believes are less susceptible to fraud or manipulation. Specifically, proposed paragraph (f)(5) would provide an exception for securities with a worldwide ADTV value of at least $100,000 during the 60 calendar days immediately before the date of the publication of a quotation for such security and the issuer of such security has $50 million in total assets and $10 million unaffiliated shareholder's equity as reflected in the issuer's publicly available audited balance sheet issued within six months after the end of the most recent fiscal year. Broker-dealers would not be required to comply with the information review requirement when publishing or submitting quotations for these securities, so these amendments would reduce the burden of the information collection. The Commission believes that excepting certain types of OTC securities from the Rule's provisions would decrease the burden associated with the information review requirement in a manner that is consistent with these securities' percentage of the overall OTC market.

Based on data pulled from Bloomberg's equity screening function on April 12, 2019, 37 issuers with securities trading on OTC Markets Group's systems meet the exception in proposed paragraph (f)(5). Thirty-one of these 37 issuers (roughly 80 percent) are reporting issuers, and six (roughly 20 percent) are catch-all issuers.[202] Bloomberg's dataset covers only 6,069 issuers with securities that are traded on OTC Markets Group's systems, but, from this number and the number of excepted issuers, it can be estimated that the proposed amendments would roughly decrease the amount of times broker-dealers conduct the required review by 0.5 percent annually. Therefore, after rounding, the Commission estimates that the exceptions would reduce the number of times broker-dealers conduct the required review by three per year,[203] two of which would be reporting issuers and one of which would be a catch-all issuer,[204] resulting in a total reduction of 14 burden hours per year.[205]

The Commission believes that, other than as discussed above, the proposed amendments to the Rule do not impact the burden of the information review requirement. For example, proposed paragraph (f)(2)(ii), which would provide an exception for a broker-dealer to publish or submit a quotation by or on behalf of certain company insiders in reliance on the unsolicited quotation exception only if proposed paragraph (b) information is current and publicly available,[206] would limit the availability of the unsolicited quotation exception in certain circumstances. There is no existing burden for the information review requirement for these types of quotations, however, because under paragraph (f)(2) of the existing Rule, broker-dealers are not required to conduct the review prior to publishing or submitting a quotation for these orders. Therefore, this proposed amendment would not decrease the burden of the information review requirement. If the unsolicited quotation exception becomes unavailable due to this proposed amendment, broker-dealers would not be able to complete the required review as an alternative to utilizing this exception because current and publicly available information is a condition of the information review requirement in proposed paragraph (a)(1)(ii) and (a)(2)(ii). As a result, this proposed change would not increase the burden of the information review requirement if the unsolicited quotation exception becomes unavailable due to proposed paragraph (f)(2)(ii).

Out of an abundance of caution due to a lack of granular data, the Commission is not reducing the overall burden estimate of the information review requirement as a result of

[201] 3,211 catch-all issuers × 7 hours review and recordkeeping = 22,477 hours.

[202] To arrive at this number, a list of excepted issuers that resulted when using Bloomberg's equity screening function to return issuers that meet the criteria in proposed paragraph (f)(5) was cross-referenced against the Reporting Status field in OTC Market's Company Data File dated March 29, 2019. Issuers that report pursuant to bank regulatory requirements were considered to be reporting issuers for the purposes of this number.

[203] 538 completions of the information review requirement × .5% = 3.

[204] 3 × 70% (reporting issuers) and 3 × 20% (catch-all issuers).

[205] (2 reporting issuers × 3 hours) + (1 catch-all issuer × 7 hours) = 13 hours.

[206] The burden related to a broker-dealer's determination of whether paragraph (b) is current and publicly available is discussed below.

proposed paragraph (f)(6), which would provide an exception from the information review requirement for certain quotations of broker-dealers named as underwriters in the registration statement or offering circular of a security within the time frames contained in proposed paragraphs (b)(1) or (b)(2), as applicable. The Commission believes that no broker-dealer would be required to comply with the information review requirement for quoted OTC securities that meet the requirements of the underwriter exception. While it is estimated that this proposed amendment would result in a slight reduction in the number of times broker-dealers comply with the information review requirement annually, out of an abundance of caution, the Commission has not decreased the overall burden estimates of total annual burdens due to this exception because of a lack of granular data.

PRA TABLE 1—SUMMARY OF ESTIMATED BURDENS ASSOCIATED WITH INITIAL PUBLICATION OR SUBMISSION OF A QUOTATION IN A QUOTATION MEDIUM

Type of issuer	Type of burden	Initial burden [207]	Number of times the required information reviews are conducted	Annual burden per response	Total industry burden
Information review requirement absent proposed changes [208]					
Baseline Information Review Requirement Burdens:					
Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review	0	91	3	273
Exempt foreign private issuers	Recordkeeping and Review	0	391	7	2,737
Catch-all issuers	Recordkeeping and Review	0	56	7	392
Limiting piggyback exception to both bid and ask quotations at specified prices					
Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review	0	402	3	1,206
Exempt foreign private issuers	Recordkeeping and Review	0	187	7	1,309
Catch-all issuers	Recordkeeping and Review	0	290	7	2,030
Requiring current and publicly available proposed paragraph (b) information for catch-all issuers to remain piggyback eligible					
Changes to Exceptions:					
Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review	0	0	0	0
Exempt foreign private issuers	Recordkeeping and Review	0	0	0	0
Catch-all issuers	Recordkeeping and Review	0	3,211	7	22,477
Exception for securities that meet ADTV and asset test (decreases annual burden)					
Prospectus, Reg. A, or reporting issuers.	Recordkeeping and Review	0	2	3	−6
Exempt foreign private issuers	Recordkeeping and Review	0	0	0	0
Catch-all issuers	Recordkeeping and Review	0	1	7	−7

2. Other Burden Hours

Some provisions of the proposed amendments would create burdens other than those directly related to the initial publication or submission of a quotation.

Proposed paragraph (d)(2) would require that certain broker-dealers, qualified IDQSs, or registered national securities associations preserve documents and information that demonstrate that the requirements for an exception under proposed paragraph (f) are met. As noted above, rather than specifically direct that market participants would need to document every condition of the basis of their reliance on an exception for each quotation, the proposed Rule instead requires broker-dealers, qualified IDQSs, and registered national securities associations to preserve documents and information ''that demonstrate that the requirements for an exception under paragraph (f)'' are met. Additionally, proposed paragraph (f)(8) would allow broker-dealers that publish or submit quotations based on an exception to rely on publicly available determinations made by a qualified IDQS or registered national securities association. If a qualified IDQS or registered national securities association makes a publicly available determination that the requirements of an exception are met, or that the proposed paragraph (b) information is current and publicly available, the broker-dealer would need to document only the exception upon which the broker-dealer relies and the name of the qualified IDQS or registered national securities association that made the determination that the requirements of the exception are met.

[207] As mentioned above, it is not expected that the proposed changes to the information review requirement would create any initial one-time burden as it is unlikely that broker-dealers would need to modify their systems or conduct training to comply with the information review requirement under the proposed amendments.

[208] Because the exception for securities that meet the ADTV and asset tests would decrease the annual burden from the 2018 baseline, the numbers in this section of the chart reflect the number of times the information review requirement were conducted in 2018 multiplied by the hourly burden estimate for the completion of the information review requirement.

The types of documentation that a broker-dealer, qualified IDQS, or registered national securities association would need to maintain would vary based upon the exception. Certain exceptions, however, such as the unsolicited quotation exception, and the ADTV value and asset test exception, require that proposed paragraph (b) information be current and publicly available. Additionally, the piggyback exception requires that proposed paragraph (b)(5) information be current and publicly available within six months before the date of publication or submission of a quotation in an IDQS. The Commission believes that the requirement in these exceptions to have current and publicly available proposed paragraph (b) information would create ongoing recordkeeping burdens for broker-dealers under proposed paragraph (d)(2). A proviso to proposed paragraph (d)(2)(ii), however, does not require that a broker-dealer, qualified IDQS, or registered national securities association preserve proposed paragraph (b) information if such information is available on EDGAR. As shown in the Table 3 of the Economic Analysis, there are 9,913 unique issuers of quoted OTC securities for which broker-dealers would be required to maintain records to establish that proposed paragraph (b) information is current and publicly available.[209] Of these 9,913 issuers, 3,320 are SEC/Reg. A/Bank Reporting Obligation issuers, 4,192 are exempt foreign private issuers, and 2,401 are catch-all issuers.[210] It is estimated that it would take one minute to create documentation regarding the determination that the proposed paragraph (b) information is current and publicly available and that broker-dealers, qualified IDQSs, and registered national securities associations would do so quarterly for SEC/Reg. A/bank reporting obligation issuers and foreign private issuers,[211] bi-annually for catch-all issuers.[212] Accordingly, each broker-dealer would spend roughly 581 hours on this task annually, leading to a total annual burden of 52,871 hours dispersed between 89 broker-dealers, one qualified IDQS, and one registered national securities association.[213] The Commission believes that broker-dealers, the qualified IDQS, and the registered national securities association already have systems and personnel in place to create these records, so the initial burden of putting procedures in place to ensure compliance with the proposed amendments would be limited to one annualized hour of internal cost per broker-dealer, qualified IDQS, and registered national securities association to reprogram systems and capture records pursuant to the recordkeeping requirement, leading to an initial burden of 91 hours for the industry. Adding these two together, it is estimated that the total industry-wide burden for this documentation requirement would be 52,962 hours for the first year, and 52,871 hours annually going forward.

Proposed paragraph (f)(2)(ii) eliminates broker-dealers' reliance on the unsolicited quotation exception for certain company insiders if proposed paragraph (b) information is not current and publicly available. Beyond the requirement that proposed paragraph (b) information be publicly available as discussed above, the Commission believes that this proposed amendment would create ongoing recordkeeping burdens for broker-dealers relying on the unsolicited quotation exception. Based on data from OTC Markets Group, there were 3,043,214 quotations published in reliance on the unsolicited quotation exception in 2018. Although there is current and publicly available information for many issuers of securities involving unsolicited customer order quotations, out of an abundance of caution the Commission is including all unsolicited customer quotations in its estimate and estimating that the number would remain consistent on an annual basis for the purpose of this analysis. Therefore, it is estimated that there would be 3,043,214 quotations published in reliance on the unsolicited quotation exception annually that would require documentation and information to demonstrate that the quotation is not by or on behalf of an insider.

It is estimated that it would take a broker-dealer approximately one minute to create a record regarding such unsolicited customer quotation. Accordingly, it is estimated that, after rounding, broker-dealers would spend roughly 50,720 hours[214] in the aggregate complying with this recordkeeping requirement annually. These 50,720 hours would be dispersed between 89 broker-dealers, leading to an annual burden of 570 hours per broker-dealer.[215] The Commission believes that broker-dealers would already have systems and personnel in place that they would use to create these records, so the initial burden of putting procedures in place to ensure compliance would be limited to three hours of internal cost per broker-dealer to reprogram systems and capture the record, leading to an initial burden of 267 hours for the industry.[216] Adding these two together, it is estimated that the total industry-wide burden for this documentation requirement would be 50,987 hours for the first year, and 50,720 hours annually going forward.

The proviso in proposed paragraph (f)(3)(ii) would eliminate eligibility for the piggyback exception for securities of issuers that are shell companies. Accordingly, to comply with the recordkeeping requirement in proposed paragraph (d)(2), each broker-dealer, qualified IDQS, and registered national securities association that is relying on, or making publicly available determinations that a broker-dealer may rely on, the piggyback exception would need to preserve documents and information regarding its determination that the issuer of a security is not a shell company. The Commission estimates

[209] This number is determined by adding all unique issuers of quoted OTC securities except for SEC/Reg. A/Bank Reporting obligation issuers with public information available. Broker-dealers would not be required to preserve the required information for SEC/Reg. A/Bank Reporting because the records would be available on EDGAR.

[210] See *infra* Part VIII.B. for Table 3.

[211] Proposed paragraph (b)(3) provides that the reporting issuer information be the issuer's most recent annual report and periodic or current reports filed thereafter to be considered ''current'' and made publicly available. Proposed paragraph (b)(4) provides a similar standard, for foreign private issuer information, and requires the information published pursuant to 12g3–2(b) since the beginning of the issuer's last fiscal year. The Commission expects that respondents will preserve records to document compliance with this proposed requirement on a quarterly basis to capture quarterly reporting for these issuers.

[212] The proviso in proposed paragraph (f)(3)(ii) would require that the catch-all issuer information be ''current'' and made publicly available within six months prior to the broker-dealer's submission or publication of a quotation in an IDQS, creating a bi-annual requirement. *See supra* Part III.A.2.e.

[213] (3,320 SEC/Reg. A/Bank Reporting Obligation issuers × 1 minute × 4 responses per year) + (4,192 exempt foreign private issuers × 1 minute × 4 responses per year) + (2,401 catch-all issuers × 1 minute × 2 responses per year) = 581 hours.

[214] (3,043,214 quotations × 1 minute)/60 minutes = 50,720 hours.

[215] 50,720 hours/89 broker-dealers = 570 hours.

[216] The Commission notes that Supplemental Material .01 to FINRA Rule 6432 requires that broker-dealers initiating or resuming quotations in reliance on the exception provided by Rule 15c2–11(f)(2) (*i.e.,* the unsolicited quotation exception) must be able to demonstrate eligibility for the exception by making a contemporaneous record of (1) the identification of each associated person who receives the unsolicited customer order or indication of interest directly from the customer, if applicable; (2) the identity of the customer; (3) the date and time the unsolicited customer order or indication of interest was received; and (4) the terms of the unsolicited customer order or indication of interest that is the subject of the quotation (*e.g.,* security name and symbol, size, side of the market, duration (if specified) and, if priced, the price). Accordingly, based on this FINRA recordkeeping requirement, the Commission believes that broker-dealers will already have systems in place to document information related to the unsolicited quotation exception.

that broker-dealers, qualified IDQSs, and registered national securities associations would make determinations regarding shell companies quarterly and rely on the quarterly review for all quotations submitted concerning a particular issuer.[217]

The Commission estimates that broker-dealers, qualified IDQSs, and registered national securities associations would each spend one minute making a determination and preserving documents and information that demonstrate that an issuer of the OTC security is not a shell company. As noted in the Economic Analysis, there are 10,167 quoted OTC securities.[218] Accordingly, each broker-dealer would spend roughly 678 hours[219] on this task annually, leading to a total annual burden of 60,342 hours dispersed between 89 broker-dealers, one qualified IDQS, and one registered national securities association. The Commission believes that broker-dealers already have systems and personnel in place to create these records, so the initial burden of putting procedures in place to ensure compliance with the proposed amendments would be limited to three hours of internal cost per broker-dealer, qualified IDQS, and registered national securities association leading to an initial burden of 273 hours for the industry to reprogram systems and capture the record. Adding these two together, it is estimated that the total industry-wide burden for this documentation requirement would be 60,615 hours for the first year, and 60,342 hours annually going forward.

As noted above, it is estimated that there would be approximately 37 securities that would meet the proposed paragraph (f)(5) ADTV and asset tests. Beyond preserving documents and information that demonstrate proposed paragraph (b) information is current and publicly available, as discussed above, the broker-dealer, qualified IDQS, or registered national securities association would need to preserve documents and information that demonstrate that the various requirements of the ADTV test and asset test have been met. It is estimated it would take one minute to create documentation supporting the broker-dealer's reliance on the asset test prong of the exception and that broker-dealers would do this once annually per issuer.[220] Accordingly, broker-dealers, qualified IDQSs, and registered national securities associations would spend roughly 0.62 hours[221] on this information collection annually, leading to an ongoing burden of roughly 56.5 hours dispersed between 89 broker-dealers, one qualified IDQS, and one registered national securities association after rounding. Additionally, the Commission estimates that it would take one minute for a broker-dealer, qualified IDQS, or registered national securities association to preserve documents and information that demonstrate that the requirements of the ADTV test have been met and that each respondent would do this 252 times a year, each trading day. Accordingly, each respondent would spend roughly 155.4 hours[222] on this information collection annually leading to an ongoing burden of 14,141 hours dispersed between 89 broker-dealers, one qualified IDQS, and one registered national securities association (after rounding). The Commission believes that broker-dealers, the qualified IDQS, and the registered national securities association would already have systems and personnel in place to create these records, so the initial burden of putting procedures in place to ensure compliance would be limited to three hours of internal cost per broker-dealer, qualified IDQS, and registered national securities association, leading to an initial burden of 273 hours for the industry to reprogram systems and capture the record. Adding these values together, it is estimated that, after rounding, the total industry-wide requirement would be 14,414 hours for the first year, and 14,141 hours annually going forward.

Proposed paragraph (f)(6) would except from the information review requirement quotations concerning a security by a broker-dealer that is named as underwriter in a security's registration statement referenced in proposed paragraph (b)(1) or in an offering circular referenced in proposed paragraph (b)(2), subject to the time limitations contained in those sections. Registration statements and offering circulars are filed in EDGAR. Since the proviso to proposed paragraph (d)(2)(ii) would not require broker-dealers to preserve proposed paragraph (b) information that is available on EDGAR, the Commission is not estimating any initial or ongoing burden with respect to this exception.

Proposed paragraph (f)(7) would except from the Rule's issuer information and review and document collection provisions in proposed paragraphs (a) through (c), and (d)(1), the publication or submission, in a qualified IDQS, of a quotation concerning a security where that qualified IDQS complies with the requirements of proposed paragraphs (a) through (c) of the proposed Rule. Any broker-dealer would be able to publish or submit quotations for such security and would be required to document the reliance on this exception under proposed paragraph (d)(2). It is unclear how many securities would be eligible for this exception. As discussed above, this proposed exception is intended to except certain securities from the information review requirement that are less likely to be targeted for fraudulent activity (*e.g.,* securities of large cap foreign issuers). The Commission conservatively estimates that qualified IDQSs would conduct the required review for five percent of the exempt foreign private issuers that are quoted OTC securities[223] and that each broker-dealer would document its reliance on the exception once per year per issuer.[224] The information required to document compliance with the exception would be publicly available, so the Commission estimates that each broker-dealer would spend approximately one minute creating each

[217] As discussed above, proposed paragraph (d)(2) would require broker-dealers, qualified IDQSs, and registered national securities associations only to preserve documents and information ''that demonstrate that the requirements for an exception under paragraph (f)'' are met. Accordingly, the Commission believes that broker-dealers may likely document the availability of this exception quarterly, but they may do so more or less often in practice.

[218] Some broker-dealers may not provide quotations for all OTC securities; however, as a conservative estimate, the Commission estimates that each broker-dealer would determine the shell status of each issuer of a quoted OTC security on a bi-annual basis.

[219] 10,167 securities × 1 minute × 4 responses per year.

[220] As discussed above, proposed paragraph (d)(2) would require broker-dealers, qualified IDQSs, and registered national securities associations only to preserve documents and information ''that demonstrate that the requirements for an exception under paragraph (f)'' are met. Accordingly, the Commission believes that broker-dealers would likely document the availability of this exception annually because the test is based on audited balance sheets issues within six months of the end of the most recent fiscal year.

[221] 37 securities × 1 minute.

[222] 252 × 37 securities × 1 minute.

[223] According to FINRA Form 211 data, broker-dealers complied with the information review requirement 391 times for exempt foreign private issuers, five percent of which, after rounding, is 20 issuers. The Commission believes that, given the relatively large number of foreign issuers of quoted OTC securities, five percent is a reasonable estimate for the proportion of securities that would be reviewed by qualified IDQSs.

[224] Under this proposed exception, the security can become eligible for the piggyback exception after 30 days and, at this point, broker-dealers would not be required to document reliance on proposed paragraph (f)(7). The Commission, therefore, estimates that the securities that are quoted under this exception would either become eligible for the piggyback exception or would not be eligible for quotations for the remainder of the year given the lack of interest in the market.

record. Accordingly, broker-dealers would spend roughly 0.33 hours [225] on this information collection annually leading to an ongoing burden of 30 hours dispersed between 89 broker-dealers (after rounding). The Commission believes that broker-dealers would already have systems and personnel in place to create these records, so the initial burden of putting procedures in place to ensure compliance with the proposed amendments would be limited to three hours of internal cost per broker-dealer leading to an initial burden of 267 hours for the industry to reprogram systems and capture the record. Adding these two together, it is estimated that the total industry-wide burden for this documentation requirement would be 297 hours for the first year, and 30 hours annually going forward.

Under the proposed amendments, proposed paragraph (f)(8) would be contingent upon the qualified IDQS or registered national securities association representing that it has reasonably designed written policies and procedures to determine whether proposed paragraph (b) information is publicly available and current and the requirements of an exception under proposed paragraph (f) of this section are met. Accordingly, these entities would be required to update their written policies and procedures to make this representation. The Commission estimates that it would take one qualified IDQS and one registered national securities association subject to the Rule approximately 18 hours of initial burden each to initially prepare these written policies and procedures, and an ongoing annual burden of 10 hours each to review and update policies and procedures. Given the sophistication of the qualified IDQS and the registered national securities association, the Commission estimates that this burden would be borne internally. Accordingly, the total industry-wide burden for this documentation requirement would be 56 hours for the first year, and 20 hours annually going forward.

Proposed paragraphs (f)(1) and (f)(4) are exceptions for quotations concerning a security admitted to trading on a national securities exchange and which is traded on such an exchange on the same day as, or on the business day immediately preceding, the day of the quote and the publication or submission of a quotation concerning a municipal security, respectively. The Commission is not estimating any initial or ongoing burden with respect to these exceptions because the proviso to proposed paragraph (d)(2) does not require broker-dealers, qualified IDQSs, or registered national securities association to preserve records under paragraph (d)(2) for the proposed paragraphs (f)(1) or (f)(4) exceptions.

PRA Table 2—Summary of Estimated Other Burdens

Requirement	Type of burden	Number of entities impacted	Total initial industry burden	Total annual industry burden
Recordkeeping when relying on an exception under proposed paragraph (f), that proposed paragraph (b) information is current and publicly available.	Recordkeeping	91	273	52,871
Recordkeeping obligations under unsolicited quotation exception under proposed paragraph (f)(2).	Recordkeeping	89	267	50,720
Recordkeeping obligations concerning determining shell status under the proviso in proposed paragraph (f)(3)(ii)).	Recordkeeping	91	273	60,342
Recordkeeping obligations for the exceptions under proposed paragraph (f)(5)—Asset Test.	Recordkeeping	91	273	56.5
Recordkeeping obligations for the exceptions under proposed paragraph (f)(5)—ADTV Test.	Recordkeeping	91	0	14,141
Recordkeeping obligations concerning reliance on an IDQS under proposed paragraph (f)(7).	Recordkeeping	89	267	30
Recordkeeping obligations related to the creation of reasonable Policies under proposed paragraph (f)(8).	Recordkeeping	2	36	20

3. Collection of Information Is Mandatory

The information collections for the information review requirement and recordkeeping requirement are mandatory under the proposed amendments if a broker-dealer wishes to provide the initial publication or submission of a quotation for an OTC security. Additionally, the information collections involving documentation and information that demonstrate that the requirements for an exception have been met are mandatory under the proposed amendments if a broker-dealer submits or publishes quotations that rely on an exception in proposed paragraph (f).

4. Confidentiality

The Commission would not typically receive confidential information as a result of this collection of information. The collection of information is expected to be, for the most part, publicly available information. To the extent that the Commission receives records related to such disclosures or other records from a qualified IDQS or registered broker-dealer that are not publicly available concerning the information review requirement through the Commission's examination and oversight program, through an investigation, or some other means, such information would be kept confidential, subject to the provisions of an applicable law. To the extent that the Commission receives records that are not publicly available from a qualified IDQS, registered national securities association, or registered broker-dealer concerning the records related to a reliance on an exception contained in proposed paragraph (f) of the proposed Rule 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.

5. Retention Period of Recordkeeping Requirement

Pursuant to proposed paragraph (d)(1), a broker-dealer publishing or

[225] 20 issuers × 1 minute = 20 minutes or 0.33 hours.

submitting a quotation, or a qualified IDQS that makes known to others the quotation of a broker-dealer pursuant to proposed paragraph (a)(2), shall preserve the documents and information for a period of not less than three years, the first two years in an easily accessible place. Pursuant to proposed paragraph (d)(2), a broker-dealer publishing or submitting a quotation, or a qualified IDQS or a registered national securities association that make a publicly available determination pursuant to proposed paragraph (f)(8) shall preserve the documents and information for a period of not less than three years, the first two years in an easily accessible place.

D. Request for Comment

The Commission requests comment on whether the estimates for burden hours and costs are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

While the Commission welcomes any public input on this topic, the Commission asks commenters to consider the following questions:

Q134. Is the burden associated with the review required to comply with the information review requirement generally, and, in particular, whether three hours for reporting issuers and seven hours for exempt foreign private and catch-all issuers is reasonably accurate?

Q135. Is the Commission adequately capturing the respondents that would be subject to the burdens under the proposed Rule? Are there more than 39, or fewer than 39, broker-dealers that conduct the required review to provide the initial publication or submission of a quotation? Are there more than 89, or fewer than 89, broker-dealers that publish or submit quotations in reliance on exceptions to the Rule?

Q136. What is the impact of the proposed amendments on the number of times broker-dealers would comply with the information review requirement?

Q137. What are any other hourly burdens associated with complying with the proposed amendments?

Q138. Would any of the proposed amendments that are not discussed in this PRA Analysis impact the burden associated with the collection of information?

Persons wishing to submit comments on the collection of information requirements should direct the comments 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 send a copy to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–14–19. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–14–19, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

VIII. Economic Analysis

A. Background

The proposed amendments are intended to better protect retail investors from incidents of fraud and manipulation in OTC securities, particularly securities of issuers for which there is no or limited publicly available information. These amendments are also intended to reduce regulatory burdens on broker-dealers for publication of quotations of certain OTC securities that may be less susceptible to potential fraud and manipulation, such as securities of certain issuers with higher capitalization and securities that were issued in offerings underwritten by the broker-dealer publishing a quote.

The Commission is mindful of the costs imposed by and the benefits obtained from the Commission's rules. Exchange Act Section 3(f) requires the Commission, when engaging in rulemaking that requires consideration or determination of whether an action is necessary or appropriate in the public interest, also to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Additionally, Exchange Act Section 23(a)(2) requires the Commission, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition and not to adopt any rule that will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The discussion below addresses the expected economic effects of the proposed amendments, including the likely benefits and costs, as well as the likely effects of the proposed amendments on efficiency, competition, and capital formation. The Commission has, where possible, quantified the economic effects that are expected to result from the proposed amendments in the analysis below. However, the Commission is unable to quantify some of the potential effects discussed below.

First, it is unclear to what extent publicly available proposed paragraph (b) information would influence retail investors' investment decisions and how these decisions might affect the welfare of these investors.[226] In addition, the Commission is unable to estimate certain costs with precision because it lacks data on the costs associated with making proposed paragraph (b) information publicly available as well as the degree of activity and concentration in this market by individual broker-dealers with respect to initiating, resuming, or piggybacking quotes.[227] Wherever possible, where more precise estimates were not feasible, the Commission has estimated a range or bound associated with the costs of the proposed amendments. In addition, the Commission lacks information required to predict the extent to which a qualified IDQS will satisfy the information review requirement under the proposed amendments to the Rule or the extent to which a qualified IDQS or a national securities association will make publicly available a determination about the characteristics of OTC securities and whether broker-dealers can rely on the proposed exceptions to

[226] For example, the effect of investment decisions on the welfare of the investor depends on the individual's preference for risk and return. The Commission lacks data not only on the effect of disclosure on investment decisions, but also the preferences of OTC investors.

[227] For example, the Commission lacks data on the degree to which OTC issuers are already producing proposed paragraph (b) information that is current but not disseminating it to the public, which would reduce the costs associated with the proposed disclosure requirements. In addition, the Commission lacks data on which broker-dealers are publishing specific quotes; much of the analysis in this release is done at the security or issuer-level.

the Rule. Lastly, the Commission is unable to quantify the extent to which the proposed amendments to the Rule would impact entry of issuers into the quoted OTC market or the migration between securities in the quoted OTC market and the grey market, in which trades in OTC securities occur without broker-dealers publishing quotations in a quotation medium. Therefore, much of the discussion below is qualitative in nature, although the Commission describes, where possible, the direction of these effects.

B. Baseline and Affected Parties

The proposed amendments would affect broker-dealers that publish or submit quotations for OTC securities. Besides broker-dealers and qualified IDQSs, affected parties include issuers of quoted OTC securities and investors in these securities. The Commission assesses the economic effects of the proposed amendments relative to the baseline of existing requirements and practices in the OTC market. Registered broker-dealers participate in the market for quoted OTC securities by publishing priced and unpriced quotations representing customer interest in trading, executing customer orders, and acting as market makers.[228] OTC Markets Group identifies 89 broker-dealers that are active on the OTC Link ATS in OTC securities.[229] Thirty-two broker-dealers filed at least one FINRA Form 211 in order to initiate the publication or submission of quotations for an OTC security during the calendar year 2018.[230]

Securities quoted on the OTC market differ from those listed on national securities exchanges. In particular, the average OTC security issuer is smaller, and these securities trade less, on average. Table 1 below compares quoted OTC securities to those listed on the New York Stock Exchange (NYSE) or Nasdaq.[231] On average, issuers of quoted OTC securities have a lower market capitalization than those with securities that are listed on a national stock exchange.[232] Panel B of Table 1 shows that this difference is more pronounced when companies with securities listed on foreign exchanges, such as the Tokyo Stock Exchange or the TSX Venture Exchange, are excluded from the sample of quoted OTC securities. Further, Table 1 demonstrates that quoted OTC securities are characterized by significantly lower dollar trading volumes than listed stocks, even when comparing securities of similar size as measured by market capitalization.[233]

TABLE 1—COMPARISON OF QUOTED OTC SECURITIES AND LISTED SECURITIES, CY 2018

	Quoted OTC			Exchange listed	
	All	Unlisted	$50M–$5B market cap	All	$50M–$5B market cap
	(A)	(B)	(C)	(D)	(E)
Market Cap—median ($M)	22.12	3.78	444.39	581.20	528.66
Market Cap—mean ($M)	3,707.35	328.53	1,130.74	5,818.03	1,031.08
Volume—median ($M)	0.34	0.17	0.98	891.16	761.85
Volume—mean ($M)	76.18	86.27	39.75	11,422.17	2,737.79
Number of Securities	11,534	6,906	2,655	6,125	4,348

Table 2 provides more detail on the characteristics of quoted OTC securities and their issuers for the 2018 calendar year.[234] The Commission estimates that, on average, 10,167 quoted OTC securities had published quotations per

[228] In addition to the Rule, the regulatory baseline includes SRO rules governing the process of broker-dealers' publication of quotations for OTC securities. In particular, FINRA Rule 6432 requires broker-dealers to file Form 211 when initiating or resuming quotations in OTC securities to ensure compliance with the information requirements of the Rule. *See supra* Part III.J.1.

[229] *See Broker-Dealer Directory,* OTC Mkts. Grp. Inc. (last visited Aug. 13, 2019, 11:06 a.m.), *https://www.otcmarkets.com/otc-link/broker-dealer-directory.* The Commission expects that some of the broker-dealers included in the directory are not actively engaged in quoting OTC securities.

[230] The average annual level of FINRA Form 211 filing activity for the 32 broker-dealers was approximately 14 OTC securities during 2018. This activity is associated with initiating or resuming quotations only. The Commission lacks data that would allow it to estimate the number of quotes that broker-dealers published pursuant to paragraph (a) or in reliance on the piggyback exception, national securities exchange, or municipal security exceptions to the Rule. Based on data from OTC Markets Group, broker-dealers published 3,043,214 quotations in reliance on the unsolicited order exception in 2018. See *supra* note 227 for a discussion of data limitations. Because broker-dealers could rely on the piggyback exception for the vast majority (91 percent) of quoted OTC securities on an average day during 2018, the Commission believes that it is reasonable to assume that the majority of quotes that broker-dealers published during 2018 relied on the piggyback exception. See *infra* Part VIII.B for Table 2, which describes average daily activity for securities that are quoted in the OTC market.

[231] See *infra* note 234 for a description of OTC securities data sources. All information for stocks listed on NYSE and Nasdaq comes from The Center for Research in Security Prices (CRSP). Statistics are computed by averaging market capitalization and trading volume for each security across all trading days during the calendar year 2018. The conclusions drawn from this analysis regarding how OTC securities compare to exchange-listed securities with respect to size and volume traded remain qualitatively unchanged if the Commission extends the analysis to include securities listed on additional smaller national exchanges.

[232] The Commission estimates that securities listed on NYSE and Nasdaq were valued at approximately $34.9 trillion in total during calendar year 2018, while quoted OTC securities were valued at approximately $33.6 trillion with 95.3 percent of the total market capitalization coming from companies that also have securities listed on public foreign exchanges.

[233] Total dollar volume is annualized by taking the average daily trading volume and multiplying it by the number of trading days in 2018. Panels C and E of Table 1 provide statistics for comparable samples of quoted OTC and exchange listed securities with a market capitalization between $50 million and $5 billion. Several academic studies document the differences in liquidity between OTC and listed stocks using older data. *See* Bjorn Eraker & Mark Ready, *Do Investors Overpay for Stocks with Lottery-Like Payoffs? An Examination of the Returns of OTC Stocks,* 115 J. Fin. Econ. 486–504 (2015); Andrew Ang *et al., Asset Pricing in the Dark: The Cross-Section of OTC Stocks,* 26 Rev. Fin. Studs. 2985–3028 (2013).

[234] The Commission uses three sources of data on OTC securities. OTC Markets Group's ''End-of-Day Pricing Service'' and ''OTC Security Data File'' provide closing trade and quote data for the U.S. OTC equity market and include identifying information for securities and issuers, as well as securities' piggyback eligibility. The Commission also uses information from the weekly OTC Markets Group's ''OTC Company Data File.'' Company Data Files include information about issuer reporting, shell, and bankruptcy status, as well as the SEC Central Index Key (CIK) identifier and whether an issuer's financial statements are audited.

All statistics in Table 1 represent characteristics of OTC securities and OTC issuers on a typical trading day and are computed by averaging across all trading days for the 2018 calendar year. The Commission identified 18,964 unique OTC securities for 15,851 unique companies from aggregated OTC Markets Group data for the calendar year 2018. Of these, 11,534 unique OTC securities had at least one published quotation and 9,913 unique companies had a security that was quoted at least once during the calendar year 2018. The Commission believes that OTC Markets Group data are reasonably representative of all OTC quoting and trading activity in the U.S.

day during the calendar year 2018.[235] A majority of these had published both bid and ask quotations (88 percent).[236] The Commission identified that broker-dealers could rely on the piggyback exception to publish or submit quotations for 91 percent of these quoted OTC securities.[237] Many quoted OTC securities are illiquid. For example, the Commission estimates that, on average, only 43 percent of these quoted securities reported a positive daily trading volume, with three percent of quoted securities being ''inactive,'' which the Commission defines as not having reported any trading volume within the last year.[238] Conversely, only nine percent of quoted securities had an ADTV value greater than $100,000.[239]

TABLE 2—MARKET FOR QUOTED OTC SECURITIES, CY 2018

[Average daily activity]

Number of Securities	10,167
Quotes with both Bid and Ask	88%
Piggyback Eligible	91%
Traded	43%
Inactive	3%
ADTV value >$100,000	9%

Some OTC securities are traded on the grey market. Broker-dealers might not publicly quote these securities due to a lack of available issuer information necessary to satisfy the information review requirement or due to insufficient investor interest. The Commission estimates that 5,155 OTC securities were traded at some point during 2018 without having published quotations, with 522 securities of 517 issuers traded on the grey market on average per day during 2018. Despite not having published quotations, some grey market OTC securities were actively traded, with two percent having an ADTV value greater than $100,000.[240]

Table 3 below provides detail on issuers of quoted OTC securities.[241] The Commission estimates that, brokers participating in the OTC market published quotations for the securities of 9,913 issuers during the calendar year 2018.[242] These issuers differed in regulatory status, which determines the information issuers need to provide to comply with securities regulations and the type of proposed paragraph (b) information that would be required to be publicly available by the proposed amendments. Thirty-three percent of issuers followed the Exchange Act, Regulation A, or the U.S. Bank reporting standards; 42 percent followed the international reporting standard; and the remaining 24 percent followed an alternative reporting standard.[243] Given that issuers of quoted OTC securities follow different reporting standards, current financials are available for some issuers but not others. The Commission estimates that current financials were publicly available for approximately 68 percent of issuers of quoted OTC securities.[244] In particular, a total of 3,211 issuers of quoted OTC securities did not disclose information publicly. Of these, 1,146 issuers had an obligation to disclose information under the Exchange Act, Regulation A, or the U.S. Bank reporting standards; 111 issuers had an obligation under an international reporting standard; and the remaining 1,954 issuers did not have a reporting or disclosure obligation. Although the majority of issuers of quoted OTC securities provided current financial information publicly, financial statements of these issuers are not always audited. The Commission estimates that only 48 percent of issuers with publicly available financial statements with quoted OTC securities that were quoted in 2018 provided audited financial statements.[245] Four

[235] The number of securities quoted includes those with published priced and unpriced quotations. The Commission estimates that approximately five percent of quoted OTC securities did not have priced quotations. The number of OTC securities quoted on an average day is lower than the total number of OTC securities with published quotations in 2018 because some securities did not have published quotations for every trading day in 2018.

[236] The Commission estimates the number of securities with quotations with both bid and ask prices from close of trading day data. This estimate is a lower bound as the Commission is not able to identify cases in which a security had a published two-sided quotation during the day but was no longer published at day close.

[237] *See supra* Part III.C. A security would qualify for the piggyback exception if it satisfies the frequency of quotation requirements pursuant to proposed paragraph (f)(3) of the Rule. For such securities, a broker-dealer would not need to comply with the Rule's information review requirement prior to publishing a quotation on an IDQS.

[238] Broker-dealers trading in quoted OTC securities are required to report their trades to FINRA, which then disseminates this information to the market. OTC Markets Group receives trading data from FINRA's Trade Data Dissemination Service (TDDS) feed and incudes aggregated daily trading volume data for OTC securities in the ''End-of-Day Pricing Data File.''

[239] The Commission computes the ADTV on a given day by taking the average of reported dollar trading volume over the previous 60 calendar days. The computed ADTV for each security is a lower bound estimate of its worldwide ADTV if some of the trading activity was not reported to FINRA. As such, it is possible that there were more securities than the Commission identifies that would satisfy the volume threshold. The Commission estimates that approximately eight percent of quoted securities had an ADTV value greater than $100,000 and current and publicly available information.

[240] Conditional on having been traded, the average (median) dollar trading volume on a given day during 2018 for a security trading on the grey market was $40,301 ($1,257) as compared to $336,902 ($4,798) for quoted OTC securities.

[241] See *supra* note 234 for information on data sources. Numbers in parenthesis represent percentages of the row totals.

[242] During the 2018 calendar year, 14 percent of issuers of quoted OTC securities had multiple (two or more) quoted OTC securities with published quotations.

[243] The Exchange Act reporting standard requires that issuers are in compliance with their SEC reporting requirements. The Regulation A reporting standard applies to companies subject to reporting obligations under Tier 2 of Regulation A under the Securities Act. These companies must file annual, semi-annual, and other interim reports on EDGAR. The U.S. Bank reporting standard applies to companies in the OTCQX U.S. Bank Tier on OTC Markets Group's system and may be satisfied by following the SEC reporting standards, Regulation A reporting standards, or reporting standards outlined in OTCQX Rules for U.S. Banks (*https://www.otcmarkets.com/files/OTCQX_Rules_for_US_Banks.pdf*). Foreign issuers that are exempt from registering a class of equity securities under Section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b) follow international disclosure requirements. Lastly, the alternative reporting standard, which could apply to all remaining OTC security issuers and is based on the information required by Rule 15c2–11(a)(5), has varying requirements for disclosure depending on the OTC Markets Group Tier in which quotations for the security are published.

The Commission observed several instances in which issuers of quoted OTC securities changed their reporting standard during 2018. In these instances, for the computation of statistics in Table 3, the Commission attributed a reporting standard that the issuer followed for the majority of the days that its securities had published quotations during 2018.

[244] See *supra* note 234 for information on data sources. The Commission uses information on the IDQS and the OTC Markets Group tier classification to estimate the number of issuers with current and publicly available disclosures. In particular, the Commission counts all issuers with securities quoted on OTC Bulletin Board (''OTCBB'') and specific tiers on OTC Markets Group's system: OTCQX, OTXQB, and OTC Pink: Current Information and OTC Pink: Limited Information. This includes all quoted securities other than in the OTC Market OTC Pink: Limited Information and OTC Pink: No Information tiers. OTC Bulletin Board requires that quoted securities are current in their required filings with the SEC or other federal regulatory authority with proper jurisdiction. All OTC Markets Group tiers other than OTC Pink: Limited Information and OTC Pink: No Information require financial information to be at most six months old and available on *www.otcmarkets.com* or on the Commission's EDGAR system. The number the Commission computes here is a rough estimate as it is possible that some issuers of securities in the OTC Pink: Limited Information or OTC Pink: No Information tiers voluntarily release current and public information somewhere other than on the OTC Markets Group platform. Of all the quoted securities that qualified for the piggyback exception in calendar year 2018, the Commission estimates that 68 percent of them had publicly available current disclosures.

[245] OTC Markets Group classifies issuers that provide audited financial statements. In the analysis, the Commission assumes that all issuers that have been identified as providing audited financial statements provide audited balance sheets.

Although current FINRA and Commission rules do not require the financial statements of non-SEC reporting OTC securities issuers to be audited, OTC Markets Group requires audited financials from

Continued

percent of issuers with quoted OTC securities were shell companies, and broker-dealers were able to rely on the piggyback exception to publish or submit quotations for nearly all securities of shell companies (99 percent).[246] Lastly, the Commission estimates that 1,032 (10 percent) of issuers with quoted OTC securities and current and publicly available information had total assets greater than $50 million and shareholder equity greater than $10 million on their most recent audited balance sheets.[247]

TABLE 3—ISSUERS OF QUOTED OTC SECURITIES, CY 2018[248]

	SEC/Reg. A/ bank reporting obligation	International reporting obligation	No reporting/ disclosure obligation	Total
Public Information Available				
	(A)	(B)	(C)	
Issuers	2,174 (32.44)	4,081 (60.89)	447 (6.67)	6,702
Securities	2,522 (30.71)	5,201 (63.33)	489 (5.95)	8,212
Shell Company	192 (88.48)	1 (0.46)	24 (11.06)	217
Audited Financials	1,921 (59.58)	1,144 (35.48)	159 (4.93)	3,224
Assets >$50 mil & SE >$10 mil	578 (56.01)	438 (42.44)	16 (1.55)	1,032
No Public Information Available				
	(D)	(E)	(F)	
Issuers	1,146 (35.69)	111 (3.46)	1,954 (60.85)	3,211
Securities	1,179 (35.49)	121 (3.64)	2,022 (60.87)	3,322
Shell Company	136 (66.67)	0 (0.00)	68 (33.33)	204
Total (by Reporting Status)				
Issuers	3,320 (33.49)	4,192 (42.29)	2,401 (24.22)	9,913
Securities	3,701 (32.09)	5,322 (46.14)	2,511 (21.77)	11,534

The OTC market may attract those seeking to engage in fraudulent practices, such as pump-and-dump schemes, due to a lack of publicly available current information about certain issuers of quoted OTC securities. Two academic studies have found that market manipulation and pump-and-dump cases are concentrated among issuers of OTC securities relative to exchange-listed securities.[249] Another study has highlighted a higher incidence of cases involving delinquent filings and pump-and-dump schemes brought against issuers of OTC securities relative to cases brought against issuers of exchange-listed securities.[250] A Commission staff analysis of 4,000 SEC litigation releases between 2003 and 2012 found that the majority of alleged violations involving issuers of OTC securities were primarily classified as reverse mergers of shell companies or as market manipulation.[251] In addition, the Commission estimates, from a sample of 226 Commission enforcement actions filed in fiscal years 2017 and 2018 involving 502 OTC securities, that 171 enforcement actions (76 percent) were

OTC issuers with securities quoted in the OTCQX U.S.® and OTCQB® tiers. Issuers with securities quoted in the OTC Pink: Current Information tier must provide an Attorney Letter with Respect to Current Information if they do not file with the SEC and do not publish audited financial information.

[246] See *supra* Part III.C.2.d for a detailed discussion of shell companies. Even though broker-dealers had the ability to publish quotes for these securities relying on the piggyback exception, some quotes broker-dealers published for these securities may have relied on other exceptions to the Rule.

[247] The Commission reviews information on assets and shareholder equity of OTC issuers from a combination of four sources: (1) Quarterly and annual filings in EDGAR, (2) S&P Global Market Intelligence Compustat North America and Compustat Global databases, (3) Bloomberg, and (4) the OTC Markets Group website (*https://www.otcmarkets.com*). The Commission uses data on the most recent financial information available, as the Commission does not have access to historical financial data for many issuers. In some cases, the most recent financial data available is outdated. Specifically, for approximately 28 percent of OTC issuers, for which the Commission has data, the financial data are from calendar year 2017 or earlier. Of the 15,851 unique OTC issuers that appear in the data for calendar year 2018, the Commission is able to draw financial data for 1,806 (11 percent) of them from EDGAR and Compustat, 10,333 (65 percent) from Bloomberg, and 1,415 (nine percent) from the OTC Markets Group website. The Commission is unable to collect financial information for 2,297 (14 percent) of OTC issuers because financial statement information for these issuers was absent in the four data sources the Commission checked.

The Commission is only able to observe total shareholder equity and not affiliated shareholder equity on the balance sheets of issuers of quoted OTC securities. Since total shareholder equity serves as an upper bound on affiliated shareholder equity, the number of issuers with affiliated shareholder equity greater than $10 million must be no greater than the number of issuers with total shareholder equity greater than $10 million.

[248] See *supra* note 234 for information on data sources. The Commission observes that issuers of OTC securities that trade on the grey market differ from issuers of quoted OTC securities. The majority of these issuers followed the alternative reporting standard (69 percent) and a few (one percent) were identified as shell companies. In addition four percent of these issuers had total assets greater than $50 million and shareholder equity greater than $10 million on their most recent audited balance sheets.

[249] One study analyzed 142 stock manipulation cases, including pump-and-dump cases, in SEC litigation releases from 1990 to 2001 and found that that 48 percent involved OTC securities, while 17 percent involved securities listed on national exchanges. *See* Aggarwal & Wu, *supra* note 22. A more recent study looked at 150 pump-and-dump manipulation cases between 2002 and 2015 and found that 86 percent of these cases involved OTC securities. *See* Renault, *supra* note 22.

[250] This study looked at a broader sample of securities cases filed between January 2005 and June 2011 and identified 1,880 cases involving OTC securities and 1,157 cases involving securities listed on exchanges in the United States. The majority of OTC securities cases, 1,148 (61 percent), were related to delinquent filings, while 151 (eight percent) were related to a pump-and-dump scheme, 159 (eight percent) were related to financial fraud, 12 (one percent) were related to insider trading, and 212 (11 percent) were related to other fraudulent misrepresentation or disclosure. In contrast, only 26 (two percent) of listed securities cases involved delinquent filings, 43 (four percent) involved pump-and-dumps, 278 (24 percent) involved financial fraud, 399 (34 percent) involved insider trading, and 173 (15 percent) involved other fraudulent misrepresentation or disclosure. *See* Cumming & Johan, *supra* note 23.

[251] *See* Spotlight on Microcap Fraud (Feb. 22, 2019), *https://www.sec.gov/spotlight/microcap-fraud.shtml.*

classified as involving delinquent filings and seven enforcement actions (three percent) were classified as involving market manipulation. In contrast, the Commission estimates, from a sample of 68 Commission enforcement actions filed in fiscal years 2017 and 2018 involving listed securities, that one enforcement action (two percent) was classified as involving delinquent filings and three enforcement actions (five percent) were classified as involving market manipulation.

To highlight characteristics of securities and issuers in the OTC market that tend to involve risk of fraud and manipulation, the Commission examined quoted OTC securities that had been the subject of Commission-ordered trading suspensions and those that have been assigned a ''caveat emptor'' designation by OTC Markets Group during the 2018 calendar year.[252] The Commission summarizes the findings below, in Table 4.[253]

TABLE 4—QUOTED OTC SECURITIES, SUSPENSIONS AND OTC MARKETS GROUP ''CAVEAT EMPTOR'' STATUS, CY 2018

	SEC suspensions		OTC Markets Group ''caveat emptor'' status	
Issue Characteristics:				
Number of Securities	318		357	
Multiple Broker-Dealers Quoting	296	(93%)	336	(94%)
Quotes with both Bid and Ask	270	(85%)	309	(87%)
Piggyback Eligible	315	(99%)	354	(99%)
Issuer Characteristics:				
Number of Issuers	315		349	
SEC/Reg. A/Bank Reporting Standard	225	(71%)	233	(67%)
International Reporting Standard	24	(8%)	25	(7%)
Alternative Reporting Standard (ARS)	65	(21%)	90	(26%)
Public Information Available	28	(9%)	56	(16%)
Audited Financials	231	(73%)	245	(70%)
Shell Company	30	(10%)	34	(10%)

Overall, 318 quoted OTC securities were the subject of Commission-ordered trading suspensions over the calendar year 2018. Relative to the characteristics of the overall quoted OTC security market, broker-dealers were more likely to be able to rely on the piggyback exception to publish or submit quotations for quoted OTC securities subject to trading suspensions. Although issuers of suspended quoted OTC securities tended to be mostly reporting companies, they were less likely to have current public information available relative to the full sample of quoted OTC securities because many failed to file required reports.[254] Several of these companies were identified as shell companies (10 percent).

In addition, the Commission examined 357 instances in which quoted OTC securities were flagged with the ''caveat emptor'' designation by OTC Markets Group to inform investors to exercise additional care when considering whether to transact in these securities. Most of these companies had Commission-ordered trading suspensions.[255] Similar to the sample of OTC issuers with suspended securities, issuers of these securities were less likely to have publicly available information.

Increasing the availability of information about OTC issuers has the potential to counteract misinformation, which can proliferate through promotions and other channels. Several recent studies have examined the effects of stock promotions on investor trading in the OTC market.[256] For example, one study has found large price and trading volume movements following spam email campaigns that conveyed optimism about a particular OTC security's price and were viewed as containing credible information about the security.[257] Others have documented that cases in which issuers have secretly hired stock promoters for campaigns to increase their stock price and liquidity often are accompanied by trading by company insiders.[258] Based on publicly available website information reviewed by the Commission on OTC securities that were subjects of promotion campaigns, the Commission identified 350 OTC securities (three percent of all quoted OTC securities) that were featured in at least one promotion campaign during 2018. The vast majority of these OTC securities, 297 (85 percent), were issued by companies that did not otherwise provide current and publicly available

[252] See *supra* note 25 for information about Commission-ordered trading suspensions. OTC Markets Group explains that a ''caveat emptor'' designation may be assigned to a security if OTC Markets Group becomes aware of a misleading or a manipulative promotion; a company is under investigation for fraudulent activity; there is a regulatory suspension on the security; the company fails to disclose a corporate action, such as a reverse merger; or there is another public interest concern associated with the security. *See Caveat Emptor Policy,* OTC Mkts. Grp. Inc. (last visited July 15, 2019), *https://www.otcmarkets.com/learn/caveat-emptor.*

[253] All statistics in Table 4 were estimated by analyzing security and issuer characteristics on the trading day before the start of a Commission-ordered trading suspension or an assignment of a ''caveat emptor'' designation by OTC Markets Group.

[254] Issuers typically become subject to Commission-ordered trading suspensions under circumstances where there is a lack of publicly available current, accurate, or adequate information about the company. This may happen, for example, when a company is not current in its filings of periodic reports. As a result, it is not surprising that many of these issuers were not quoted in OTCBB or OTC market tiers that require current and publicly available financial information.

[255] For 297 of the 357 ''caveat emptor'' securities, this designation was assigned at the start of the suspension. In the remaining 21 suspension over the calendar year 2018, the security had already been designated with a ''caveat emptor'' status prior to 2018. The remaining 60 instances of ''caveat emptor'' assignment were associated with fraud or public interest concerns other than trading suspension.

[256] *See* White, *supra* note 41, at 11–12.

[257] *See* Karen K. Nelson *et al. Are Individual Investors Influenced by the Optimism and Credibility of Stock Spam Recommendations?,* 40 J. Business Fin. & Acct. 1155–83 (2013) (''[T]rading volume more than doubles in the days immediately following the spam campaign, and the mean return is positive and significant. However, the median return is zero, with nearly as many firms experiencing negative returns as positive on the spam date . . . . [C]ombining optimistic target price projections with credible, but stale, information from old press releases increase the return and volume reaction to spam. Moreover, the larger the return implied by the target price, the larger the market reaction.'').

[258] *See* Nadia Massoud *et al., Does It Help Firms to Secretly Pay for Stock Promoters?,* J. Fin. Stability 26, 45–61 (2016) (sampling both OTC securities and exchange-listed securities).

financial disclosures. An alternative data source from OTC Markets Group data identified 241 OTC securities (two percent of all quoted OTC securities) that were involved in at least one promotion campaign during 2018 with 58 of these securities (24 percent) issued by companies that did not have publicly available information.

An academic study has found that OTC stocks tend to be owned primarily by retail investors rather than institutional investors.[259] Studies have also found that, on average, quoted OTC securities earn lower returns than exchange-listed stocks. These investment decisions by individuals may be due to investors misestimating payoff probabilities for OTC stocks by overweighting extreme positive outcomes, particularly in cases where there is a lack of available information about the issuer.[260] An alternative explanation, supported by recent research, indicates that some investors in OTC securities may be driven by a speculative motive.[261] Demographic analysis of OTC investors suggests that they tend toward higher wealth and education.[262] However, OTC security holding period returns are worse for investors residing in locations with populations that may be more vulnerable in that they are older, lower-income, and less educated.[263] Overall, findings in these studies suggest that investors in the OTC market might benefit from additional information regarding company fundamentals. For example, some retail investors could more readily find, through online searches, information that refutes misinformation disseminated through promotions with publicly available proposed paragraph (b) information. Other retail investors could benefit from more efficient prices that are less susceptible to manipulation as a result of the trading activity of better-informed investors who acquire this information.

C. Discussion of Economic Effects

1. Effects of Rule 15c2–11 Amendments

In this section, the Commission discusses the expected costs and benefits of the proposed amendments to Rule 15c2–11. These amendments generally seek to increase the availability of current company financial information within the quoted OTC market and modify rule requirements to account for developments in this market.

The amendments would impact OTC investors, issuers, and intermediaries such as broker-dealers. The Commission anticipates the principal economic effects of the proposed amendments to be as follows. First, the transparency requirements could enable investors to learn more about the fundamental value of certain companies in the OTC market, which may direct their funds toward higher-return investments. In addition, other investors could benefit from more efficient prices that are less susceptible to manipulation as a result of the trading activity of better-informed investors who acquire this information. Second, the amendments may reduce the incidence of fraudulent schemes, such as pump-and-dump activity, as a result of heightened disclosure requirements and restrictions on the piggyback exception being applied to non-transparent and illiquid securities. Finally, broker-dealers could bear additional costs from the information review requirement as well as filing FINRA Forms 211 more frequently (*e.g.,* if proposed paragraph (b) information is not publicly available) as a result of, among other things, proposed limitations on relying on the piggyback exception.[264] To the extent that broker-dealers currently incur costs associated with disseminating proposed paragraph (b)(5) information, such costs on broker-dealers may be mitigated to some extent. The requirement for proposed paragraph (b)(5) information to be publicly available would reduce the broker-dealer's obligation to make proposed paragraph (b) information available upon request to interested investors electronically.

In specific circumstances, other provisions of the proposed amendments seek to relieve broker-dealers of costs related to the information review requirement and filing FINRA Form 211. For example, the exception for issuers with ADTV value greater than $100,000, total assets greater than $50 million, and unaffiliated shareholder equity greater than $10 million will relieve broker-dealers of the information review requirement for larger, more liquid issuers which are potentially less susceptible to fraud.

Broker-dealers could also incur costs and benefits associated with possible migration in trading activity from certain issuers and markets to others (*e.g.,* between quoted and grey markets). Some of these costs and benefits to broker-dealers may be passed on to investors in the form of higher or lower transaction costs and account fees. The costs and benefits associated with the specific proposed Rule provisions are discussed below.

(a) Making Proposed Paragraph (b) Information Current and Publicly Available

The costs and benefits discussed below pertain to the general requirements for proposed paragraph (b) information to be publicly available and current to publish or submit quotations for, or to maintain a quoted market in, quoted OTC securities. They also pertain to the new public disclosure requirements for the unsolicited quotation exception. The Commission expects that investors would benefit from easier access to proposed paragraph (b) information through public mediums, such as EDGAR or the website of a qualified IDQS, a registered national securities association, the issuer, or a registered broker-dealer that publishes proposed paragraph (b) information related to quoted OTC securities.

Presently, not all issuers of quoted OTC securities publicly disclose current financial information.[265] This information could allow investors to better assess the quality of the issuer

[259] *See* Ang *et al., supra* note 233 (stating that retail investors are ''the primary owners of most OTC stocks, whereas institutional investors hold significant stakes in nearly all stocks on listed exchanges, including small stocks'').

[260] *See* White, *supra* note 41.

[261] *See* Christian Leuz *et al., Who Falls Prey to the Wolf of Wall Street? Investor Participation in Market Manipulation* (NBER, Working Paper No. 24083, 2017), *available at https://www.nber.org/papers/w24083.pdf* (finding an average loss of 30 percent in a sample of 421 pump-and-dump schemes from 2002 to 2015 involving 6,569 German investors). The study also finds that ''35% of the tout investors have been day-trading in penny stocks or are frequent traders with short investment horizons. These investors appear to be willing to take substantial risks and trade aggressively also in other stocks. These investor types are more likely to invest in touts, place larger bets and have better returns. Their participation in touts looks quite differently from more conservative traders, who trade infrequently and do not invest in penny stocks. This group could be the ones that were tricked into the schemes.'' *Id.*

[262] *See* White, *supra* note 41; *see also* John R. Nofsinger & Abhishek Varma, *Pound Wise and Penny Foolish? OTC Stock Investor Behavior,* 6 Rev. Behav. Fin. 2–25 (2014).

[263] *See* White, *supra* note 41 (''[M]edian holding period returns deteriorate for zip codes with greater percentages of elderly, less education and residence stability, and lower income and wealth. All of the return differences are economically and statistically significant.'').

[264] Several of the proposed amendments would provide additional exceptions to the Rule (*e.g.,* eliminating the requirement for 12 business days of quotes within the previous 30 calendar days to establish piggyback eligibility). However, the Commission does not expect these amendments to have a significant impact on the costs and benefits of the Rule, as discussed below.

[265] Notably, there are no requirements to make financial disclosures publicly available for OTC securities quoted on the OTC Market OTC Pink: No Information tier. An analysis of quoted OTC securities during the calendar year 2018 has revealed that approximately 32 percent of issuers do not publicly disclose current financial information. *See supra* Part VIII.B.

and help them to avoid lower-return investments, such as those involved in a fraudulent scheme. By enabling investors to compare information contained in promotion campaigns to that in current company disclosures, the proposed requirement for proposed paragraph (b) information to be publicly available may help investors avoid trading on false information. Investors could also use this information to make better-informed corporate voting decisions to the extent that OTC issuers put matters to a shareholder vote in annual or special meetings.[266] Investors could also benefit from more efficient prices that are less susceptible to manipulation as a result of the trading activity of better-informed investors who acquire this information. In addition, broker-dealers will be restricted from publishing quotations for securities without publicly available proposed paragraph (b) information, which would likely push trading activity in these securities into the grey market.[267] Therefore, these proposed requirements could have a deterrent effect in inhibiting fraudulent activity related to quoted OTC securities. Investors could benefit from decreased exposure to investment losses as a result of diminished frequency of fraudulent activity in the OTC market.

Higher quality issuers (*i.e.,* issuers more likely to have productive investment opportunities) could benefit from increased access to capital to the extent that the change leads to a net increase in demand for higher quality OTC stocks. Previous academic studies have highlighted the relationship between the breadth and quality of firm disclosures and liquidity in the OTC market.[268] Conversely, issuers may also incur costs associated with making proposed paragraph (b) information publicly available to enable broker-dealers to publish or submit quotations for their securities. These costs could include preparing and producing proposed paragraph (b) information in document form and ensuring that the proposed paragraph (b) information is publicly available.[269] However, this particular cost is mitigated by the fact that these amendments would offer several possible alternatives for releasing proposed paragraph (b) materials, including making disclosures on public information repositories, such as EDGAR.[270] Alternatively, OTC issuers may elect not to provide proposed paragraph (b) information to the public, in which case their securities may exit from the quoted market, and their shareholders may incur costs related to loss of liquidity. The Commission estimates that the cost to an issuer in connection with this proposed amendment to the Rule will be, at most, equivalent to the cost of completing and filing a Form C–AR under Regulation Crowdfunding. The staff report on Regulation Crowdfunding cites survey data and estimates related costs to issuers to be, at most $12,804.[271] There were 3,211 issuers of quoted OTC securities in 2018 without public information subject to the requirements of proposed paragraph (b)(5).[272] Therefore, the Commission estimates that the maximum annual monetized cost of producing and updating proposed paragraph (b) information and making it publicly available every six months to be $82,227,288 across OTC issuers (and this represents a high upper bound, because the survey includes costs that may be unrelated to the proposed Rule, such as legal review of promotional materials).[273] This cost may be mitigated by a number of factors, including whether some of the cost associated with ensuring that the proposed paragraph (b) information is publicly available may be borne by broker-dealers intending to quote the security of this issuer.[274]

Broker-dealers may incur costs or accrue benefits from changes in the liquidity of quoted OTC securities as a result of changes in demand associated with new disclosures within quoted markets. For example, there may be changes in trading volume which alter the number of transactions from which broker-dealers earn fees. As discussed below, there may be migration from the quoted market to the grey market for OTC issuers avoiding these requirements. Therefore, the proportion of rents earned by broker-dealers from the grey market for OTC securities may increase relative to the quoted market. The net effect of these changes on the profits of trading intermediaries is unclear. Some of these costs and benefits to broker-dealers may be passed on to investors in the form of higher or lower transaction costs and account fees. The Commission anticipates that costs and benefits would be passed on more readily as competition increases

[266] The Commission lacks data on the quantity and nature of matters put to a vote at annual or special meetings of issuers of quoted OTC securities not subject to Commission reporting obligations.

[267] Using data on daily dollar trading volume for quoted OTC securities during the 2018 calendar year, the Commission finds that quoting activity and trading activity are correlated. In particular, the Commission finds that OTC securities with published quotations were 1.82 times more likely to have reported a positive dollar trading volume on a given day in 2018 relative to securities trading on the grey market. In addition, if they were traded, OTC securities with published quotations had, on average, 6.68 times greater daily dollar trading volume than securities trading on the grey market. See *supra* note 234 for a description of OTC securities data sources.

[268] *See* John (Xuefeng) Jiang *et al., Private Intermediary Innovation and Market Liquidity: Evidence from the Pink Sheets Market,* 33 Contemp. Acct. Res. 920–948 (2016) (finding that following the introduction of Pink tiers in OTC Markets Group, each associated with different self-established eligibility requirements pertaining to disclosure, firms with higher levels of disclosure experienced an increase in liquidity, while firms that did not disclose information experienced a decrease in liquidity); *see also* Bruggemann *et al., supra* note 49 (finding that market liquidity and the propensity of a security to experience a crash in returns, both used as proxies for the quality of a security in the analysis, decrease monotonically when moving across OTC tiers from those with high regulatory strictness and disclosure requirements to those with lower requirements); Ryan Davis *et al., Information and Liquidity in the Modern Marketplace* (Working Paper, 2016), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2873853.*

[269] Issuers that presently make disclosures publicly available, either voluntarily or because of a reporting obligation, and have systems in place for the preparation of these disclosures, would not face additional costs as a result of this proposed amendment. An analysis of quoted OTC securities during the calendar year 2018 has revealed that approximately 68 percent of issuers publicly disclose current financial information. *See supra* Part VIII.B.

[270] Presumably, issuers will choose the most cost-effective method to disseminate proposed paragraph (b) information.

[271] *See* U.S. Securities and Exchange Commission Staff, *Report to the Commission: Regulation Crowdfunding* (June 18, 2019), *available at https://www.sec.gov/files/regulation-crowdfunding-2019_0.pdf.* This report cites survey data and estimates costs to issuers undertaking a crowdfunding offering, including accounting costs of $3289, legal costs of $3297, and certain disclosure costs of $6218. Some of these costs may include costs unrelated to Form C–AR (such as legal review of promotional materials). Therefore, the cost cited above serves as an upper bound for the cost of completing and filing Form C–AR.

[272] See *supra* Part VIII.B for an analysis of quoted OTC securities issuers for which there was no public information in 2018. Proposed paragraph (b)(5) would include issuers without a reporting obligation in addition to issuers delinquent in their reporting obligations.

[273] $12,804 × 3,211 issuers × two times per year = $82,227,288. In the Commission's estimate of the maximum total cost to issuers of providing proposed paragraph (b) information publicly, the Commission has assumed that all issuers of quoted OTC securities that do not currently provide information publicly will choose to do so consistent with the proposed rule provisions. In addition, the Commission has assumed that these issuers will update this information every six months in order to maintain quoting activity in their securities. It may be the case that some of these issuers will choose not to provide any disclosures and quoting in their securities will cease. In these cases, costs associated with providing proposed paragraph (b) information for these issuers will be null.

[274] For example, it is unclear the extent to which specific OTC issuers without public disclosures may already be producing financial information internally or even have operations producing income and other accounting items. In these cases, the Commission expects the cost for these issuers would be less than the Commission's estimate.

among broker-dealers for OTC transactions.

(b) Proposed Amendments to Rule 15c2–11 Exceptions

The following proposed amendments to the piggyback exception would serve to limit the circumstances under which the exception would apply relative to the baseline: The requirement for proposed paragraph (b)(5) information to be current and publicly available within six months before the date of publication or submission of quotation in an IDQS in order for broker-dealers to continue to rely on the piggyback exception; the requirement that reliance on the piggyback exception be based upon quotations with both bid and ask prices; and the inability of broker-dealers to rely on the piggyback exception to publish or submit quotations for securities of shell companies or for securities within 60 calendar days of a trading suspension. These amendments generally would serve to draw quotation and trading activity away from less liquid and less transparent quoted OTC securities.

Currently, broker-dealers may rely on the piggyback exception to publish or submit quotations for the vast majority of quoted OTC securities, but many issuers of these securities do not provide current publicly available financial disclosures.[275] This requirement would encourage OTC issuers that would like to maintain a quoted market for their securities to provide current information to the public. The Commission discusses in detail the expected benefits and costs associated with providing current information publicly for investors, issuers of quoted OTC securities, and broker-dealers above.

Generally, these amendments could benefit investors by drawing their trading activity away from less liquid and less transparent quoted OTC securities that could attract fraudulent activity. Issuers in the OTC market could benefit from greater access to capital.[276] These amendments could also benefit investors by potentially deterring fraudulent activity. For example, the inability of broker-dealers to rely on the piggyback exception when publishing quotations for securities of shell companies could draw trading activity away from these securities. Currently, many publications of quotations for quoted OTC securities associated with issuers identified as shell companies are eligible for broker-dealers to rely on the piggyback exception. Potential fraudsters would incur costs in providing proposed paragraph (b) information to perpetrate fraud in shell companies.

These amendments could also cause broker-dealers to incur additional costs. In particular, broker-dealers may need to comply with the information review requirement as well as file FINRA Forms 211 more often to maintain a quoted market for securities under these restrictions. The Commission estimates that it will take broker-dealers four hours to complete the information review and file Form 211 for prospectus issuers, Reg. A issuers, and reporting issuers and eight hours to do so for exempt foreign private issuers or catch-all issuers whenever a broker-dealer initiates the publication or submission of a quotation for an OTC security.[277] Therefore, broker-dealers will bear a monetized cost of $240 for prospectus issuers, Reg. A issuers, and reporting issuers, $480 for exempt foreign private issuers and catch-all issuers whenever a broker-dealer initiates the publication or submission of a quotation in an OTC security.[278] The Commission estimates that 3,696 securities would lose piggyback eligibility as a result of the proposed restrictions on the piggyback exception.[279] Therefore, the aggregate monetized cost on broker-dealers would be $1,426,800 assuming that 1,447 securities were from prospectus, Reg. A, or reporting issuers, 238 were from exempt foreign private issuers, and 2,011 were from catch-all issuers.[280]

Broker-dealers may also incur costs related to determining whether or not these conditions apply to the issuer (*i.e.,* whether the issuer is a shell company within the proposed definition). The Commission believes that broker-dealers could set up information systems to assess whether these conditions apply to OTC securities such that there would a one-time cost but negligible ongoing cost. However, these costs on individual broker-dealers may be mitigated by allowing a qualified IDQS to satisfy the information review requirement under the Rule, as the amendments propose. Additionally, these costs may be mitigated by permitting broker-dealers to rely on determinations by qualified IDQSs and national securities associations that proposed paragraph (b) information is publicly available and that an exception to the Rule applies. The Commission estimates that it would take a broker-dealer, IDQS, or national securities association fifteen hours to establish a system to determine whether exceptions apply to an issuer, for a maximum aggregate cost of $81,900.[281] Alternatively, broker-dealers could withdraw from publishing or submitting quotations for certain OTC securities as a result of the requirements related to proposed paragraph (b) information, including the requirements to review and retain this information. This withdrawal may impose costs on investors by reducing liquidity for OTC securities they might want to purchase or already own prior to the withdrawal of liquidity. In addition, such withdrawal might impose costs of raising capital for OTC issuers. Broker-dealers could, again, incur costs and

[275] *See supra* note 265. The Commission estimates that during the calendar year 2018, issuers of 3,250 quoted OTC securities for which broker-dealers were relying on the piggyback exception when publishing quotations, did not have publicly available current information.

[276] The potential increase in access to capital for issuers is based on the likelihood that OTC market investors prefer to invest in unlisted securities, and market changes as a result of the proposed amendments could result in the divestiture of fraud-related securities and increased investment in non-fraud-related securities. However, to the extent that investment decisions are driven by other factors, such as a personal interest in specific companies, then there might be no increase in access to capital for issuers.

[277] The Commission estimates that it would take one hour for a broker-dealer to complete and file FINRA Form 211.

[278] 94 hours × $60 per hour = $240 for prospectus, Reg. A, and reporting issuers; 8 hours × $60 per hour = $480 for exempt foreign private issuers and for catch-all issuers.

[279] The Commission estimates that during 2018, broker-dealers could publish quotations relying on the piggyback exception for 10,122 quoted OTC securities. The Commission estimates the total number of securities that would lose piggyback eligibility under the proposed amendments by considering the number of securities that were piggyback eligible, but also would meet at least one of the following conditions: (1) The issuer of the quoted OTC security did not provide public information (3,022 securities); (2) the issuer of the quoted OTC security was a shell company (448 securities); (3) the security did not have both bid and ask quotations for four or more consecutive days (879 securities); and (4) the security was piggyback eligible after having been suspended (316 securities).

Of the 3,696 securities that would lose piggyback eligibility under the proposed amendments, 1,447 were securities of prospectus issuers, Reg. A issuers, and reporting issuers, 238 were of exempt foreign private issuers, and 2,011 were of catch-all issuers.

[280] 1,447 × $240 + 238 × $480 + 2,011 × $480 = $1,426,800. To the extent that broker-dealers may maintain the ability to rely on the piggyback exception by starting to publish both bid and ask quotations for securities that are presently piggyback eligible with only bid, ask or unpriced quotations, fewer securities may lose piggyback eligibility under the proposed amendments than the estimates the Commission presents. As noted in the PRA section, broker-dealers may also withdraw from quoting in securities such as shell companies and suspended securities. Therefore, the Commission expects the costs for broker-dealers computed here to be an upper bound.

[281] (89 broker-dealers + 1 IDQS + 1 National Securities Association) × 15 hours × $60 = $81,900. These costs are an upper bound of the total costs on broker-dealers because the actual number of broker-dealers quoting OTC securities may be a subset of the 89 broker-dealers identified by OTC Markets Group.

benefits associated with possible migration in trading activity from certain issuers to others as well as from the quoted to non-quoted market. Some of these costs and benefits to broker-dealers may, again, be passed on to investors.

The proposed requirement that reliance on the piggyback exception be conditioned on quotations with both bid and ask prices could also impose costs on broker-dealers and issuers of quoted OTC securities by possibly limiting the formation of an active quoted market for OTC securities for which broker-dealers initially publish quotes with only either a bid or ask price or no prices at all. The Commission estimates that, out of 431 quoted OTC securities for which broker-dealers could start relying on the piggyback exception to publish or submit quotations during the calendar year 2018, 45 (10 percent) OTC securities had quotes with only either a bid or ask price for the entire first 30-days of being quoted and 14 (three percent) had unpriced quotes only.[282] At the same time, however, if the proposed requirement were to encourage broker-dealers to shift away from publishing unpriced or quotations with only either a bid or an ask price to publishing quotations with both bid and ask prices for some quoted OTC securities, the proposed requirement may expedite the development of a two-sided market and facilitate price discovery and liquidity in these securities.

In contrast, eliminating from the piggyback exception the requirement for 12 days of quotations within the previous 30 calendar days has the potential to widen the circumstances under which broker-dealers may rely on the piggyback exception relative to the baseline. This proposed amendment could make publishing quotations and trading easier in less liquid securities. Therefore, this amendment could, in principle, mitigate both the benefits and costs of the amendments described above. However, the Commission expects that eliminating the 12-day publication-of-quotations requirement would have an insignificant effect on the OTC market as it should only impact a small fraction of quoting activity. In particular, of all quoted OTC securities in the calendar year 2018, the Commission estimates that only nine of more than 10,000 securities had fewer than 12 days of published quotations within the 30 previous calendar days, with no more than four business days in succession without a quotation.

These proposed amendments also include changes to the exception for unsolicited customer quotations. In particular, the amendments limit reliance on the unsolicited quotation exception on behalf of company insiders when proposed paragraph (b) information is not current and publicly available. These amendments could increase costs for broker-dealers because they may need to verify whether proposed paragraph (b) information is current and publicly available. Broker-dealers could also be required to document and record the circumstances involved in an unsolicited customer quotation. The Commission estimates that the cost of establishing systems to document and record these circumstances would be included in the $81,900 systems cost discussed previously. In addition, the Commission estimates that it would take a broker-dealer one minute to document and record these circumstances for each customer order arising from a distinct customer and circumstance, resulting in a monetary cost of $89.[283] The Commission lacks data to estimate how many unsolicited customer quotations come from distinct customers under distinct circumstances, which would trigger the need for broker-dealers to document a new circumstance. They could also increase costs for broker-dealers as a result of the information review requirement, as well as filing FINRA Form 211, when the exception does not apply. The costs to broker-dealers associated with these requirements for various types of issuers are the same as discussed previously in this section. However, the Commission lacks data on which unsolicited customer quotations come from company insiders.

These costs could be passed on to OTC investors. For example, OTC investors may be required to provide documentation supporting the fact that they are not a prohibited person within this exception, and may experience reduced liquidity in certain securities in which they are invested. The magnitude of this potential cost to OTC investors could vary significantly depending on the manner in which it is or is not acquired by broker-dealers. However, the Commission believes that this cost could be minimal because there are means to provide documentation such as through attestations which would require minimal resources on the part of the investor.

There could also be benefits to OTC investors from the requirement for broker-dealers to obtain and review proposed paragraph (b) information when the unsolicited quotation exception does not apply. For example, the review of proposed paragraph (b) information in order to provide a quotation for an unsolicited customer quotation of a company insider could deter fraud by alerting broker-dealers to potential sales by company insiders related to fraud. In addition, as discussed above in relation to proposed limitations on the piggyback exception, the costs and benefits to investors, issuers and broker-dealers would be qualitatively similar. Issuers in the OTC market could benefit from greater access to capital if capital flows away from fraudulent investments. Broker-dealers could also incur costs and benefits associated with possible migration in trading activity if unsolicited customer orders move from quoted to non-quoted markets. These costs and benefits could be passed on to OTC investors. Finally, there would be benefits and costs associated with the requirements pertaining to public disclosure of proposed paragraph (b) information, as the unsolicited quotation exception for a company insider would be contingent on this information being current and publicly available.

(c) Proposed New Exceptions to Rule 15c2–11 To Reduce Burdens

These amendments propose three new exceptions to except publications of quotations for certain OTC securities from the provisions of Rule 15c2–11, primarily the requirement for broker-dealers to obtain and review proposed paragraph (b) information. The first of the three new exceptions would apply to securities with (1) a $100,000 ADTV value and where (2) the issuer of such security has $50 million total assets value and $10 million unaffiliated shareholders' equity on the issuer's publicly available audited balance sheet issued within six months after the end of the most recent fiscal year. This exception would apply only to securities for which proposed paragraph (b) information is current and publicly available. This exception is meant to target more visible quoted OTC securities for which current and reliable information about the issuer is publicly available to investors, specifically for larger issuers, and for more liquid securities. This exception is expected to reduce the broker-dealer burden of complying with the Rule with respect to publishing quotations for securities for a subset of issuers of OTC securities. The analysis in the baseline revealed no

[282] Of the 14 quoted OTC securities that became piggyback eligible based on unpriced quotations, six (42 percent) had a published priced quote within the first 60 days after becoming piggyback eligible.

[283] (89 broker-dealers × 1 hour) × $60 = $5340. (89 broker-dealers × 1/60 hour) × $60 = $89.

issuers that had financial information publicly available to investors and that had been the subject of Commission-ordered trading suspensions or assigned a ''caveat emptor'' designation by OTC Markets Group in calendar year 2018 would have met both the ADTV and assets tests.[284] Therefore, the Commission expects that many other quoted OTC securities that would qualify for these exceptions would be less susceptible to misinformation campaigns and share price run-ups as a result of buying pressure.

The main economic effect of this proposed exception regarding ADTV and assets tests should be to relieve broker-dealers from the information review requirement and filing a FINRA Form 211 to publish quotations in a quotation medium. As before, the Commission estimates that broker-dealers will incur relief from a monetized cost of $240 for prospectus issuers, Reg. A issuers, and reporting issuers, $480 for exempt foreign private and catch-all issuers whenever a broker-dealer publishes or submits a quotation for issuers satisfying these requirements. According to the Commission's estimates from the PRA, two issuers would be reporting issuers while one would be a catch-all issuer per year so that the total cost savings would be $960.[285] Broker-dealers would also need to incur costs to verify that OTC issuers satisfy these ADTV and size thresholds. The Commission believes that broker-dealers could set up information systems to assess whether these conditions apply to OTC issuers such that there would a one-time cost but negligible ongoing cost. This cost would be included in the $81,900 systems cost across broker-dealers, IDQSs, and national securities associations discussed previously. Some of these benefits and costs may be passed on to OTC investors. Certain issuers or securities that would meet the Rule's proposed ADTV and assets test but currently trade in the grey market may benefit from a broker-dealer establishing a quoted market without incurring costs associated with complying with the Rule's provisions. This migration may result in a benefit to investors to the extent that it may establish a new quoted market that facilitates price discovery and liquidity for higher quality securities previously trading in the grey market.

The second of the three proposed new exceptions would apply to quotations following a registered or Regulation A offering, where the broker-dealer was named as an underwriter in the registration statement or offering circular and publishes or submits quotations for the same class of security in an IDQS within certain specified time frames. This exception is targeted towards those OTC securities that were recently offered in a transaction in which a regulated entity may have conducted a due diligence review. Because of the liability attached to underwriting activity, an underwriter typically conducts a due diligence review to mitigate potential liability associated with underwriting an offering of securities. Depending on its breadth and quality, this review may permit an underwriter to assert a defense to liability under Section 11 or Section 12(a)(2) of the Securities Act. As a result, underwriters of registered and Regulation A offerings are incentivized to confirm that the information provided to investors in the prospectus for a registered offering and offering circular for a Regulation A offering is materially accurate and obtained from a reliable source. Thus, excepting these quotations from the Rule's provisions is expected to reduce the burden of complying with the Rule for certain broker-dealers without sacrificing investor protection. The Commission does not currently have data that allow it to estimate the propensity with which broker-dealers are underwriting offerings for the same securities for which they are publishing quotations and thus quantify the effect of this exception on broker-dealers.

In addition, the Commission is also proposing an exception for publications or submissions of quotations respecting securities where a qualified IDQS complies with the Rule's provisions, so long as the issuer of the security is not a shell company. Broker-dealers could also rely on a publicly available determination by a qualified IDQS that proposed paragraph (b) information is current and publicly available for a given security. This exception is expected to reduce the burden on some broker-dealers with respect to publishing or submitting quotations for certain OTC securities. However, broker-dealers may incur additional costs related to determining certain characteristics about the issuer (*e.g.,* whether the issuer is a shell company within the proposed definition). The Commission believes that broker-dealers or qualified IDQSs could set up information systems to assess whether these conditions apply to OTC issuers such that there would a one-time cost but negligible ongoing cost. This cost would again be included in the $81,900 systems cost across broker-dealers, IDQSs, and registered national securities associations discussed previously. These costs and benefits may, again, be passed on to OTC investors. Although the Commission recognizes that, currently, an IDQS already operates as a public repository for some information about the securities that trade in their market, the Commission is unable to predict how common it would become for a qualified IDQS to be willing to take on the responsibility of satisfying the requirements of the qualified IDQS review exception to the Rule, allowing certain broker-dealers to qualify for this exception.

Lastly, the Commission is also proposing an exception for publications or submissions of quotations by broker-dealers that rely on publicly available determinations by a qualified IDQS or a registered national securities association that proposed paragraph (b) information is current and publicly available, as well as whether a broker-dealer may rely on certain proposed exceptions to the Rule. The Commission expects the main economic effect of this proposed exception to be mitigating costs broker-dealers are expected to incur associated with determining certain characteristics about an issuer (*e.g.,* whether the issuer is a shell company within the proposed definition, or whether the security

[284] The Commission finds that in 2018, five suspended securities and 17 ''caveat emptor'' securities had an ADTV value in excess of $100,000. However, issuers of these securities would not have satisfied the thresholds for assets and unaffiliated shareholder equity required to qualify for the exemption under the proposed amendments. Similarly, 11 issuers of suspended securities and 10 issuers of securities with the ''caveat emptor'' designation that met the assets and the shareholder thresholds did not have sufficient trading volume that would meet the liquidity threshold.

This analysis pertains to total shareholder equity which serves as an upper bound for unaffiliated shareholder equity. Therefore, any firms which fall below $10 million in shareholder equity fall below this threshold for unaffiliated shareholder equity.

Because delinquent filings may be the reason for the trading suspension, the Commission is aware that the Commission's analysis using data on total assets and shareholder equity of issuers with suspended OTC securities may rely on information which is outdated and no longer representative of issuer fundamentals.

[285] (2 reporting issuers × $240) + (1 catch-all issuer × $480) = $960.

There could be additional relief as a result of the ADTV and assets exceptions for broker-dealers quoting securities that end up losing piggyback eligibility under the proposed paragraph (g)(3) exception. The Commission estimates that out of the 3,696 securities that would lose piggyback eligibility under the proposed amendments, four securities of prospectus issuers, Reg. A issuers, and reporting issuers and three securities of exempt foreign private issuers would have satisfied the ADTV value and assets thresholds. The ability of broker-dealers to rely on the proposed paragraph (g)(5) exception for securities for which they could no longer rely on the proposed paragraph (g)(3) exception could lead to an additional relief of four × $240 + 3 × $480 = $2,400.

jointly satisfies the ADTV and assets tests.) However, the Commission is unable to predict how common it would become for a qualified IDQS or registered National Securities Association to make these determinations.

2. Efficiency, Competition, and Capital Formation

In this section, the Commission discusses the impact that the proposed amendments to Rule 15c2–11 may have on efficiency, competition, and capital formation. As discussed above, these amendments generally would increase transparency by requiring public availability of proposed paragraph (b) information that is current to enable broker-dealers to publish or submit quotations for OTC securities. As a result, the proposed amendments may cause capital to migrate from opaque to more transparent companies. A transfer of capital could occur as a result of non-disclosing OTC issuers either exiting OTC market altogether or migrating from the quoted OTC market to the grey market. This transfer of capital would occur where OTC issuers opt not to make existing paragraph (b) information publicly available. Less liquid OTC securities could also migrate away from the quoted OTC market as a result of the proposed restrictions on the piggyback exception pertaining to (1) shell companies, (2) recently suspended securities, and (3) securities without a sufficient prior history of both bid and ask prices. One academic study finds that valuations decrease when firms migrate from more liquid markets to less liquid markets, possibly as a result of decreased access to capital.[286] Therefore, investors may reallocate capital away from OTC issuers of these less liquid securities as these issuers exit the quoted OTC market. These proposed amendments could decrease investors' exposure to fraudulent activity directed toward non-transparent or illiquid securities. Capital formation could improve as investors' funds are diverted away from fraudulent OTC securities, which would migrate away from the quoted OTC market, and investors move toward the investments that remain.

In addition, the transparency of the market for quoted OTC securities should generally improve, particularly for non-disclosing issuers that decide to start publicly disclosing proposed paragraph (b) information to remain on the quoted OTC market. Capital formation could improve as investors allocate funds toward more productive investments based on enhanced availability of proposed paragraph (b) information in the quoted market for OTC securities. In particular, investors may be able to better discern the value of an OTC security from the financial and qualitative data contained in proposed paragraph (b) information. As a result of these effects, these proposed amendments could generally enhance the efficiency of capital allocation, *i.e.,* the degree to which funds are diverted away from low value investments and toward high value investments. Previous academic studies have documented a relationship between greater quality of a firm's disclosures and a decreased cost of capital for the firm.[287] Other studies find a relationship between increased quality and frequency of accounting disclosures and the productivity of corporate investment.[288] As discussed previously, certain OTC issuers may withdraw from quoted markets as a result of the proposed disclosure requirements and lose access to capital as a result. However, these issuers may be less likely to have productive investment opportunities than those that opt to disclose, which may mitigate the impact on capital formation.

The efficiency of prices (*i.e.,* the degree to which prices reflect the fundamental value of the security) could also improve in the OTC market as a result of greater transparency. In particular, prices could become less susceptible to manipulation as a result of the trading activity of informed investors who would have access to proposed paragraph (b) information. These investors could buy underpriced securities and sell overpriced securities, pushing mispriced securities toward fundamental values.

The heightened transparency that would arise from the proposed amendments could increase competition among both broker-dealers and issuers of quoted OTC securities. For example, broker-dealers could access proposed paragraph (b) information at a low cost and establish more competitive prices. Prior to these proposed amendments, broker-dealers could have had differential access to proposed paragraph (b) information in quoted the OTC market and potentially benefited from non-competitive pricing as a result. As mentioned previously, some broker-dealers may withdraw from quoting certain OTC securities (*e.g.,* shell companies) as a result of the costs of initiating and resuming quotations associated with the proposed amendments. As a result, there may be diminished price competition in these types of securities.

Issuers of quoted OTC securities may also need to price seasoned equity offerings more competitively because investors would have improved access to information and might be able to more easily compare the financials of OTC issuers when allocating their investment dollars. This information could again enable OTC investors to divert funds more easily from higher to lower cost issues. As a result, OTC issuers would have less ability to price their issues high relative to the fundamental value of the securities being offered.

D. Reasonable Alternatives

In this section, reasonable alternatives to the proposed amendments to Rule 15c2–11 are discussed.

1. Eliminating the Piggyback Exception

The 1999 Reproposing Release proposed to eliminate the piggyback exception from Rule 15c2–11. This amendment would have required all broker-dealers to complete the information review requirement and file FINRA Form 211 before publishing or submitting a quotation in a quotation medium. Relative to the baseline (*i.e.,* the existing provisions of Rule 15c2–11), this alternative would have increased the costs of broker-dealers that complied with the Rule's review, document collection, and recordkeeping provisions prior to publishing or submitting a quotation for an OTC security. These costs could be passed on to OTC investors. Alternatively, some broker-dealers could withdraw from publishing quotations in the OTC market as a result of the information review requirement, which could lead to the disappearance of a quoted market for some OTC securities and a migration of these securities to the grey market. Both possible effects would benefit investors by imposing costs on potential fraudsters in the OTC market.

First, review of proposed paragraph (b) information could help broker-

[286] *See* James J. Angel, *et al., From Pink Slips to Pink Sheets: Liquidity and Shareholder Wealth Consequences of NASDAQ Delistings* (Working Paper, Nov. 4, 2004), *available at https://www.researchgate.net/profile/Jeffrey_Harris7/publication/4893245_From_Pink_Slips_to_Pink_Sheets_Liquidity_and_Shareholder_Wealth_Consequences_of_Nasdaq_Delistings/links/02e7e527daa56e7612000000.pdf.*

[287] *See supra* note 269; Luzi Hail & Christian Leuz, *International differences in the cost of equity capital: Do legal institutions and securities regulation matter?,* 44 J. Acct. Res. 485–531 (2006) (finding that stock markets with greater disclosure requirements have lower costs of capital in cross-country comparisons).

[288] *See e.g.,* Sugata Roychowdhury *et al., The Effects of Financial Reporting and Disclosure on Corporate Investment: A Review,* J. Acct. & Econ. (forthcoming 2019).

dealers increase price efficiency, while deterring fraudsters. Second, broker-dealers' withdrawal from publishing quotations for OTC securities could benefit investors by inhibiting fraudulent and manipulative schemes. However, broker-dealers might also withdraw from publishing quotations for securities of high quality issuers at the same time. Eliminating the piggyback exception would be expected to increase capital raising costs for OTC issuers. Therefore, the net effect of this alternative on OTC investors and issuers is unclear.

The Commission preliminarily believes that the proposed Rule more appropriately meets the Commission's policy goals because the alternative places the additional burdens upon broker-dealers and OTC issuers relative to the proposed amendments, while it fails to target OTC securities most vulnerable to fraud and manipulation. In particular, broker-dealers would incur additional costs associated with review of proposed paragraph (b) information and filing FINRA Form 211 for all OTC securities they wish to quote. In addition, this alternative could raise the cost of capital for OTC issuers relative to the proposed amendments again without targeting those issuers most vulnerable to fraud and manipulation.

2. Eliminating the Piggyback Exception for Shell Companies After Reverse Mergers

These amendments to Rule 15c2–11 propose to eliminate the piggyback exception for publications or submissions of quotations for shell companies, which could inhibit pump-and-dump schemes that can be targeted toward shell companies. One possible alternative would be to more narrowly target pump-and-dump schemes by eliminating the piggyback exception for publications or submissions of shell companies only during a fixed period after a reverse merger between a shell company and an operating company. Because there is often no public information about the post-merger company, eliminating the piggyback exception at that point would require the issuer to make proposed paragraph (b) information publicly available for a broker-dealer to maintain an actively quoted market. The economic effect of this alternative would be directionally similar to that of the proposed restriction on publications or submissions of quotations for securities of all shell companies.

In particular, this alternative could improve the welfare of investors by helping them avoid fraud perpetrated through shell companies following a reverse merger. Second, issuers in the OTC market could benefit from greater access to capital.[289] Although broker-dealers would bear costs from the information review requirement and filing FINRA Form 211 for securities of shell companies after a reverse merger (with some of this cost possibly passed on to OTC investors), this cost may be lower relative to the proposed amendments because, under this alternative, broker-dealers would only need to bear this cost after a reverse merger. However, under this alternative, broker-dealers may incur additional costs in monitoring the OTC market for reverse mergers relative to the proposed amendments. The Commission preliminarily believes that the proposed Rule is more appropriate than the alternative because of the additional cost on broker-dealers. In addition, the Commission recognizes that broker-dealers may not be able to accurately identify reverse mergers when they occur.

3. Alternative Thresholds for Exceptions

The 1999 Reproposing Release proposed to except publications of quotations from the provision of Rule 15c2–11 for OTC securities with at least: (1) $100,000 ADTV value, (2) $50 million total assets value and $10 million shareholders' equity on the issuer's audited balance sheet or (3) $50 bid price. These exceptions were less restrictive than the ones in the current proposed amendments as the exception would apply if an OTC security could conform to only one of these three conditions. Therefore, one possible alternative would be to establish thresholds which conform to these conditions from the 1999 Reproposing Release.

Relative to the baseline, the main economic effect of this alternative would be to relieve broker-dealers from complying with the Rule's provisions and filing FINRA Form 211 to publish quotations in a quotation medium. Some of these benefits may be passed on to OTC investors. Certain issuers or securities that would qualify for these exceptions but currently trade in the grey market may benefit from a broker-dealer establishing a quoted market without incurring costs associated with complying with the Rule's provisions. This migration may result in a benefit to investors to the extent that it may establish a new quoted market that facilitates price discovery and liquidity for quality securities previously trading in the grey market.

Relative to the proposed amendments, however, this alternative is more likely to except securities that may be targeted for fraudulent activity from the Rule's review and document collection provisions. For example, there were five suspended OTC securities in 2018 with ADTV value in excess of $100,000 and 11 issuers of suspended OTC securities that exceeded the thresholds for $50 million in total assets and $10 million in shareholders' equity. Therefore, investors may incur costs from greater exposure to fraud and manipulation relative to the proposed amendments. As a result, the Commission preliminarily believes the proposed Rule is better than the alternative. However, investors in higher quality OTC issuers could benefit in that a greater number would qualify for the quoted market relative to the proposed amendments. In addition, broker-dealers would benefit from even greater relief from the Rule's provisions and from filing FINRA Form 211.

4. Quotations With Either Bid or Ask Prices for Piggyback Exception

The proposed amendments condition the piggyback exception on quotations with both bid and ask prices for the prior 30 calendar days with no gap in quoting of more than four days. One alternative would be to condition the exception on quotations with either a bid or ask price. Relative to the proposed amendments, this alternative would allow more securities to become eligible for the piggyback exception. As such, broker-dealers would incur less cost associated with the Rule's review, document collection, and record-keeping provisions (as well as filing FINRA Form 211) before publishing or submitting a quotation for an OTC security relative to the proposed amendments. The Commission has estimated that 879 OTC securities for which broker-dealers could publish quotations relying on the piggyback exception during 2018 did not have quotations with both bid and ask prices for four days one or more times in a year. Of these securities, 402 were of prospectus, Reg. A, and reporting issuers, 187 were of exempt foreign private issuers, and 290 were of catch-all issuers. Therefore, the Commission estimates that the additional dollar benefit to broker-dealers from this relief would be $325,440.[290] OTC investors in

[289] The potential increase in capital availability would occur to the extent that, in response to an exit from quoted markets by certain issuers, OTC market investors reinvest with other OTC market companies, reflecting a preference for unlisted investments.

[290] $(402 \times \$240) + (187 \times \$480) + (290 \times \$480) = \$325,440$.

higher quality issuers could benefit from greater liquidity if this reduced cost results in more securities remaining in the quoted market. However, this alternative may also allow less liquid securities to become eligible for piggybacked quotations relative to the proposed amendments. As a result, OTC investors may suffer costs if these securities are more prone to fraud than securities with more frequent quotations with both bid and ask prices. Therefore, the Commission preliminarily believes the proposed Rule is better than the alternative.

5. Alternative Disclosure Frequency

The Commission has sought to align the proposed Rule with existing regulatory requirements for publicly available information, as well as with private market solutions that have developed since the Commission last proposed to amend the Rule. Notwithstanding this, an alternative to the proposed amendments would be to define proposed paragraph (b) disclosures as ''current'' for catch-all issuers based on a different length of time (*e.g.,* four months instead of six months) for the purposes of the initiation and resumption of quotes or reliance upon the piggyback exception. For example, increasing the frequency of disclosures required to qualify as ''current'' could benefit investors by improving the relevance of information used for investment decisions relative to the information available under the existing Rule. Investors could also benefit from decreased exposure to loss from fraud as heightened disclosure requirements could push trading activity in less transparent securities out of the OTC market or to the grey market. Higher quality OTC issuers could benefit from increased access to capital to the extent that heightened disclosure requirements lead to a net increase in demand for higher quality OTC stocks.

However, OTC issuers would face increased costs of providing disclosures more frequently under such an alternative. In particular, OTC issuers with no reporting obligations or minimal reporting obligations would effectively be subject to a more frequent reporting obligation under such an alternative. Some OTC issuers that wish to have quoted securities may find themselves effectively subject to a reporting framework that requires more frequent public disclosures than their current annual or semiannual reporting obligations as an issuer under the federal securities laws, such as reporting requirements under the Securities Act or exchange listing requirements under the Exchange Act. Broker-dealers, IDQSs, and national securities associations may also be required to review proposed paragraph (b) information more frequently under this alternative in order to initially publish or submit, or maintain, quotes in the OTC market. The Commission preliminarily believes the proposed Rule is better than the alternative because the additional benefits from more frequently disclosed information are likely to be minor, while the costs for issuers, broker-dealers, and other market participants could increase in proportion to the required frequency of disclosures.

Decreasing the frequency of required disclosures could have effects opposite to those discussed above. The Commission is not proposing such an alternative because a significant decrease in the frequency of required disclosures could make the disclosures less relevant for decision making purposes, driving down their potential benefit to investors.

E. Request for Comment

While the Commission welcomes any public input on its economic analysis, the Commission asks commenters to consider the following questions:

Q139. The Commission requests information including data that would help quantify the costs and the value of the benefits of the proposed amendments described above. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already defined, that may result from the proposed amendments. The Commission also requests qualitative feedback on the nature of the benefits and costs described above and any benefits and costs the Commission may have overlooked.

Q140. In particular, the Commission requests information including data on the costs to issuers associated with preparing and providing publicly proposed paragraph (b) information, especially for issuers that do not currently have a reporting obligation under the Exchange Act or other federal securities laws or rules. To what extent are these costs mitigated by offering alternatives for releasing proposed paragraph (b) materials?

Q141. What types of investors typically invest in quoted OTC securities in terms of demographics such as age, income, wealth, education, gender and other characteristics such as financial literacy and behavior? What types of investors typically invest in OTC security promotions or pump-and-dump schemes? What are the typical outcomes from investment in quoted OTC securities, promotions, and pump-and-dump schemes for investors with different demographics and characteristics?

Q142. To what extent do investors consider already publicly available information about quoted OTC securities when making investment decisions? Would requiring all quoted OTC securities to have proposed paragraph (b) information publicly available increase investor reliance on issuer information (perhaps because it would become easier to compare among issuers)?

Q143. To what extent would the proposed amendments change the number of quoted securities? In particular, which types of quoted OTC securities will be likely to move away from the quoted OTC market to the grey market? Which types of OTC securities previously trading on the grey market are likely to move to the quoted market? Are there frictions to moving between the quoted OTC market and the grey market?

Q144. Which types of securities are likely to have significant discrepancies when comparing worldwide trading volume and trading volume reported to FINRA? Which data on trading will broker-dealers likely use when establishing eligibility for relying on the ADTV prong of the proposed ADTV and asset test exception?

Q145. What impact would the proposed amendments have on competition? Would the proposed amendments put issuers of quoted OTC securities, or particular types of issuers of quoted OTC securities, at a competitive advantage or disadvantage?

Q146. What impact would the proposed amendments have on efficiency? Has the Commission overlooked any positive or negative effects on efficiency?

Q147. What impact would the proposed amendments have on capital formation? Would there be any positive or negative effects on capital formation that the Commission may have overlooked?

Q148. To what degree would the costs of the proposed Rule's provisions be borne by a qualified IDQS on behalf of broker-dealers? To what degree would a qualified IDQS or registered national securities association make publicly available determinations that the requirements of an exception are met?

Q149. How common is it for broker-dealers to initiate quotations for OTC securities that were underwritten by them? To what extent would broker-dealers rely on the proposed exception for securities issued in offerings that were underwritten?

Q150. To what extent do certain broker-dealers have information systems in place to assess whether certain conditions (*i.e.,* whether the issuer is a shell company within the proposed definition) apply to OTC issuers? Which types of broker-dealers, if any, have these information systems in place? What are the costs of setting up and maintaining such systems? Is it reasonable to assume that setting up such systems would involve a one-time fixed cost and negligible ongoing costs?

Q151. What is the degree of competition among broker-dealers that publish quotations for OTC securities? Is it the case that there is a handful of dominant broker-dealers publishing quotations for OTC securities or is this activity spread across many broker-dealers of varying size? Do certain broker-dealers publish quotations for a specific subset of OTC securities and not others (*i.e.,* particular industries, domiciles, etc.)? How will the degree of competition change as a result of the proposed amendments? Has there been a change in the number of broker-dealers publishing quotations for OTS securities over time? Has there been a change in the number of broker-dealers conducting the information review under the Rule over time? Commenters are requested to provide data that would allow the Commission to identify broker-dealers publishing quotations for OTC securities as well as the potential costs of the proposed amendments on the broker-dealer industry.

Q152. For issuers of quoted OTC securities that do not currently have a reporting or disclosure obligation outside of the existing Rule, could requiring disclosures to be publicly available lead to changes in the nature or the quality of disclosures these companies provide? For these same issuers, which method of distribution would they likely choose for making proposed paragraph (b) information publicly available?

Q153. To what extent are quoted OTC securities subjects of promotion campaigns? How is the propensity of a quoted OTC security to be the subject of a promotion campaign related to there being a lack of publicly available information about its issuer?

Q154. Are there alternatives the Commission should consider other than those discussed in this release? What are the costs and benefits of those alternatives relative to the regulatory baseline and relative to the proposed amendments?

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [291] requires federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. Section 603(a) [292] of the Administrative Procedure Act,[293] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small businesses'' [294] unless the Commission certifies that the rule, if adopted, would not have a significant impact on a substantial number of ''small entities.'' [295] As discussed above in PRA section above, the Commission believes that the Rule and proposed amendments impact the 89 broker-dealers that publish or submit quotations on OTC Markets Group's systems. A broker-dealer is a small entity if it has 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 § 240.17a–5(d), and it is not affiliated with any person (other than a natural person) that is not a small business or small organization.[296] As of December 31, 2018, the Commission estimates that there were approximately 1,000 broker-dealers that would be small entities as defined above.

Based on a review of data involving the 89 broker-dealers that publish quotations for OTC securities, the Commission does not believe that any of the 89 broker-dealers impacted by the Rule are small entities under the above definition because they either exceed $500,000 in total capital or are affiliated with a person that is not a small entity as defined in Rule 0–10.[297] It is possible that in the future a small entity may become impacted by the Rule and the proposed amendments. Based on experience with broker-dealers that participate in this market, however, the Commission preliminarily believes that this scenario will be unlikely since firms that enter the market are likely to exceed $500,000 in total capital or be affiliated with a person that is not a small entity.

For the foregoing reason, the Commission certifies that the proposed amendments to Exchange Act Rule 15c2–11 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.

X. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address whether the proposed changes, if adopted, would have a $100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovations. Commenters should provide empirical data to support their views.

XI. Statutory Basis and Text of Proposed Rules

The rule amendments are being proposed pursuant to Sections 3, 10(b), 15(c), 15(h), 17(a), and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78c, 78j(b), 78o(c), 78o(g), 78q(a), and 78w(a).

XII. List of Subjects

List of Subjects in 17 CFR Parts 230 and 240

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

For the reasons set out in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of the Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L.

[291] 5 U.S.C. 601 *et seq.*

[292] *Id.*

[293] 5 U.S.C. 551 *et seq.*

[294] Although Section 601(b) of the RFA defines the term ''small business,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small business 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. Exchange Act Rule 0–10 (''Rule 0–10'').

[295] 5 U.S.C. 605(b).

[296] Exchange Act Rule 0–10(c).

[297] *See supra* Parts VII.B and VIII.B.

112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

§ 230.144 [Amended]

■ 2. Section 230.144, paragraph (c)(2), is amended by removing the text ''(a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi)'' and adding in its place ''(b)(5)(i)(A) to (N), inclusive, and paragraph (b)(5)(i)(P)''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read, in part, 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, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 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; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

■ 4. Section 240.15c2–11 is revised to read as follows:

§ 240.15c2–11 Publication or submission of quotations without specific information.

(a) *Review Requirement.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for:

(1) A broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium, unless:

(i) Such broker or dealer has in its records the documents and information required by paragraph (b) of this section;

(ii) Such documents and information required by paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P) of this section) are current and publicly available; and

(iii) Based upon a review of the documents and information required by paragraph (b) of this section, together with any other documents and information required by paragraph (c) of this section, such broker or dealer has a reasonable basis under the circumstances for believing that:

(A) The documents and information required by paragraph (b) of this section are accurate in all material respects; and

(B) The sources of the documents and information required by paragraph (b) of this section are reliable; or

(2) A qualified interdealer quotation system to make known to others the quotation of a broker or dealer that is published or submitted pursuant to paragraph (f)(7) of this section, unless:

(i) Such qualified interdealer quotation system has in its records documents and information required by paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P) of this section except where the qualified interdealer quotation system has knowledge or possession of this information);

(ii) Such documents and information required by paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P) of this section) are current and publicly available; and

(iii) Based upon a review of the documents and information required by paragraph (b) of this section (excluding paragraphs (b)(5)(i)(N) through (P) of this section except where the qualified interdealer quotation system has knowledge or possession of this information), together with any other documents and information required by paragraph (c) of this section, such qualified interdealer quotation system has a reasonable basis under the circumstances for believing that:

(A) The documents and information required by paragraph (b) of this section are accurate in all material respects; and

(B) The sources of the documents and information required by paragraph (b) of this section are reliable.

(b) *Required Information.* (1) A copy of the prospectus specified by section 10(a) of the Securities Act of 1933 for an issuer that has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided,* That such registration statement has not thereafter been the subject of a stop order that is still in effect when the quotation is published or submitted; or

(2) A copy of the offering circular provided for under Regulation A under the Securities Act of 1933 for an issuer that has filed a notification under Regulation A and was authorized to commence the offering less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium; *Provided,* That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order that is still in effect when the quotation is published or submitted; or

(3) A copy of the:

(i) Issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act, together with any periodic and current reports that have been filed thereafter under the Act by the issuer, except for current reports filed during the three business days prior to the publication or submission of the quotation; *Provided, however,* That

(A) Until such issuer has filed its first such annual report, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective within the prior 16 months, together with any periodic and current reports filed thereafter under section 13 or 15(d) of the Act, and

(B) The broker, dealer, or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing such reports described in this paragraph (b)(3)(i);

(ii) Issuer's most recent annual report filed pursuant to Regulation A (§§ 230.251 through 230.263 of this chapter), together with any periodic and current reports filed thereafter under Regulation A by the issuer, except for current reports filed during the three business days prior to the publication or submission of the quotation; *Provided, however,* That

(A) Until such issuer has filed its first such annual report, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the offering circular filed by the issuer under Regulation A, that was qualified within the prior 16 months, together with any periodic and current reports filed thereafter under Regulation A, and

(B) The broker, dealer, or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing such reports described in this paragraph (b)(3)(ii);

(iii) Annual statement referred to in section 12(g)(2)(G)(i) of the Act (in the case of an issuer required to file reports pursuant to section 13 or 15(d) of the Act), together with any periodic and current reports filed thereafter under the Act by the issuer, except for current reports filed during the three business days prior to the publication or submission of the quotation; *Provided, however,* That

(A) Until such issuer has filed its first such annual statement, the broker, dealer, or qualified interdealer quotation system has in its records a copy of the registration statement filed by the issuer

under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act, that became effective within the prior 16 months, together with any periodic and current reports filed thereafter under section 13 or 15(d) of the Act, and

(B) The broker, dealer or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing such reports described in this paragraph (b)(3)(iii); or

(iv) Annual statement referred to in section 12(g)(2)(G)(i) of the Act (in the case of an issuer of a security that falls within the provisions of section 12(g)(2)(G) of the Act); *Provided, however,* That the broker, dealer, or qualified interdealer quotation system has a reasonable basis under the circumstances for believing that the issuer is current in filing (in the case of an insurance company exempted from section 12(g) of the Act by reason of section 12(g)(2)(G) thereof) the annual statement referred to in section 12(g)(2)(G)(i) of the Act; or

(4) A copy of the information that, since the beginning of its last fiscal year, the issuer has published pursuant to § 240.12g3–2(b), which the broker or dealer must make available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with the broker or dealer, such as by providing the requesting person with appropriate instructions regarding how to obtain the information electronically; or

(5)(i) The following information, which must be made publicly available (excluding paragraphs (b)(5)(i)(N) through (P) of this section) and be current as of a date within 12 months prior to the publication or submission of the quotation, unless otherwise specified:

(A) The name of the issuer and its predecessor (if any);

(B) The address of the issuer's principal executive offices;

(C) The state of incorporation or registration;

(D) The title and class of the security;

(E) The par or stated value of the security;

(F) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;

(G) The name and address of the transfer agent;

(H) A description of the issuer's business;

(I) A description of products or services offered by the issuer;

(J) A description and extent of the issuer's facilities;

(K) The name of the chief executive officer, members of the board of directors, and officers, as well as any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer;

(L) The issuer's most recent balance sheet (as of a date less than 16 months before the publication or submission of the quotation) and profit and loss and retained earnings statements (for the 12 months preceding the date of the most recent balance sheet); *Provided, however,* That if the balance sheet is not as of a date less than six months before the publication or submission of the quotation, the balance sheet must be accompanied with profit and loss and retained earnings statements for the period from the date of such balance sheet to a date that is less than six months before the publication or submission of the quotation;

(M) Similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence;

(N) Whether the broker or dealer or any associated person of the broker or dealer is affiliated, directly or indirectly, with the issuer;

(O) Whether the quotation is being published or submitted on behalf of any other broker or dealer and, if so, the name of such broker or dealer; and

(P) Whether the quotation is being submitted or published, directly or indirectly, by or on behalf of the issuer or persons identified in paragraph (b)(5)(i)(K) of this section and, if so, the name of such person and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

(ii) The broker or dealer must make information required by paragraph (b)(5)(i) of this section available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with the broker or dealer, such as by providing the requesting person with appropriate instructions regarding how to obtain publicly available information electronically. If such information is made available to others upon request pursuant to this paragraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is accurate, but shall constitute a representation by such broker or dealer that the information is current in relation to the day the quotation is submitted, that the broker or dealer has a reasonable basis under the circumstances for believing the information is accurate in all material respects, and that the information was obtained from sources that the broker or dealer has a reasonable basis for believing are reliable. Paragraph (b)(5)of this section shall apply to any security of an issuer that is not included in paragraphs (b)(1) through (b)(4) of this section. Paragraph (b)(5) of this section shall apply to any security of an issuer if information described in paragraphs (b)(1) through (b)(4) of this section is not current.

(c) *Supplemental Information.* With respect to any security the quotation of which is within the provisions of this section, the broker or dealer submitting or publishing such quotation, or any qualified interdealer quotation system that makes known to others the quotation of a broker or dealer pursuant to paragraph (a)(2) of this section, shall have in its records the following documents and information:

(1) Records related to the submission or publication of such quotation, including the identity of the person or persons for whom the quotation is being published or submitted, whether such person or persons is the issuer, chief executive officer, any members of the board of directors, officers, or any person, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of equity security of the issuer, and any information regarding the transactions provided to the broker, dealer or qualified interdealer quotation system by such person or persons;

(2) A copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act concerning any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation or a copy of the public release issued by the Commission announcing such trading suspension order; and

(3) A copy or a written record of any other material information (including adverse information) regarding the issuer that comes to the knowledge or possession of the broker, dealer, or qualified interdealer quotation system before the publication or submission of the quotation.

(d) *Recordkeeping.* (1)(i) The following persons shall preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information

required under paragraphs (a), (b), and (c) of this section:

(A) Any broker or dealer publishing or submitting a quotation pursuant to paragraph (a)(1) of this section concerning a security; or

(B) Any qualified interdealer quotation system that makes known to others the quotation of a broker or dealer pursuant to paragraph (a)(2) of this section concerning a security;

(ii) *Provided, however,* That documents and information required by paragraph (b) of this section are not required to be preserved if it is available on the Commission's *Electronic Data Gathering, Analysis and Retrieval System* (''*EDGAR*'') and the broker-dealer or qualified interdealer quotation system documents the documents and information required by paragraph (b) of this section that it reviewed.

(2)(i) The following persons shall preserve for a period of not less than three years, the first two years in an easily accessible place, the documents and information that demonstrate that the requirements for an exception under paragraphs (f)(2), (f)(3), (f)(5), (f)(6), (f)(7), and (f)(8) of this section are met:

(A) Any qualified interdealer quotation system or registered national securities association that makes the publicly available determinations described in paragraph (f)(8) of this section; and

(B) Any broker or dealer publishing or submitting a quotation pursuant to paragraph (f) of this section; *Provided, however,* That any broker or dealer that relies on a determination described in paragraphs (f)(7) or (f)(8) of this section is required to preserve only a record of the exception upon which the broker or dealer is relying and the name of the qualified interdealer quotation system or registered national securities association that determined that the requirements of that exception are met.

(ii) *Provided, further,* That paragraph (b) information is not required to be preserved if it is available on the Commission's *Electronic Data Gathering, Analysis and Retrieval System* (''*EDGAR*'').

(e) *Definitions.* For purposes of this section:

(1) *Current* shall mean filed, published, or disclosed in accordance with the time frames identified in each paragraphs (b)(1) through (b)(5) of this section.

(2) *Interdealer quotation system* shall mean any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(3) *Issuer,* in the case of quotations for American Depositary Receipts, shall mean the issuer of the deposited shares represented by such American Depositary Receipts.

(4) *Publicly available* shall mean available on the Commission's *Electronic Data Gathering, Analysis and Retrieval System* (''*EDGAR*'') or on the website of a qualified interdealer quotation system, a registered national securities association, the issuer, or a registered broker or dealer; *Provided, however,* That *publicly available* shall not mean where access to documents and information required by paragraph (b) of this section is restricted by user name, password, fees, or other restraints.

(5) *Qualified interdealer quotation system* shall mean any interdealer quotation system that meets the definition of an ''alternative trading system'' under Rule 300(a) of Regulation ATS and operates pursuant to the exemption from the definition of an ''exchange'' under Rule 3a1–1(a)(2) of the Act.

(6) Except as otherwise specified in this rule, *quotation* shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that wishes to advertise its general interest in buying or selling a particular security.

(7) *Quotation medium* shall mean any ''interdealer quotation system'' or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(8) *Shell company* shall mean any issuer, other than a business combination related shell company, as defined in § 230.405 of this chapter, or an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(i) No or nominal operations; and

(ii) Either:

(A) No or nominal assets;

(B) Assets consisting solely of cash and cash equivalents; or

(C) Assets consisting of any amount of cash and cash equivalents and nominal other assets.

(f) *Exceptions.* Except as provided in paragraph (d)(2) of this section, the provisions of this section shall not apply to:

(1) The publication or submission of a quotation concerning a security that is admitted to trading on a national securities exchange and that is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted.

(2) The publication or submission by a broker or dealer, solely on behalf of a customer (other than a person acting as or for a dealer), of a quotation that represents the customer's unsolicited indication of interest; *Provided, however,* That this paragraph (f)(2) shall not apply to a quotation:

(i) Consisting of both a bid and an offer, each of which is at a specified price, unless the quotation medium specifically identifies the quotation as representing such an unsolicited customer interest; or

(ii) Published or submitted, directly or indirectly, by or on behalf of the chief executive officer, members of the board of directors, officers, or any person who is, directly or indirectly, the beneficial owner of more than 10 percent of the outstanding units or shares of any class of any equity security of the issuer, unless documents and information required by paragraph (b) of this section are current and publicly available.

(3)(i)(A) The publication or submission, in an interdealer quotation system that specifically identifies as such unsolicited customer indications of interest of the kind described in paragraph (f)(2) of this section, of a quotation concerning a security that has been the subject of both bid and ask quotations (exclusive of any identified customer interests) in such a system at specified prices within the previous 30 calendar days, with no more than four business days in succession without such a quotation;

(B) The publication or submission, in an interdealer quotation system that does not so identify any such unsolicited customer indications of interest, of a quotation concerning a security that has been the subject of both bid and ask quotations in an interdealer quotation system at specified prices within the previous 30 calendar days, with no more than four business days in succession without such a quotation; or

(C) A dealer acting in the capacity of market maker, as defined in section 3(a)(38) of the Act, that has published or submitted a quotation concerning a security in an interdealer quotation system and such quotation has qualified for an exception provided in this paragraph (f)(3), may continue to publish or submit quotations for such security in the interdealer quotation system without compliance with this section, unless and until such dealer ceases to submit or publish a quotation

or ceases to act in the capacity of market maker concerning such security;

(ii) *Provided, however,* That this paragraph (f)(3) shall not apply to the security of an issuer that is a shell company or that was the subject of a trading suspension order issued by the Commission pursuant to section 12(k) of the Act until 60 calendar days after the expiration of such order; and that this paragraph (f)(3) shall apply to a publication or submission of a quotation concerning a security of an issuer included in paragraph (b)(5) of this section only where the information required by paragraph (b)(5)(i) (excluding paragraphs (b)(5)(i)(N) through (P)) is current and has been made publicly available within six months before the date of publication or submission of such quotation.

(4) The publication or submission of a quotation concerning a municipal security.

(5)(i) The publication or submission of a quotation concerning:

(A) A security with a worldwide average daily trading volume value of at least $100,000 during the 60 calendar days immediately before the publication of the quotation of such security; and

(B) The issuer of such security has at least $50 million in total assets and $10 million in unaffiliated shareholders' equity as reflected in the issuer's publicly available audited balance sheet issued within six months after the end of its most recent fiscal year;

(ii) *Provided, however,* That this paragraph (f)(5) shall apply only to the publication or submission of a quotation concerning such security if documents and information required by paragraph (b) of this section of the issuer of such security are current and publicly available.

(6) The publication or submission of a quotation concerning a security by a broker or dealer that is named as an underwriter in a registration statement for an offering of that class of security referenced in paragraph (b)(1) of this section or in an offering circular for an offering of that class of security referenced in paragraph (b)(2) of this section; *Provided, however,* That this paragraph (f)(6) shall apply only to the publication or submission of a quotation concerning such security within the time frames identified in paragraphs (b)(1) or (b)(2) of this section.

(7) The publication or submission of a quotation by a broker or dealer, in a qualified interdealer quotation system, concerning a security where such qualified interdealer quotation system complies with the requirements of paragraphs (a) through (c) of this section and also makes a publicly available determination of such compliance, and a broker or dealer publishes or submits a quotation in reliance on this exception within three business days after such publicly available determination; *Provided, however,* That this paragraph (f)(7) shall not apply to a quotation concerning a security:

(i) If the issuer of such security is a shell company; or

(ii) After the first 30 calendar days of publication or submission of such quotation by a broker or dealer in reliance on this paragraph (f)(7).

(8) The publication or submission of a quotation by a broker or dealer that relies on publicly available determinations by a qualified interdealer quotation system or registered national securities association that:

(i) Documents and information required by paragraph (b) are current and publicly available;

(ii) A broker or dealer may rely on an exception contained in paragraph (f)(1), (f)(3)(i)(A), (f)(3)(i)(B), (f)(4), (f)(5), or (f)(7) of this section;

(iii) The qualified interdealer quotation system or registered national securities association has reasonably designed written policies and procedures to determine whether documents and information required by paragraph (b) of this section are current and publicly available and that the requirements of an exception under paragraph (f) of this section are met.

(g) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may, conditionally or unconditionally, exempt by order any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

By the Commission.

Dated: September 25, 2019.

Vanessa Countryman,

Secretary.

[FR Doc. 2019–21260 Filed 10–29–19; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 210 October 30, 2019

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing Residual Risk and Technology Review; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0392; FRL–10000–81–OAR]

RIN 2060–AT07

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Rubber Tire Manufacturing source category. The proposal addresses the results of the residual risk and technology review (RTR) conducted as required under the Clean Air Act (CAA). The proposed amendments address the startup, shutdown, and malfunction (SSM) provisions of the rule and amend provisions regarding electronic reporting of certain notifications, performance test results, and semiannual reports.

DATES:

Comments. Comments must be received on or before December 16, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 29, 2019.

Public Hearing. If anyone contacts us requesting a public hearing on or before November 4, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/rubber-tire-manufacturing-national-emission-standards-hazardous-air.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2019–0392, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2019–0392 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2019–0392.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2019–0392, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Korbin Smith, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2416; fax number: (919) 541–4991; and email address: *smith.korbin@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; and email address: *hirtz.james@epa.gov.* For questions about monitoring and testing requirements, contact Mr. Ketan Patel, Sector Policies and Programs Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–9736; fax number: (919) 541–4991; and email address: *patel.ketan@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public hearing. Please contact Ms. Nancy Perry at (919) 541–5628 or by email at *perry.nancy@epa.gov* to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2019–0392. All documents in the docket are listed in *Regulations.gov.* Although listed, 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. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. 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 EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2019–0392. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2019–0392.

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:

AEGL acute exposure guideline level
AERMOD air dispersion model used by the HEM–3 model
CAA Clean Air Act
CalEPA California EPA
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERPG emergency response planning guideline
ERT Electronic Reporting Tool
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HEM–3 Human Exposure Model, Version 1.5.5
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
IRIS Integrated Risk Information System
km kilometer
MACT maximum achievable control technology
MIR maximum individual risk
NAAQS National Ambient Air Quality Standards
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
POM polycyclic organic matter
REL reference exposure level
RFA Regulatory Flexibility Act
RfC reference concentration
RTR residual risk and technology review
SAB Science Advisory Board
SBA Small Business Administration
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
UF uncertainty factor
UMRA Unfunded Mandates Reform Act
URE unit risk estimate

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Background
A. What is the statutory authority for this action?
B. What is this source category and how does the current NESHAP regulate its HAP emissions?
C. What data collection activities were conducted to support this action?
D. What other relevant background information and data are available?
III. Analytical Procedures and Decision-Making
A. How do we consider risk in our decision-making?
B. How do we perform the technology review?
C. How do we estimate post-MACT risk posed by the source category?
IV. Analytical Results and Proposed Decisions
A. What actions are we taking pursuant to CAA sections 112(d)(2) and 112(d)(3)?
B. What are the results of the risk assessment and analyses?
C. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?
D. What are the results and proposed decisions based on our technology review?
E. What other actions are we proposing?
F. What compliance dates are we proposing?
V. Summary of Cost, Environmental, and Economic Impacts
A. What are the affected sources?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
VI. Request for Comments
VII. Submitting Data Corrections
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal

government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July 1992), the Rubber Tire Manufacturing source category is any facility engaged in producing passenger car and light duty truck tires, heavy duty truck tires, off-the-road tires, aircraft tires, and miscellaneous other tires. The category includes the following processes: Rubber compounding; tread rubber, cord, and bead production; tire building; green tire spraying; and tire curing and finishing.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Rubber Tire Manufacturing	40 CFR part 63, subpart XXXX	326211, 326212, 314992.

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/rubber-tire-manufacturing-national-emission-standards-hazardous-air.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2019–0392).

II. Background

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP) from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the ''residual risk review.'' In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are ''developments in practices, processes, or control technologies'' that may be appropriate to incorporate into the standards. This review is commonly referred to as the ''technology review.'' When the two reviews are combined into a single rulemaking, it is commonly referred to as the ''risk and technology review.'' The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology,* in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. ''Major sources'' are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are ''area sources.'' For major sources, CAA section 112(d)(2) provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT ''floor.'' The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA's use of the two-step approach for developing standards to address any residual risk and the Agency's interpretation of ''ample margin of safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate

residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination ''considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [1] of approximately 1 in 10 thousand.'' 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. In conducting this review, which we call the ''technology review,'' the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC)* v. *EPA,* 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The Rubber Tire Manufacturing NESHAP was promulgated on July 9, 2002 (67 FR 45588), and codified at 40 CFR part 63, subpart XXXX. As promulgated, the Rubber Tire Manufacturing NESHAP applies to affected sources of HAP at rubber materials manufacturing facilities that are major sources of HAP. The affected source covered by this subpart is each new, reconstructed, or existing facility that manufactures rubber tires.

The Rubber Tire Manufacturing source category is subcategorized into four subcategories, which include rubber processing, tire production, tire cord production, and puncture sealant application. Components of rubber tires include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, tire cord, and liners. Other components often associated with rubber tires but not integral to the tire, such as wheels, inner tubes, tire bladders, and valve stems, are not components of rubber tires or tire cord and are not subject to this subpart. At the time of this proposal we did not identify any major source facilities of tire cord production or puncture sealant application.

Emissions limits in the 2002 NESHAP for the Rubber Tire Manufacturing source category were set for each subcategory separately:

1. Rubber Processing

There are no emission limits for rubber processing affected sources.

2. Tire Production

There are two options for compliance under this subcategory. First is a HAP constituent option, which states that emissions of each HAP in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total cements and solvents used at the tire production affected source, and that emissions of each HAP not in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total cements and solvents used at the tire production affected source.

The second emission limit option is a production-based option. For this option, emissions of HAP must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber used at the tire production affected source.

3. Tire Cord Production

There are three options for compliance under this subcategory. The first option is a production-based option for existing tire cord production affected sources. As part of this option, emissions must not exceed 280 grams HAP per megagram (0.56 pounds per ton) of fabric processed at the tire cord production affected source.

The second option is a production-based option for new or reconstructed tire cord production affected sources. As part of this option, emissions must not exceed 220 grams HAP per megagram (0.43 pounds per ton) of fabric processed at the tire cord production affected source.

The third option is a HAP constituent option available to both existing and new or reconstructed tire cord production affected sources. As part of this option, emissions of each HAP in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total coatings used at the tire cord production affected source, and emissions of each HAP not in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total coatings used at the tire cord production affected source.

4. Puncture Sealant Application

There are three options for compliance under this subcategory. The first option is a percent reduction option for existing puncture sealant application spray booths. As part of this option, facilities are required to reduce spray booth HAP (measured as volatile organic compounds (VOC)) emissions by at least 86 percent by weight.

The second option is a percent reduction option for new or reconstructed puncture sealant application spray booths. As part of this option, facilities are required to reduce spray booth HAP (measured as VOC) emissions by at least 95 percent by weight.

The third option is a HAP constituent option for both existing and new or reconstructed puncture sealant application spray booths. As part of this option, emissions of each HAP in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total puncture sealants used at the puncture sealant affected source, and emissions of each HAP not in Table 16 to 40 CFR part 63, subpart XXXX, must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total puncture sealants used at the puncture sealant affected source.

5. Alternatives for Meeting Emission Limits

The three subcategories subject to emission limits (tire production, tire cord production, and puncture sealant application) offer compliance alternatives to meet the above-mentioned emission limits. For more information, a detailed breakdown of

[1] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

the subcategory alternatives can be found in 40 CFR 63.5985, 40 CFR 63.5987, and 40 CFR 63.5989.

C. What data collection activities were conducted to support this action?

For the residual risk assessment, the EPA received data from a voluntary data gathering effort led by the United States Tire Manufacturing Association (USTMA). USTMA worked with its major source facility members to provide information to the Agency regarding the rubber tire manufacturing process and the associated air emissions. The information received included description of HAP-emitting processes, information on the HAP-containing materials used, estimates of emissions, and descriptions of control technologies, if present.

For all major sources who are not members of USTMA, data was collected from the 2014 National Emissions Inventory (NEI). The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors, and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint, and mobile sources in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years. The NEI includes data necessary for conducting a risk assessment, including annual HAP emissions estimates from individual emission points at facilities and the related emissions release parameters.

The EPA used NEI emissions and the voluntary data gathered by USTMA as the primary data to develop the model input files for the residual risk assessment for the Rubber Tire Manufacturing source category. Additional information on the development of the modeling file for the Rubber Tire Manufacturing source category can be found in the document, *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposal,* which is available in the docket for this rulemaking.

For both the risk assessment and technology review in this action, the EPA visited three rubber tire manufacturing facilities. During the visits, the EPA discussed process operations, compliance with the existing NESHAP, description of the emission points, process controls, unregulated emissions, and other aspects of facility operations. The EPA used the information provided by the facilities to understand the various operations, existing controls, and new developments in practices, processes, and control technologies for the source category. Additional information can be found in the site visit reports, *Michelin Tire Lexington Site Visit Report, Goodyear Tire Fayetteville Site Visit Report,* and *Continental Tire Mt. Vernon Site Visit Report,* which are available in the docket for this action.

For both the risk assessment and technology review, the EPA also gathered data from facility construction and operating permits regarding emission points, air pollution control devices, and process operations. We collected permits and supporting documentation from state permitting authorities through state-maintained online databases. The facility permits were also used to confirm that the facilities were major sources of HAP and were subject to the Rubber Tire NESHAP. In certain cases, we contacted facility owners or operators to confirm and clarify the sources of emissions that were reported.

D. What other relevant background information and data are available?

For the technology review, we collected information from the Reasonably Available Control Technology, Best Available Control Technology, and Lowest Achievable Emission Rate Clearinghouse (RBLC). This is a database that contains case-specific information on air pollution control technologies that have been required to reduce the emissions of air pollutants from stationary sources. Under the EPA's New Source Review (NSR) program, if a facility is planning new construction or a modification that will increase the air emissions above certain defined thresholds, an NSR permit must be obtained. The RBLC promotes the sharing of information among permitting agencies and aids in case-by-case determinations for NSR permits. We examined information contained in the RBLC to determine what technologies are currently used for these source categories to reduce air emissions.

Additional information about these data collection activities for the technology review is contained in the technology review memorandum titled *Technology Review for the Rubber Tire Manufacturing Source Category,* which is available in the docket for this action.

III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, the first step judgment on acceptability cannot be reduced to any single factor and, thus, the Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information. 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.[2] The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that the policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be

[2] The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential HAP exposure concentration to the noncancer dose-response value; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will protect the public health. See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that an MIR of approximately 1-in-10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors. *Id.* at 38045. In other words, risks that include an MIR above 100-in-1 million may be determined to be acceptable, and risks with an MIR below that level may be determined to be unacceptable, depending on all of the available health information. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category. *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.,* reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.,* other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA ''that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area.'' [3]

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency (1) conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

B. How do we perform the technology review?

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed the NESHAP, we review a variety of data sources in our investigation of potential practices,

[3] Recommendations of the SAB Risk and Technology Review Methods Panel are provided in their report, which is available at: *https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

processes, or controls to consider. See sections II.C and II. D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB–HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for Rubber Tire Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule.* The methods used to assess risk (as described in the seven primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009;[4] and described in the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

The estimated actual emissions and the emission release characteristics for each facility in the source category were obtained from USTMA's voluntary data gathering and the 2014 NEI database. In addition, the EPA provided draft actual emissions data and stack parameters to facilities for review and confirmation. In some cases, facilities were contacted to confirm emissions that appeared to be outliers, otherwise inconsistent with our understanding of the industry, or associated with high risk values in our initial risk screening analyses. Where appropriate, emission values and release characteristics were corrected, based on revised stack parameter information provided by the facilities. Additional information on the development of the modeling file for each source category, including the development of the actual emissions and emissions release characteristics, can be found in the document, *Residual Risk Assessment for Rubber Tire Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* which is available in the docket for this action.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These ''actual'' emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the ''MACT-allowable'' emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

In order to calculate allowable emissions, a detailed analysis of the source category was conducted to determine how each major source facility meets the emissions standards of the Rubber Tire NESHAP. All major sources comply with NESHAP by utilizing the purchasing alternative (40 CFR 63.5985(a)) or the monthly average alternative, without using an add-on control device (40 CFR 63.5985(b)). The purchasing alternative allows a facility to use only cements and solvents that, as purchased, contain no more HAP than allowed by the emission limits in Table 1 of the NESHAP (40 CFR part 63, subpart XXXX, option 1, HAP constituent option). The monthly average alternative, without using an add-on control device, allows a facility to use cements and solvents in such a way that the monthly average HAP emissions do not exceed the emission limits in Table 1 of the NESHAP to this subpart, option 1 or option 2. Calculating allowable emissions was challenging because certain HAP (those in Table 16 of 40 CFR part 63, subpart XXXX) have lower emission limits than others (those not in Table 16 of 40 CFR part 63, subpart XXXX). Since raw ingredients used in tire production vary for each company and type of tire, the allowable emissions are also variable. This variability makes calculating allowable emissions impractical. It is, however, reasonable to assume that 16 years after promulgation of the MACT standards, tire manufacturers have optimized their use of cements and solvents, and their current emissions, per unit of production, are a good reflection of what the MACT standard allows. For additional information, see *Rubber Tire Manufacturing Emissions Memo,* located in the docket for this action.

Additionally, due to engineering advancements resulting in less cement/solvent usage for this source category, we expect that majority of major source facilities use less than 1 ton of cement/solvent. For facilities using the HAP constituent option (purchasing alternative), the emission limit results in an allowance of less than 2 pounds of HAP for those HAP listed in Table 16 of 40 CFR part 63, subpart XXXX, and less than 20 pounds for HAP not in Table 16 of this subpart. Due to the complexity of calculating allowable emissions for this source category, we solicit comments on calculating allowable emissions.

Since the two utilized options of the standard cannot effectively be used to calculate representative allowable emissions, production data were used to determine production output from 2007 to 2016. These data are presented in Table 2 of the *Rubber Tire Manufacturing Emissions Memo,* which

[4] U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* June 2009. EPA–452/R–09–006. Available at *https://www3.epa.gov/airtoxics/rrisk/rtrpg.html.*

can be found in the docket for this action. The annual total of tire weight, in pounds, was used instead of the number of tires due to the large variance in size of tires (and hence raw material used) at facilities within the source category. Based on data in Table 2, the highest year of total production was 2015. Actual emissions data we received from the source category were also from 2015. Therefore, we conclude that the emissions data modeled are representative of the maximum annual emissions between 2007 and 2016 and actual emissions are representative of allowable emissions for the Rubber Tire Manufacturing source category.

3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM–3).[5] The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources, and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM–3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.[6] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[7] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter (μg/m^3)) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for each of the carcinogenic HAP[8] emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as ''an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime'' (*https://*

[5] For more information about HEM–3, go to *https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem.*

[6] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[7] A census block is the smallest geographic area for which census statistics are tabulated.

[8] The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: ''carcinogenic to humans,'' ''likely to be carcinogenic to humans,'' and ''suggestive evidence of carcinogenic potential.'' These classifications also coincide with the terms ''known carcinogen, probable carcinogen, and possible carcinogen,'' respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment,* published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R–00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=20533&CFID=70315376&CFTOKEN=71597944.* Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory,* available at *https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf.*

iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (*https://www.atsdr.cdc.gov/mrls/index.asp*); (2) the CalEPA Chronic Reference Exposure Level (REL) (*https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0*); or (3) as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at *https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants.*

c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. In this proposed rulemaking, as part of our efforts to continually improve our methodologies to evaluate the risks that HAP emitted from categories of industrial sources pose to human health and the environment,[9] we are revising our treatment of meteorological data to use reasonable worst-case air dispersion conditions in our acute risk screening assessments instead of worst-case air dispersion conditions. This revised treatment of meteorological data and the supporting rationale are described in more detail in *Residual Risk Assessment for Rubber Tire Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* We will be applying this revision in RTR rulemakings proposed on or after June 3, 2019.

To assess the potential acute risk to the maximally exposed individual, we use the peak hourly emission rate for each emission point,[10] reasonable worst-case dispersion conditions (*i.e.,* 99th percentile), and the point of highest off-site exposure. Specifically, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions co-occur and that a person is present at the point of maximum exposure.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGLs), and emergency response planning guidelines (ERPG) for 1-hour exposure durations, if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure concentration by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as ''the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.'' [11] Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.[12] They are guideline levels for ''once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.'' *Id.* at 21. The AEGL–1 is specifically defined as ''the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes that ''Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.'' *Id.* AEGL–2 are defined as ''the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.'' *Id.*

ERPGs are ''developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.'' [13] *Id.* at 1. The ERPG–1 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.'' *Id.* at 2. Similarly, the ERPG–2 is defined as ''the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could

[9] See, *e.g.,* U.S. EPA. *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (Draft Report, May 2017. *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*).

[10] In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for Rubber Tire Manufacturing Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Technical Support Document for Acute Risk Screening Assessment.* Both are available in the docket for this rulemaking.

[11] CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants,* which is available at *https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary.*

[12] National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2. Available at *https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf.* Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (*https://www.epa.gov/aegl*).

[13] *ERPGS Procedures and Responsibilities.* March 2014. American Industrial Hygiene Association. Available at: *https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf.*

impair an individual's ability to take protective action.'' *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL–1 and ERPG–1. Even though their definitions are slightly different, AEGL–1s are often the same as the corresponding ERPG–1s, and AEGL–2s are often equal to ERPG–2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1).

Rubber tires are manufactured via a continuous batch operation. In a continuous batch operation, manufacturing operations take place continuously, but occur in batches. On any single production line, a batch must complete the manufacturing process before the next batch may begin the manufacturing process on that production line. Since rubber tire facilities are large and have significant production capacities, there are multiple production lines operating simultaneously. This results in relatively consistent emissions. As discussed in the allowable emissions section (III.C.2) above, we do expect there to be some variability in emissions depending on the type of tire a facility is manufacturing. To account for this variability, we have selected a multiplier of two based upon the continuous nature of the batch processes, to use in assessing acute risks.

We believe two is a conservative acute multiplier for this source category. Since the operation is a continuous batch process that operates around the clock, we do not expect there to be significant changes in hour-to-hour emissions such as those that may occur in industries that do not continuously operate their production lines. Slight variation in batch ingredients is accounted for by using the multiplier of two. A further discussion of why this factor was chosen can be found in the memorandum, *Rubber Tire Manufacturing Emissions Memo,* available in the docket for this rulemaking.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1, and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we consider additional site-specific data to develop a more refined estimate of the potential for acute exposures of concern. These refinements are discussed more fully in, *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* ingestion). We first determine whether any sources in the source category emit any HAP known to be persistent and bioaccumulative in the environment, as identified in the EPA's Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at *https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the Rubber Tire Manufacturing source category, we identified PB–HAP emissions of polycyclic organic matter (POM), cadmium, and lead, so we proceeded to the next step of the evaluation. Except for lead, the human health risk screening assessment for PB–HAP consists of three progressive tiers. In a tier 1 screening assessment, we determine whether the magnitude of the facility-specific emissions of PB–HAP warrants further evaluation to characterize human health risk through ingestion exposure. To facilitate this step, we evaluate emissions against previously developed screening threshold emission rates for several PB–HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology, Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and POM. Based on the EPA estimates of toxicity and bioaccumulation potential, the pollutants represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at *https://www.epa.gov/sites/production/files/2013–08/documents/volume_1_reflibrary.pdf.*) In this assessment, we compare the facility-specific emission rates of these PB–HAP to the screening threshold emission rates for each PB–HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a ''screening value.''

We derive the Tier 1 screening threshold emission rates for these PB–HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.,* for arsenic compounds, polychlorinated dibenzodioxins and furans, and POM) or, for HAP that cause noncancer health effects (*i.e.,* cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB–HAP or combination of carcinogenic PB–HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.,* the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment. The Tier 2 screening assessment separates the Tier 1 combined fisher and farmer exposure scenario into fisher, farmer, and gardener scenarios that retain upper-bound ingestion rates.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility and assume the fisher only consumes fish from lakes within that 50 km zone. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and USGS lakes database.

In the Tier 2 farmer scenario, we maintain an assumption that the farm is located within 0.5 km of the facility and that the farmer consumes meat, eggs, dairy, vegetables, and fruit produced near the facility. We may further refine the Tier 2 screening analysis by assessing a gardener scenario to characterize a range of exposures, with the gardener scenario being more plausible in RTR evaluations. Under the gardener scenario, we assume the gardener consumes home-produced eggs, vegetables, and fruit products at

the same ingestion rate as the farmer. The Tier 2 screen continues to rely on the high-end food intake assumptions that were applied in Tier 1 for local fish (adult female angler at 99th percentile fish consumption [14]) and locally grown or raised foods (90th percentile consumption of locally grown or raised foods for the farmer and gardener scenarios [15]). If PB–HAP emission rates do not result in a Tier 2 screening value greater than 1, we consider those PB–HAP emissions to pose risks below a level of concern. If the PB–HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates, we may conduct a Tier 3 screening assessment.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, locating residential/garden locations for urban and/or rural settings, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume-rise on chemical fate and transport (a time-series analysis). If necessary, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.[16] Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

5. How do we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines ''adverse environmental effect'' as ''any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.''

The EPA focuses on eight HAP, which are referred to as ''environmental HAP,'' in its screening assessment: Six PB–HAP and two acid gases. The PB–HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB–HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Rubber Tire Manufacturing source category emitted any of the environmental HAP. For the Rubber Tire Manufacturing source category, we identified emissions of cadmium and POM. Because one or more of the environmental HAP evaluated cadmium and POM are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

c. PB–HAP Methodology

The environmental screening assessment includes six PB–HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB–HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB–HAP was compared to the Tier 1 screening

[14] Burger, J. 2002. Daily consumption of wild fish and game: Exposures of high end recreationists. *International Journal of Environmental Health Research* 12:343–354.

[15] U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

[16] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an ''ample margin of safety to protect public health''). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.,* the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

threshold emission rate for that PB–HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility ''passes'' the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km radius for each facility and PB–HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility ''passes'' the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.,* lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.,* facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM–3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km^2; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for Rubber Tire Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action.

6. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire ''facility,'' where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For this source category, we conducted the facility-wide assessment using a dataset compiled from the 2014 NEI. For this source category, we conducted the facility-wide assessment using a dataset compiled from the 2014 NEI. The source category records of that NEI dataset were removed, evaluated, and updated as described in section II.C of this preamble: What data collection activities were conducted to support this action? Once a quality assured source category dataset was available, it was placed back with the remaining records from the NEI for that facility. The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted ''facility-wide'' for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, we made a reasonable attempt to identify the source category risks, and these risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual Risk Assessment for Rubber Tire Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Rubber Tire Manufacturing Source Category in Support of the Risk and Technology Review 2019 Proposed Rule,* which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health*

Multipathway Residual Risk Assessment Report.

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.,* not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.,* not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.,* meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment;* namely, that ''the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective'' (the EPA's *2005 Guidelines for Carcinogen Risk Assessment,* page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.[17] That is, they represent a ''plausible upper limit to the true value of a quantity'' (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[18] Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be ''without appreciable risk,'' the methodology relies upon an uncertainty factor (UF) approach,[19] which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute dose-response value at another exposure duration (*e.g.,* 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (*i.e.,* no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine

[17] IRIS glossary (*https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary*).

[18] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[19] See *A Review of the Reference Dose and Reference Concentration Processes,* U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry,* U.S. EPA, 1994.

whether risk exists and whether the risk could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we also apply the most protective dose-response value from the other compounds in the group to estimate risk.

e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emission rates, meteorology, and the presence of a person. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and reasonable worst-case air dispersion conditions (*i.e.,* 99th percentile) co-occur. We then include the additional assumption that a person is located at this point at the same time. Together, these assumptions represent a reasonable worst-case actual exposure scenario. In most cases, it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and reasonable worst-case air dispersion conditions occur simultaneously.

f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB–HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB–HAP (dioxins, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[20]

Model uncertainty concerns whether the model adequately represents the actual processes (*e.g.,* movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume-rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

[20] In the context of this discussion, the term ''uncertainty'' as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.,* screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

IV. Analytical Results and Proposed Decisions

A. What are the results of the risk assessment and analyses?

1. Inhalation Risk Assessment Results

Table 2 of this preamble provides an overall summary of the inhalation risk results. The results of the chronic baseline inhalation cancer risk assessment indicate that, based on estimates of current actual and allowable emissions, the MIR posed by the Rubber Tire Manufacturing source category is 4-in-1 million. The risk drivers include several organic and metallic HAP from mixing, curing, and extruding operations. The total estimated cancer incidence from rubber tire manufacturing emission sources based on actual and allowable emission levels is 0.002 excess cancer cases per year, or one case in every 500 years. Based upon actual or allowable emissions, 4,500 people are estimated to be exposed to cancer risks greater than or equal to 1-in-1 million. The maximum chronic noncancer HI (TOSHI) values for the source category, based on actual and allowable emissions, are estimated to be less than 1 (0.2), with aniline emissions from mixing and curing processes driving the TOSHI value.

TABLE 2—RUBBER TIRE MANUFACTURING INHALATION RISK ASSESSMENT RESULTS [1]

Risk assessment	Number of facilities	Maximum individual cancer risk (in 1 million) [2]	Estimated population at increased risk of cancer ≥1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]	Maximum screen acute noncancer HQ [4]
Baseline Actual Emissions:						
Source Category	21	4	4,500	0.002	0.2	0.4
Facility-Wide	21	8	9,200	0.002	0.2	.....
Baseline Allowable Emissions:						
Source Category	21	4	4,500	0.002	0.2	.....

[1] For this source category actual and allowable emissions are the same.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the Rubber Tire Manufacturing source category is the spleen.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which in most cases is the REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value. The HQ of 0.4 is based upon an acute REL based upon worst-case screening values.

2. Acute Risk Results

Worst-case acute HQs were calculated for every HAP for which there is an acute health benchmark using actual emissions. Our screening analysis for worst-case acute impacts based on actual emissions indicates that no pollutants exceed an acute HQ value of 1 (0.4). Acute HQs are not calculated for allowable or whole facility emissions.

3. Multipathway Risk Screening Results

Results of the worst-case Tier 1 screening analysis indicate that PB–HAP emissions (based on estimates of actual emissions) from facilities within the source category did not exceed the Tier 1 cancer screening value of 1 for POM emissions, while one facility exceeded the Tier 1 noncancer screening value by a factor of 10 for cadmium emissions.

For the one facility that did not screen out at Tier 1 for cadmium, we conducted a Tier 2 screening analysis. The Tier 2 screen replaces some of the assumptions used in Tier 1 with site-specific data, the location of fishable lakes, and local wind direction and speed. The Tier 2 screen continues to rely on high-end assumptions about consumption of local fish and locally grown or raised foods (adult female angler at 99th percentile consumption for fish [14] for the fisher scenario and 90th percentile for consumption of locally grown or raised foods [15]) for the farmer scenario and uses an assumption that the same individual consumes each of these foods in high end quantities (*i.e.,* that an individual has high-end ingestion rates for each food). The result of this analysis was the development of site-specific concentrations of cadmium. It is important to note that, even with the inclusion of some site-specific information in the Tier 2 analysis, the multipathway screening analysis is still a very conservative, health-protective assessment (*e.g.,* upper-bound consumption of local fish, locally grown, and/or raised, foods) and likely will yield results that serve as an upper-bound multipathway risk associated with a facility.

The Tier 2 noncancer screening analysis for the single facility emitting cadmium above a Tier 1 screening value of 1 resulted in a Tier 2 noncancer screening value of 1 for the fisher

scenario and less than 1 for the farmer scenario. For lead, we did not estimate any exceedances of the primary lead NAAQS.

4. Environmental Risk Screening Results

We conducted an environmental risk screening assessment for the Rubber Tire Manufacturing source category for the following pollutants: Cadmium, lead, and POM.

In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), POM emissions had no Tier 1 exceedances for any ecological benchmark. Cadmium emissions at one facility had Tier 1 exceedances for the surface soil threshold levels (no observed adverse effect level (NOAEL) mammalian insectivores (shrew) by a maximum screening value of 3.

A Tier 2 screening assessment was performed for cadmium with no exceedances for any ecological benchmark. For lead, we did not estimate any exceedances of the primary lead NAAQS.

5. Facility-Wide Risk Results

Results of the assessment of facility-wide emissions indicate that, of the 21 facilities, 13 facilities have a facility-wide MIR greater than or equal to 1-in-1 million. The maximum facility-wide cancer risk is 8-in-1 million, mainly driven by chromium (VI) compounds and metal emissions from sources outside of the source category which include mixing, extruding, calendaring, and finishing operations; refer to Table 2. The total estimated cancer incidence from the whole facility is 0.002 excess cancer cases per year, or one case in every 500 years. Approximately 9,200 people are estimated to have cancer risks greater than 1-in-1 million. The maximum facility-wide chronic noncancer TOSHI is estimated to be less than 1 (0.2), mainly driven by emissions of aniline from mixing and curing processes.

6. What demographic groups might benefit from this regulation?

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risk to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the Rubber Tire Manufacturing source category across different demographic groups within the populations living near facilities.

The results of the demographic analysis are summarized in Table 3 below. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—RUBBER TIRE MANUFACTURING DEMOGRAPHIC RISK ANALYSIS RESULTS

Rubber Tire Manufacturing: Demographic Assessment Results—50 km Study Area Radius			
	Nationwide	Population with cancer risk at or above 1-in-1 million due to rubber tire manufacturing	Population with chronic HI above 1 due to rubber tire manufacturing
Total Population	317,736,049	4,524	0
Race by Percent			
White	62	66	0
Minority	38	34	0
Race by Percent			
African American	12	25	0
Native American	0.8	0	0
Other and Multiracial	7	3	0
Hispanic or Latino (includes white and non-white)	18	6	0
Income by Percent			
Below Poverty Level	14	21	0
Above Poverty Level	86	79	0
Education by Percent			
Over 25 and without High School Diploma	14	12	0
Over 25 and with a High School Diploma	86	88	0
Linguistically Isolated by Percent			
Linguistically Isolated	6	1	0

The results of the Rubber Tire Manufacturing source category demographic analysis indicate that emissions from the source category expose approximately 4,500 people to a cancer risk at or above 1-in-1 million and no people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population indicate that the demographic groups White, African American, people below the poverty level, and people over 25 with a high school diploma that are living within 50 km of facilities in the source category exceed the corresponding national percentage for the same demographic groups.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Rubber Tire Manufacturing Source Category Operations,* available in the docket for this action.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?

1. Risk Acceptability

As noted in section III of this preamble, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard-setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand'' (54 FR 38045, September 14, 1989). In this proposal, the EPA estimated risks based on actual and allowable emissions from rubber tire manufacturing facilities, and we considered these in determining acceptability.

For the Rubber Tire Manufacturing source category, the risk analysis indicates that the cancer risk to the individual most exposed is 4-in-1 million from actual and allowable emissions. The risk analysis also estimates a cancer incidence of 0.002 excess cancer cases per year, or 1 case every 500 years, as well as a maximum chronic noncancer TOSHI value of 0.2 for both actual and allowable emissions. The results of the acute screening analysis also estimate a maximum acute noncancer HQ screening value of less than 1 based on the acute REL. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures. Based on the results of the multipathway cancer screening analyses of POM emissions, we conclude that the maximum cancer risk from ingestion exposure to the individual most exposed is less than 1-in-1 million for the Tier 1 farmer and fisher scenario. The maximum multipathway noncancer TOSHI screen value for cadmium is equal to 1 based upon the Tier 2 fisher scenario. Multipathway screening values were below a level of concern for both carcinogenic and non-carcinogenic PB–HAP as well as emissions of lead compounds. No additional screens or site-specific assessment was conducted since the multipathway screening values were deemed sufficient to demonstrate protection of public health based upon the conservative nature of our model design. The cancer risk for both inhalation and ingestion is considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. Considering all the health risk information and factors discussed above, including the uncertainties discussed in section III of this preamble, we propose that the risks from the Rubber Tire Manufacturing source category are acceptable.

2. Ample Margin of Safety Analysis

As directed by CAA section 112(f)(2), we conducted an analysis to determine whether the current emissions standards provide an ample margin of safety to protect public health. Under the ample margin of safety analysis, we evaluated the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in the risk assessment. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of the MACT rule review to determine whether there are any cost-effective controls or other measures that would reduce emissions further.

The risks from this source category were deemed acceptable with a cancer risk to the individual most exposed of 4-in-1 million. Our risk analysis indicated the inhalation risks from this source category are low for both cancer and noncancer health effects, and, therefore, any risk reductions to control process emissions from rubber tire manufacturing operations would result in minimal health benefits. Mixing, extruding, and buffing emissions result in 88 percent of the cancer incidence for this source category with metal emissions contributing to 40 percent of the cancer incidence. The inhalation chronic and acute noncancer risks were also below a HI and a HQ of 1, respectively. In addition, the multipathway screening analyses for PB–HAP and lead emissions also demonstrate a low potential for risks for cancer and noncancer health effects. The ingestion cancer risk also is less than 1-in-1 million based upon for the Tier 1 farmer and fisher scenario and the ingestion noncancer HI is less than 1 based upon the Tier 2 fisher scenario.

Our review of post-control options for the Rubber Tire Manufacturing source category identified regenerative thermal oxidizers (RTOs) as an option for reducing organic HAP emissions. The use of RTOs to control organic HAP emissions was evaluated and determined to not be cost effective during the original NESHAP. Upon review, we do not believe the associated costs for installing and operating an RTO have changed significantly since the original NESHAP. When evaluating the cost effectiveness of installing RTOs during the 2002 Rubber Tire Manufacturing NESHAP, a model facility was used. The model facility estimated a mean reduction of 103 tons of HAP by using an RTO (Docket: A–97–14 Document: II–B–12). The current mean total HAP emitted per facility within the Rubber Tire Manufacturing source category is 18.8 tons of total HAP. This significant reduction in total HAP emitted for the source category, coupled with similar associated costs for installing and operating an RTO, leads to the conclusion that RTOs would be less cost effective now. Thus, we still find the use of an RTO to not be cost effective. We solicit comment on the cost effectiveness of using an RTO to control HAP emissions.

If RTOs were installed, the MIR would change from 4-in-1 million to 3-in-1 million and would result in an estimated 50-percent reduction in cancer incidence from 0.002 excess cancer cases per year to 0.001 cases per year. This control option would reduce excess cancer cases from one in every 500 years to one in every 1,000 years based upon actual emissions from controlled HAP emission sources.

The source category is already controlling particulate matter or metal HAP with all facilities utilizing fabric filters/baghouses to control emissions, and we did not identify additional measures that could be used to control these HAP. As noted above, any further control of process emissions from rubber tire manufacturing operations would result in minimal health benefits. Based upon the low baseline risks, minimal available risk reductions, and lack of cost-effective control options to reduce organic and metal emissions from mixing, extrusion, and other process operations, we are proposing that the current NESHAP provides an ample margin of safety to protect the public health.

3. Adverse Environmental Effect

As described in section III.A of this document, we conducted an environmental risk screening assessment for the Rubber Tire Manufacturing source category. In the Tier 1 screening analysis for PB–HAP (other than lead, which was evaluated differently), POM emissions had no exceedances of any of the ecological benchmarks evaluated. Cadmium

emissions had a Tier 1 exceedance at one facility with a maximum screening value of 3 for a surface soil NOAEL (mammalian insectivores—shrew).

A Tier 2 screening analysis was performed for cadmium emissions for this one facility, with no exceedances of any of the ecological benchmarks. For lead, we did not estimate any exceedances of the secondary lead NAAQS. Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category and, therefore, propose that it is not necessary to set more stringent standards to prevent an adverse environmental effect.

C. What are the results and proposed decisions based on our technology review?

As described in section III.B of this preamble, the technology review focused on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. In conducting the technology review, we reviewed various informational sources regarding the emissions from the Rubber Tire Manufacturing source category. The review included a search of the RBLC database, reviews of air permits for rubber tire manufacturing facilities, and meetings with industry and the trade association (summarized in the docket for this action). We reviewed these data sources for information on practices, processes, and control technologies that were not considered during the development of the Rubber Tire Manufacturing NESHAP. We also looked for information on improvements in practices, processes, and control technologies that have occurred since the development of the Rubber Tire Manufacturing NESHAP.

After reviewing information from the aforementioned sources, we did not identify any cost-effective developments in practices, processes, or control technologies used at rubber tire manufacturing facilities since promulgation of the MACT standard.

Based on the technology review, we have determined that there are no new control technologies. Additional information of our technology review can be found in the memorandum, *Technology Review for Rubber Tire Manufacturing Source Category,* which is available in the docket for this action.

D. What other actions are we proposing?

In addition to the proposed decisions described above, we are proposing revisions to the Rubber Tire Manufacturing NESHAP related to SSM and electronic reporting. We are proposing revisions to the SSM provisions of the rule in order to ensure that it is consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We are proposing to require electronic submittal of notifications, semiannual reports, and compliance reports (which include performance test reports) for rubber tire manufacturing facilities. The proposed changes related to these issues are discussed below.

1. SSM Requirements

a. Proposed Elimination of the SSM Exemption

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two regulatory provisions governing the emissions of HAP during periods of SSM, which were promulgated pursuant to CAA section 112. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption, which currently appears at 40 CFR 63.5990, and any reference to SSM requirements in 40 CFR part 63, part A (General Provisions). Consistent with the Court's decision in *Sierra Club* v. *EPA,* we are proposing standards in this rule that apply at all times. We are also proposing several revisions to Table 17 of 40 CFR part 63, subpart XXXX (the General Provisions Applicability Table), as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed alternate standards for those periods.

All facilities subject to this rulemaking comply with the emission limits by either using the HAP constituent option (purchase alternative) found in 40 CFR 63.5985(a), or the monthly average alternative without using an add-on control device (40 CFR 63.5985(b)). Due to the continuous batch operation utilized across this source category, the EPA has no reason to believe that emissions are significantly different during periods of startup and shutdown from those during normal operations.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process or monitoring equipment. (40 CFR 63.2) (containing regulatory definition of ''malfunction''). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. The EPA's interpretation has been upheld as reasonable. See *United States Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–10 (D.C. Cir. 2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. See, *e.g., National Ass'n of Clean Water Agencies* v. *EPA*, 734 F.3d 1115, 1141 (D.C. Cir. 2013) (noting that ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated''). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of

the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *United States Sugar Corp* v. *EPA,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. See *United States Sugar Corp.,* 830 F.3d at 608 (discussing work practice standards and explaining that ''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.'''). See also *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent pollutant removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of, and significantly less stringent than, levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 in a way as to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devises or emergency flaring events because the EPA had information to determine that such work practices reflected the level of control that applies to the best performers. 80 FR 75178, 75211–14 (December 1, 2015). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

The EPA anticipates that it is unlikely that a malfunction will result in a violation of the standards at this time. At the time of this proposal, there are no major source facilities using control devices to comply with the emissions limits of this standard. However, the NESHAP contains the option to use a control device for compliance with the emission limits. Thus, while a malfunction event leading to increased emissions is unlikely at this time, it is possible if a facility were to use a control device in the future.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused, in part, by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, section 112, is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations. See *United States Sugar Corp.,* 830 F.3d at 606–10.

b. Proposed Revisions to the General Provisions Applicability Table

(1) 40 CFR 63.5990 General Compliance Requirements

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.6(e)(1)(i) by changing the ''yes'' in column 4 and 5 to a ''no.'' Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general compliance requirement regulatory text at 40 CFR 63.5990 that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general compliance requirement entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general compliance requirement. Therefore, the language the EPA is proposing at 40 CFR 63.5990(b) does not include that language from 40 CFR 63.6(e)(1).

We are also proposing the General Provisions table (Table 17) entry for 40 CFR 63.6(e)(1)(ii) by changing the ''yes'' in column 4 and 5 to a ''no.'' Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant

with the general compliance requirement being added at 40 CFR 63.5990.

(2) SSM Plan

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 4 to a ''no.'' Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

(3) Compliance With Standards

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 4 to a ''no.'' The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* v. *EPA* vacated the exemptions contained in this provision and held that the CAA requires that some section 112 standards apply continuously. *Sierra Club* v. *EPA,* 167 F.3d 658 (D.C. Cir. 1999). Consistent with the decision in *Sierra Club* v. *EPA,* the EPA is proposing to revise standards in this rule to apply at all times.

(4) 40 CFR 63.5993 Performance Testing

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 4 to a ''no.'' Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add performance testing requirement at 40 CFR 63.5993. The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered ''representative'' for purposes of performance testing. The proposed performance testing provisions may not be performed during startup, shutdown, or malfunction, as specified in 40 CFR 63.7(e)(1). The EPA is proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Section 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' available to the Administrator upon request but does not specifically require the information to be recorded. The regulatory text the EPA is proposing to add to this provision builds on that requirement and makes explicit the requirement to record the information.

(5) Monitoring

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.8(c)(1)(iii) by changing the ''yes'' in columns 4 and 5 to a ''no.'' The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.8(d)(3) by changing the ''Applies as modified by § 63.5990(e) and (f)'' in column 4 to a ''no.'' The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is proposing to add to the rule at 40 CFR 63.5990(f)(3) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under § 63.8(d)(2).''

(6) Recordkeeping

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.10(b)(2)(i) by changing the ''yes'' in column 4 to a ''no.'' Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. Special provisions applicable to startup and shutdown, such as a startup and shutdown plan, have been removed from the rule (with exceptions discussed below), thereby reducing the need for additional recordkeeping for startup and shutdown periods.

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.10(b)(2)(ii) by changing the ''yes'' in column 4 to a ''no.'' When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

(7) Reporting

We are proposing to revise the General Provisions table (Table 17) entry for 40 CFR 63.10(d)(5) by changing the ''yes'' in column 4 to a ''no.'' Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement for malfunctions, the EPA is proposing to replace the SSM report under 40 CFR 63.10(d)(5) with the existing reporting requirements under 40 CFR 63.4720(a). The replacement language differs from the General Provisions' requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semiannual report to be required under the proposed rule. We are proposing that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate the cross-reference to 40 CFR

63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

The proposed amendments also eliminate the cross-reference to 40 CFR 63.10(d)(5)(ii). Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdown, and malfunctions when a source failed to meet an applicable standard, but did not follow the SSM plan. We will no longer require owners and operators to report when actions are taken during a startup, shutdown, or malfunction.

2. Electronic Reporting Requirements

Through this proposal, the EPA is proposing that owners and operators of Rubber Tire Manufacturing NESHAP facilities submit electronic copies of the required notification of compliance status reports required in 40 CFR 63.9(h) and 63.6009(k), performance test reports required in 40 CFR 63.6010(h), and semiannual compliance reports required in 40 CFR 63.6010(g) through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, ''*Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,*'' available in Docket ID No. EPA–HQ–OAR–2019–0392. This proposed rule requirement does not affect submittals required by state air agencies as required by 40 CFR 63.13.

For the performance test reports required in 40 CFR 63.6010(h), the proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [21] at the time of the test be submitted in the format generated through the use of the ERT. Performance tests results collected using test methods that are not supported by the ERT at the time of the performance test are required to be submitted to the EPA electronically in a portable document format (PDF) using the attachment module of the ERT.

For semiannual compliance reports required in 40 CFR 63.6010(g), the proposed rule requires that owners and operators use the appropriate spreadsheet report form to submit information to CEDRI, 1 year after finalizing this proposed action. A draft version of the proposed electronic spreadsheet reporting template for this report is included in the docket for this action (Docket ID No. EPA–HQ–OAR–2019–0392). The EPA specifically requests comment on the content, layout, and overall design of the template. Prior to availability of the final spreadsheet report template in CEDRI, owners and operators of affected sources will be required to submit the semiannual compliance report as currently required by the rule. When the EPA finalizes the spreadsheet report template, rubber tire sources will be notified about its availability via the CEDRI website. We plan to finalize a required reporting template with the final rule. The owner or operator would begin submitting reports electronically with the next report that is due, once the electronic spreadsheet report template has been available for at least 1 year.

For the electronic submittal of notification of compliance status reports required in 40 CFR 63.9(h) and 63.6009(k), the final spreadsheet report template discussed above, which will reside in CEDRI, will also contain the information required for the notification of compliance status report and will satisfy the requirement to provide the notifications of compliance status information electronically, eliminating the need to provide a separate notification of compliance status report. As stated above, the final spreadsheet report template will be available after finalizing this proposed action and sources will be required to use the spreadsheet report template after 1 year. Prior to the availability of the final spreadsheet report template in CEDRI, owners and operators of affected sources will be required to submit notice of compliance status reports as currently required by the rule. As stated above, we will notify sources about the availability of the final spreadsheet report template via the CEDRI website.

Additionally, the EPA has identified two broad circumstances in which an extension of time for electronic reporting may be requested from the EPA. In both circumstances, the decision to grant additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing a mechanism for requesting extensions of time for electronic reporting to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. An extension of time may be requested due to outages of the EPA's CDX or CEDRI where an owner or operator is precluded from accessing the system and submitting required reports is addressed in 40 CFR 63.6010. The situation where an extension may be warranted due to a force majeure event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule is addressed in 40 CFR 63.6010. Examples of force majeure events may include acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [22] to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy [23] developed in response to the White House's Digital Government Strategy.[24] For more information on the benefits of electronic reporting, see the

[21] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[22] *EPA's Final Plan for Periodic Retrospective Reviews,* August 2011. Available at *https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154.*

[23] *E-Reporting Policy Statement for EPA Regulations,* September 2013. Available at *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[24] *Digital Government: Building a 21st Century Platform to Better Serve the American People,* May 2012. Available at *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action.

E. What compliance dates are we proposing?

The EPA is proposing that affected sources that commenced construction or reconstruction on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] must comply with all of the amendments, with the exception of the proposed electronic format for submitting notifications and compliance reports, no later than 180 days after the effective date of the final rule, or upon startup, whichever is later. Affected sources that commence construction or reconstruction after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] must comply with all requirements of the subpart, including the amendments being proposed, with the exception of the proposed electronic format for submitting notifications and compliance reports, no later than the effective date of the final rule or upon startup, whichever is later. All affected facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart XXXX, until the applicable compliance date of the amended rule. The final action is not expected to be a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For existing sources, we are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart XXXX. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and compliance reports be submitted electronically. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that are required to convert reporting mechanisms to install necessary hardware and software, become familiar with the process of submitting performance test results electronically through the EPA's CEDRI, test these new electronic submission capabilities, and reliably employ electronic reporting shows that a time period of a minimum of 90 days, and, more typically, 180 days is generally necessary to successfully accomplish these revisions. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; to evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; and to update their operation, maintenance, and monitoring plan to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the time frame needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable and, thus, is proposing that all affected sources that commenced construction or reconstruction on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] be in compliance with all of this regulation's revised requirements within 180 days of the regulation's effective date.

We solicit comment on the proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance dates.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The EPA estimates that there are 21 rubber tire manufacturing facilities that are subject to the Rubber Tire Manufacturing NESHAP affected by the proposed amendments to 40 CFR part 63, subpart XXXX. The bases of our estimates of affected facilities are provided in the memorandum, *Rubber Tire Major Source Memo,* which is available in the docket for this action. We are not currently aware of any planned or potential new or reconstructed rubber tire manufacturing facilities in the source category.

B. What are the air quality impacts?

We are not finalizing revisions to the emission limits other than to make them applicable during SSM periods, we do not anticipate any air quality impacts as a result of the proposed amendments, since facilities are already in compliance with emission limits during all periods, including SSM.

C. What are the cost impacts?

The one-time cost associated with reviewing the revised rule and becoming familiar with the electronic reporting requirements is estimated to be $6,740 (2017$). The total cost per facility is estimated to be $321 per facility to review the final rule requirements and become familiar with the electronic reporting requirements. All other costs associated with notifications, reporting, and recordkeeping are believed to be unchanged because the facilities in each source category are currently required to comply with notification, reporting, and recordkeeping requirements and will continue to be required to comply with those requirements. The number of personnel-hours required to develop the materials in support of reports required by the NESHAP remain unchanged.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs needed to comply with a proposed rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a proposed rule. The total cost associated with this proposed rule is estimated to be $6,740, which is a one-time cost associated with reviewing the revised rule and becoming familiar with the electronic reporting requirements. The estimated cost per facility is $321. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

E. What are the benefits?

The EPA does not anticipate reductions in HAP emissions as a result of the proposed amendments to the Rubber Tire Manufacturing NESHAP. However, the proposed amendments would improve the rule by ensuring that the standards apply at all times and by requiring electronic submittal of initial notifications, performance test results, and semiannual reports that would increase the usefulness of the data and would ultimately result in less burden on the regulated community. Because

these proposed amendments are not considered economically significant, as defined by Executive Order 12866, and because no emission reductions were estimated, we did not estimate any health benefits from reducing emissions.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/rubber-tire-manufacturing-national-emission-standards-hazardous-air.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.,* commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.,* performance test reports, material balance calculations).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2019–0392 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the project website at *https://www.epa.gov/stationary-sources-air-pollution/rubber-tire-manufacturing-national-emission-standards-hazardous-air.*

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1982.03. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing changes to the recordkeeping and reporting requirements associated with 40 CFR part 63, subpart XXXX, in the form of eliminating the SSM plan and reporting requirements; including reporting requirements for deviations in the semiannual report; and including the requirement for electronic submittal of reports. In addition, the number of facilities subject to the standards changed. The number of respondents was reduced from 23 to 21 based on consultation with industry representatives and state/local agencies.

Respondents/affected entities: The respondents to the recordkeeping and reporting requirements are owners or operators of rubber tire manufacturing facilities subject to 40 CFR part 63, subpart XXXX.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart XXXX).

Estimated number of respondents: 21 facilities.

Frequency of response: The frequency of responses varies depending on the burden item. Responses include one-time review of rule amendments, reports of periodic performance tests, and semiannual compliance reports.

Total estimated burden: The annual recordkeeping and reporting burden for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be 5,870 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for responding facilities to comply with all of the requirements in the NESHAP, averaged over the 3 years of this ICR, is estimated to be $819,000 (rounded, per year). There are no estimated capital and operation and maintenance costs.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the dockets identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than November 29, 2019. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities, since there are no small entities in the source category.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or

uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the Rubber Tire Manufacturing source category, and would not be affected by this action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III.A and IV.A and B of this preamble.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in sections IV.A, IV.B, IV.F, and IV.G of this preamble. As discussed in sections IV.A, IV.B, IV.F, and IV.G of this preamble, we performed a demographic analysis for each source category, which is an assessment of risks to individual demographic groups, of the population close to the facilities (within 50 km and within 5 km). In our analysis, we evaluated the distribution of HAP-related cancer risks and noncancer hazards from the Rubber Tire Manufacturing source category across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks.

Results of the demographic analysis performed for the Rubber Tire Manufacturing source category indicate that, for four of the 10 demographic groups, White, African American, people living below the poverty level, and adults over 25 without a high school diploma that reside within 5 km of facilities in the source category is greater than the corresponding national percentage for the same demographic groups. When examining the risk levels of those exposed to emissions from rubber manufacturing facilities, we find 4,500 people exposed to a cancer risk at or above 1-in-1 million and nobody exposed to a chronic noncancer TOSHI greater than 1.

The results of the Rubber Tire Manufacturing source category demographic analysis indicate that emissions from the source category expose approximately 4,500 people to a cancer risk at or above 1-in-1 million and no people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population for four of the 10 demographic groups; White people, people living below the poverty level, adults with a high school diploma, and African Americans that reside within 50 km of facilities in the source category is greater than the corresponding national percentage for the same demographic groups.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 27, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart XXXX—National Emission Standards for Hazardous Air Pollutants; Rubber Tire Manufacturing

■ 2. Section 63.5990 is amended by:
■ a. Revising paragraphs (a), (b), (d), paragraph (f) introductory text, paragraphs (f)(2), and (f)(3); and
■ b. Adding new paragraph (f)(4).

The revisions and addition read as follows:

§ 63.5990 What are my general requirements for complying with this subpart?

(a) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], you must be in compliance with the applicable emission limitations specified in Tables 1 through 4 to this subpart at all times, except during periods of startup, shutdown, and malfunction if you are using a control device to comply with an emission limit. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], you must be in compliance with the applicable emission limitations specified in Tables 1 through 4 to this subpart at all times

(b) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], except as provided in § 63.5982(b)(4), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the

Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

* * * * *

(d) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], for each affected source that complies with the emission limits in Tables 1 through 3 to this subpart using a control device, you must develop a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], a startup, shutdown, and malfunction plan is not required.

* * * * *

(f) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], in your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (f)(1) through (3) of this section as follows. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], in your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (f)(1) through (4) of this section as follows.

* * * * *

(2) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(1) and (2).

(3) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2); and

(4) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

■ 3. Section 63.5993 is amended by revising paragraphs (c) and (d) to read as follows:

§ 63.5993 What performance tests and other procedures must I use?

* * * * *

(c) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], you may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown unless specified by the Administrator or an applicable subpart. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(d) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(1) unless otherwise specified in the test method. Each test run must last at least 1 hour. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], you must conduct three separate test runs for each performance test required in this section, as specified in § 63.5993(c) above, unless otherwise specified in the test method. Each test run must last at least 1 hour.

* * * * *

■ 4. Section 63.5995 is amended by revising paragraph (d).

The revisions read as follows:

§ 63.5995 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(d) For any other control device, or for other capture systems, ensure that the CPMS is operated according to a monitoring plan submitted to the Administrator with the Notification of Compliance Status report required by § 63.9(h). The monitoring plan must meet the requirements in paragraphs (a) and (d)(1) through (3) of this section. Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

* * * * *

■ 5. Section 63.6009 is amended by revising paragraph (e)(2) and adding paragraph (k) to read as follows:

§ 63.6009 What notifications must I submit and when?

* * * * *

(e) * * *

(2) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], for each initial compliance demonstration required in tables 6 through 8 to this subpart that includes a performance test conducted according to the requirements in table 5 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], For each initial compliance demonstration required in tables 6 through 8 to this subpart that includes a performance test conducted according to the requirements in table 5 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2) and § 63.6010(h)(1) through (3).

* * * * *

(k) You must submit to the Administrator notification reports of the following recorded information. Beginning on [DATE 181 DAYS AFTER

DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] or once the reporting form has been available on the CEDRI website for 1 year, whichever date is later, you must submit all subsequent notification of compliance status reports required in § 63.9(h) and § 63.6009(d) through (i) to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov*). You must use the appropriate electronic report form (*i.e.,* template) on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date on which the report form becomes available will be listed on the CEDRI website. If the reporting form for the notification of compliance status report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent notification of compliance status reports via CEDRI. The applicable notification must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim that some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate electronic reporting form found on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph. Where applicable, you may assert a claim of EPA system outage, in accordance with § 63.6010(i), or force majeure, in accordance with § 63.6010(j), for failure to timely comply with this requirement.

■ 6. Section 63.6010 is amended by:
■ a. Revising paragraphs (b)(2) and (4);
■ b. Revising paragraphs (c)(4);
■ c. Revising paragraph (d);
■ d. Revising paragraph (g); and
■ e. Adding paragraphs (h) through (j).

The revisions and additions read as follows:

§ 63.6010 What reports must I submit and when?

* * * * *

(b) * * *

(2) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the first semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the first semiannual compliance report must be submitted electronically via CEDRI no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983.

* * * * *

(4) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], each subsequent semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], each subsequent semiannual compliance report must be submitted electronically via CEDRI no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

* * * * *

(c) * * *

(4) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], if you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], a startup, shutdown, and malfunction plan is not required.

* * * * *

(d) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], for each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction when the affected source is operating. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], for each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source, the compliance report must contain the information in paragraphs (c)(1) through (3) and (d)(1) through (3) of this section. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(1) Before [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] the total operating time of each affected source during the reporting period. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], in the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time and duration of each failure.

(2) Before [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] information on the starting date, starting time, duration, and cause of each deviation (including unknown cause, if applicable) and the corrective action taken. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], for each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(3) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], record actions taken to minimize emissions in accordance with § 63.5990, and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(g) Before [DATE 1 YEAR AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], or once the reporting form has been available on the CEDRI website for 1 year, whichever date is later, if acceptable to both the Administrator and you, you may submit reports and notifications electronically. Beginning on [DATE 1 YEAR AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], or once the reporting form has been available on the

CEDRI website for 1 year, whichever date is later, you must submit the semiannual compliance report required in § 63.6010(c)(1) through (10), as applicable, to the EPA via the CEDRI. The CEDRI interface can be accessed through the EPA's CDX (*https://cdx.epa.gov*). You must use the appropriate electronic report form on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The date on which the report form becomes available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. Once the form has been available in CEDRI for 1 year, you must begin submitting all subsequent reports via CEDRI. The reports must be submitted by the deadlines specified in this subpart, regardless of the method in which the reports are submitted. If you claim that some of the information required to be submitted via CEDRI is CBI, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate electronic reporting form found on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted shall be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(h) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], if you use a control system (add-on control device and capture system) to meet the emission limitations, you must also conduct a performance test at least once every 5 years following your initial compliance demonstration to verify control system performance and reestablish operating parameters or operating limits for control systems used to comply with the emissions limits. Within 60 days after the date of completing each performance test required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (h)(1) through (3) of this section.

(1) Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test. Submit the results of the performance test to the EPA via the CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test. The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) Confidential business information (CBI). If you claim some of the information submitted under paragraph (h) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (h) of this section.

(i) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] if you are required to electronically submit a report or notification (*i.e.,* Notification of Compliance Status Report) through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (i)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report or notification within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report or notification must be submitted electronically as soon as possible after the outage is resolved.

(j) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] if you are required to electronically submit a report or notification (*i.e.,* Notification of Compliance Status Report) through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (j)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety

hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 7. Section 63.6011 is amended by revising paragraph (a)(3) and adding paragraph (e) to read as follows:

§ 63.6011 What records must I keep?

(a) * * *

(3) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], it is not required to keep records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, or malfunction.

* * * * *

(e) After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**] any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 8. Section 63.6015 is amended by revising the definition for Deviation to read as follows:

§ 63.6015 What definitions apply to this part?

* * * * *

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart. On and after [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this paragraph no longer applies.

* * * * *

■ 9. Table 15 of Subpart XXXX is revised to read as follows:

TABLE 15 TO SUBPART XXXX OF PART 63—REQUIREMENTS FOR REPORTS

[As stated in § 63.6010, you must submit each report that applies to you according to the following table]

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.	Semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(f).
	b. If you have a deviation from any emission limitation during the reporting period at an affected source where you are not using a CPMS, the report must contain the information in § 63.6010(d). If the deviation occurred at a source where you are using a CMPS or if there were periods during which the CPMS were out-of-control as specified in § 63.8(c)(7), the report must contain the information required by § 63.5990(f)(3).	Semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(f).
	c. Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this report is no longer required.	Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(f). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this report is no longer required.

TABLE 15 TO SUBPART XXXX OF PART 63—REQUIREMENTS FOR REPORTS—Continued

[As stated in § 63.6010, you must submit each report that applies to you according to the following table]

You must submit a(n)	The report must contain . . .	You must submit the report . . .
2. Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this report is no longer required.	a. Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], actions taken for the event. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this report is no longer required.	Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], by fax or telephone within 2 working days after starting actions inconsistent with the plan. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this report is no longer required.
	b. Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the information in § 63.10(d)(5)(ii). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this report is no longer required.	Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], by letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)). After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], this report is no longer required.
3. Performance Test Report	If you use a control system (add-on control device and capture system) to meet the emission limitations.	Conduct a performance test at least once every 5 years following your initial compliance demonstration according to the requirements in § 63.5993.

■ 10. Table 17 of Subpart XXXX is revised to read as follows:

Before [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], as stated in § 63.6013, you must comply with the applicable General Provisions (GP) requirements according to the following table:

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention; severability.	Yes	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§ 63.6(b)(6)	[Reserved]			
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.		No	No.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§ 63.6(c)(3)–(4)	[Reserved]			
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes	Yes.
§ 63.6(d)	[Reserved]			
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes	No.
§ 63.6(f)(1)	Compliance Except During SSM		Yes	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test; operation and maintenance plans; records; inspection.	Yes	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards		No	No.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates		No	No.
§ 63.7(a)(3)	CAA section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	No.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes	No.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes	No.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; and internal and external quality assurance procedures for testing.	Yes	No.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	No.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes	No.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes	No.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; and conditions when data from an additional test run can be used.	Yes	No.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	No.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status report; and keep data for 5 years.	Yes	No.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	No.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard	Yes	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes	No.
§ 63.8(a)(3)	[Reserved]			
§ 63.8(a)(4)	Monitoring with Flares		No	No.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(c)(1)(i)	Routine and Predictable SSM		No	No.
§ 63.8(c)(1)(ii)	SSM not in SSMP		No	No.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements; must verify operational status before or at performance test.	Yes	No.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.		Applies as modified by § 63.5990(f).	No.
§ 63.8(c)(5)	Continuous Opacity Monitoring Systems (COMS) Minimum Procedures.		No	No.
§ 63.8(c)(6)	CMS Requirements		Applies as modified by § 63.5990(e).	No.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes	No.
§ 63.8(d)	CMS Quality Control		Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(e)	CMS Performance Evaluation		No	No.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test		No	No.
§ 63.8(g)	Data Reduction		Applies as modified by § 63.5990(f).	No.
§ 63.9(a)	Notification Requirements	Applicability and state delegation	Yes	Yes.

TABLE 17 TO SUBPART XXXX OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART XXXX—Continued

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup; and contents of each.	Yes	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes	No.
§ 63.9(f)	Notification of VE/Opacity Test	No	No.	
§ 63.9(g)	Additional Notifications When Using CMS.	No	No.	
§ 63.9(h)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; and keep for 5 years.	Yes	Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to Startup, Shutdown, and Malfunction.		Yes	No.
§ 63.10(b)(2)(vi) and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control; calibration checks; adjustments, maintenance.	Yes	No.
§ 63.10(b)(2)(vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and visible emission observation results; and measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes	Yes.
§ 63.10(b)(2)(xiii)	Records		No	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes	Yes.
§ 63.10(c)	Records		No	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes	No.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		No	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.		Yes	No.
§ 63.10(e)	Additional CMS Reports		No	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes	Yes.
§ 63.11	Flares		No	No.
§ 63.12	Delegation	State authority to enforce standards	Yes	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes	Yes.

After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], as stated in § 63.6013, you must comply with the applicable General Provisions (GP) requirements according to the following table:

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention; severability.	Yes	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes	Yes.

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§ 63.6(b)(6)	[Reserved]			
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.		No	No.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§ 63.6(c)(3)–(4)	[Reserved]			
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes	Yes.
§ 63.6(d)	[Reserved]			
§ 63.6(e)(1)(i)–(ii)	Operations & Maintenance		No	No.
§ 63.6(e)(1)(iii)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		No	No.
§ 63.6(f)(1)	SSM Exemption		No	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test; operation and maintenance plans; records; inspection.	Yes	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards		No	No.
§ 63.6(i)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with rule.	Yes	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates		No	No.
§ 63.7(a)(3)	CAA section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	No.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes	No.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes	No.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; and internal and external quality assurance procedures for testing.	Yes	No.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	No.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	No	No.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes	No.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; and conditions when data from an additional test run can be used.	Yes	No.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	No.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the Notification of Compliance Status report; and keep data for 5 years.	Yes	No.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	No.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard	Yes	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes	No.
§ 63.8(a)(3)	[Reserved]			
§ 63.8(a)(4)	Monitoring with Flares		No	No.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(c)(1)(i)	Routine and Predictable SSM		No	No.
§ 63.8(c)(1)(ii)	SSM not in SSMP		No	No.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source complying with operation and maintenance requirements; review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system.	No	No.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements; must verify operational status before or at performance test.	Yes	No.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.		Applies as modified by § 63.5990(f).	No.
§ 63.8(c)(5)	Continuous Opacity Monitoring Systems (COMS) Minimum Procedures.		No	No.
§ 63.8(c)(6)	CMS Requirements		Applies as modified by § 63.5990(e).	No.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes	No.
§ 63.8(d)	CMS Quality Control		Applies as modified by § 63.5990(e) and (f).	No.
§ 63.8(d)(3)	Written Procedures for CMS		No	No
§ 63.8(e)	CMS Performance Evaluation		No	No.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test		No	No.
§ 63.8(g)	Data Reduction		Applies as modified by § 63.5990(f).	No.
§ 63.9(a)	Notification Requirements	Applicability and state delegation	Yes	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup; and contents of each.	Yes	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate.	Yes	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes	No.
§ 63.9(f)	Notification of VE/Opacity Test		No	No.
§ 63.9(g)	Additional Notifications When Using CMS.		No	No.
§ 63.9(h)	Notification of Compliance Status	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than 1 source.	Yes	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; and keep for 5 years.	Yes	Yes.
§ 63.10(b)(2)(i) and (iv)–(v).	Records related to Startup, Shutdown, and Malfunction.		No	No.
§ 63.10(b)(2)(ii)	Recordkeeping of failures to meet a standard.		No. See 63.6010 for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.	
§ 63.10(b)(2)(iii), (vi), and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control; calibration checks; adjustments, maintenance.	Yes	No.

Citation	Subject	Brief description of applicable sections	Applicable to Subpart XXXX?	
			Using a control device	Not using a control device
§ 63.10(b)(2) (vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and visible emission observation results; and measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes	Yes.
§ 63.10(b)(2) (xiii)	Records		No	No.
§ 63.10(b)(2) (xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes	Yes.
§ 63.10(c)	Records		No	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes	No.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		No	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.		No	No.
§ 63.10(e)	Additional CMS Reports		No	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes	Yes.
§ 63.11	Flares		No	No.
§ 63.12	Delegation	State authority to enforce standards	Yes	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes	Yes.

[FR Doc. 2019–21837 Filed 10–29–19; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 84, No. 210

Wednesday, October 30, 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, OCTOBER

51937–52356 1
52357–52746 2
52747–52992 3
52993–53302 4
53303–53572 7
53573–53984 8
53985–54464 9
54465–54762 10
54763–55016 11
55017–55244 15
55245–55488 16
55489–55858 17
55859–56094 18
56095–56366 21
56367–56672 22
56673–56928 23
56929–57308 24
57309–57600 25
57601–57812 28
57813–58004 29
58005–58302 30

CFR PARTS AFFECTED DURING OCTOBER

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

417 52993

3 CFR

Proclamations:
9933 52737
9934 52739
9935 52741
9936 52983
9937 52985
9938 52987
9939 52989
9940 52991
9941 53983
9942 53985
9943 53987
9944 53989
9945 53991
9946 54763
9947 55485
9948 55489
9949 55491
9950 55493
9951 56367
9952 57305
9953 57307
9954 57601

Executive Orders:
13811 (superseded in part by 13889) 52743
13836 (Amended by Memo. of October 11, 2019 56095
13837 (Amended by Memo. of October 11, 2019 56095
13839 (Amended by Memo. of October 11, 2019 56095
13888 52355
13889 52743
13890 53573
13891 55235
13892 55239
13893 55487
13894 55851
13895 57309

Administrative Orders:
Memorandums:
Memorandum of September 24, 2019 52353
Memorandum of October 11, 2019 56095
Notices:
Notice of October 15, 2019 55857
Notice of October 22, 2019 56927

5 CFR

185 51937

6 CFR

37 55017

7 CFR

1 ..... 51938, 56097
51 51939
205 ..... 53577, 56673
251 52997
400 52993
718 53579
930 53003
1205 55019
1412 53579
3565 55034

Proposed Rules:
205 ..... 52041, 55866
273 ..... 52809, 55870
922 52384
925 57369
944 57369
966 52042

8 CFR

103 52357
212 52357
213 52357
214 52357
245 52357
248 52357

Proposed Rules:
204 55250
205 55250
245 55250

9 CFR

201 56677
202 56677
203 56677
301 52300
309 52300
310 52300

10 CFR

72 ..... 52747, 54465
1003 58005

Proposed Rules:
72 52815
429 52817
430 ..... 52817, 52818, 56540
431 ..... 52386, 56949
810 52819
955 53066

12 CFR

3 56369
6 56369
26 54465
34 ..... 53579, 56369, 58013
46 ..... 54472, 56369
160 56369
161 56369
163 56369

167 56369
201 52752
204 52753
212 54465
213 58017
225 53579
226 ....58013, 58020
238 54465
323 53579
325 56929
348 54465
701 ....51942, 53278
715 53303
746 53278
1003 57945
1013 58017
1026 ....58013, 58020
Proposed Rules:
30 55510
208 55510
217 57240
252 57240
327 52826
337 54044
364 55510
390 ....52387, 52827, 52834, 54045
741 55510

14 CFR

13 57813
23 54476
25 53995
39 ....51952, 51955, 51957, 51960, 52754, 53008, 53997, 53999, 54480, 54482, 54490, 54492, 54765, 55036, 55041, 55495, 55859, 56109, 56376, 56378, 56678, 56680, 56935, 57313, 57813
71 ....51963, 51964, 52757, 54001
97 ....51965, 51967, 51970, 51971, 56112, 56113
383 57813
406 57813
1206 54773
Proposed Rules:
25 52392
27 52392
29 52392
39 ....52044, 52047, 53070, 53073, 53076, 53082, 54046, 54049, 54051, 55073, 56152, 56707, 56709, 57655, 57657, 57660, 57663, 57829, 58060, 58062, 58066, 58070, 58073
71 ....52049, 52051, 53346, 54053, 54525, 54526, 54528, 54792, 56390
91 52392
121 52392
125 52392
135 52392
244 57370
259 57370

15 CFR

734 56117
740 56117
744 54002
746 56117
902.1 55044
Proposed Rules:
922 52053

16 CFR

305 58026
1217 57315
1220 56684
1221 56684
Proposed Rules:
312 56391
425 52393
1253 54055

17 CFR

200 55055
210 57162
230 53011
232 ....56938, 57162
239 57162
240 55055
270 57162
274 57162
Proposed Rules:
23 ....56392, 56950, 57831
43 57831
45 57831
49 57831
202 58075
210 52936
229 52936
230 58206
240 ....54062, 56956, 58206
242 54794
249 52936
270 58075

18 CFR

2 56940
385 55498
Proposed Rules:
292 53246
375 53246

19 CFR

Proposed Rules:
113 55251
127 57832
133 ....55251, 57832
148 55251
151 55251
177 55251

20 CFR

404 57319
408 57319
416 57319
620 53037
686 56942

21 CFR

101 57603
510 53309
520 53309
522 53309
526 53309
529 53309
556 53309
558 53309
862 57816
874 57610
888 57320
890 57321
1308 ....57323, 58045
Proposed Rules:
117 53347
573 52055
1303 56712
1308 58090
1315 56712

22 CFR

40 54996

23 CFR

652 53599

24 CFR

Ch. IX 54009

25 CFR

170 55498

26 CFR

1 ....53052, 54014, 54027, 55245
Proposed Rules:
1 ....52398, 52410, 52835, 54067, 54068, 54079, 54529, 55075

27 CFR

9 54779
Proposed Rules:
9 ....55075, 55082

28 CFR

Proposed Rules:
28 56397

29 CFR

2200 53052
2520 56894
2700 54782
4022 55055
Proposed Rule:
10 53956
103 ....54533, 55265
516 53956
531 53956
578 53956
579 53956
580 53956
1915 53902
1926 53902
4003 53084

30 CFR

56 55500
57 55500
250 55861
585 55861
926 ....56689, 58047
946 56696
Proposed Rules:
924 53349

31 CFR

1010 ....51973, 53053, 54495
Proposed Rules:
208 55267
800 52411

32 CFR

78 55056
314 57326
316 51974
637 52363
887 51974

33 CFR

100 ....51975, 53053, 53314, 54029
117 ....53054, 56699, 56701
165 ....51975, 52763, 54029, 54032, 54496, 54783, 55057, 55501, 55502, 55862, 56381, 56702, 57818, 57820, 58051
328 56385
401 57813
Proposed Rules:
100 52411
117 53350
127 53352
165 ....54783, 56731, 57666

34 CFR

Proposed Rules:
263 54806
300 56154

36 CFR

Proposed Rules:
7 57833
294 55522

37 CFR

1 51977
2 52363
7 52363
42 51977
Proposed Rules:
1 53090
42 56401
380 ....57833, 58095

38 CFR

3 54033
17 ....57327, 57668
Proposed Rules:
4 55086

39 CFR

20 56383
111 ....51982, 55504
265 56385
3002 53056
3004 53056
Proposed Rules:
20 56406
111 55529
Ch. III 53840
501 53353

40 CFR

9 ....54033, 55058, 57612
52 ....51983, 51986, 51988, 52001, 52003, 52005, 52364, 52368, 52766, 53057, 53061, 53601, 54035, 54498, 54502, 54785, 55864, 56058, 56121, 56385, 56942, 56946, 57822, 57846
55 56121
110 56381
112 56381
116 56381
117 56381
122 56381
180 ....52369, 52771, 52775, 52778, 53316, 53322, 53326, 53373, 54510, 57331, 57336, 57341, 57619
230 56381
232 56381
271 54516
282 52783
300 56381

302 56381
401 56381
721 ....54033, 54518, 55058, 57612

Proposed Rules:
52 ....52838, 54080, 55094, 55100, 55104, 55107, 56156, 56407, 56959, 56961, 57836
60 52055
62 57838
63 ....52419, 53662, 54278, 54394, 56288, 56733, 58268
80 57677
136 56590
180 ....52850, 57685
271 55871
282 52852
721 ....53663, 53670, 54816

41 CFR

105-70 53064
Ch. 301 55246
Ch. 304 55246
Ch. 305 55246
Ch. 306 55246

42 CFR

Ch. I 57554
412 53603
413 53603
495 53603

Proposed Rules:
411 55766
1001 55694
1003 55694

43 CFR

Proposed Rules:
3500 55873

44 CFR

64 ....54520, 56704

45 CFR

162 57621

46 CFR

221 57813
307 57813
340 57813
356 57813
501 54037
502 57037

Proposed Rules:
401 58099
403 58099
404 58099
501 54087
503 54087
515 54087
535 54087

47 CFR

0 54040
1 57343
2 53630
25 53630
27 57343
51 57629
54 54952
61 57629
69 57629

Proposed Rules:
0 53355
1 ....53355, 56734, 56743
73 55881
76 53355
96 56743

48 CFR

Ch. 1 ....54760, 54762
2 54760

Proposed Rules:
2 52420
9 52420
12 ....52425, 55109
13 ....52420, 52425
14 52428
15 ....52425, 52428
16 ....52420, 52425
19 52420
22 ....52420, 56157
25 52420
29 55109
30 52428
37 52425
52 ....52420, 52428, 55109, 56157
1539 55894
1552 55894

49 CFR

107 57813
171 57813
190 ....52015, 57813
191 52180
192 52180
195 52260
209 57813
213 57813
214 57813
215 57813
216 57813
217 57813
218 57813
219 57813
220 57813
221 57813
222 57813
223 57813
224 57813
225 57813
227 57813
228 57813
229 57813
230 57813
231 57813
232 57813
233 57813
234 57813
235 57813
236 57813
237 57813
238 57813
239 57813
240 57813
241 57813
242 57813
243 57813
244 57813
270 57813
272 57813
383 52029
384 52029
386 57813
578 57813
580 52664
624 56129

Proposed Rules:
29 52706
172 56954
173 56964
350 54093
355 54093
385 52432
388 54093
571 54533
Ch. X 53094, 55897
1039 55109
1250 53375
1333 55114

50 CFR

17 ....52598, 52791, 53336, 54436, 56131
216 52372
300 ....52035, 52800
622 ....52036, 57367
635 ....52806, 54522, 55507, 56136
648 ....52039, 53065, 54041, 54790, 58053
660 ....56137, 56142
665 ....57652, 57827
679 ....52039, 53343, 53344, 53659, 54791, 55044, 55071, 55508, 56150, 56705, 57653

Proposed Rules:
17 ....52058, 53380, 54524, 54732, 56991
20 55120
223 ....54354, 55530
224 ....54354, 55530
226 ....54354, 55530
229 54543
260 55130
261 55130
300 ....52852, 57687
600 ....52852, 57687
622 ....52438, 52864, 55132, 55531, 55900, 57378, 57840
648 54094
660 ....54561, 54579
679 ....52442, 52852, 56991, 57687

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 October 11, 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.